

CHAPTER 336

UNIFORM COMMERCIAL CODE

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| | | 336.6-107 | Repealed. |
| | | 336.6-108 | Repealed. |
| | | 336.6-109 | Repealed. |
| | | 336.6-110 | Repealed. |
| | | 336.6-111 | Repealed. |
| | | 336.9-111 | Repealed. |
| | | 336.9-411 | Computerized filing system. |
| | | 336.9-413 | Uniform commercial code account. |

336.1-105 TERRITORIAL APPLICATION OF THE CHAPTER; PARTIES' POWER TO CHOOSE APPLICABLE LAW.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 336.2-402.

Applicability of the article on leases. Sections 336.2A-105 and 336.2A-106.

Applicability of the article on bank deposits and collections. Section 336.4-102.

Governing law in the article on funds transfers. Section 336.4A-507.

Applicability of the article on investment securities. Section 336.8-106.

Perfection provisions of the article on secured transactions. Section 336.9-103.

History: 1991 c 171 art 2 s 1

336.2-403 POWER TO TRANSFER; GOOD FAITH PURCHASE OF GOODS; "ENTRUSTING".

(1) A purchaser of goods acquires all title which the purchaser's transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

- (a) the transferor was deceived as to the identity of the purchaser, or
- (b) the delivery was in exchange for a check which is later dishonored, or
- (c) it was agreed that the transaction was to be a "cash sale," or
- (d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (article 9) and documents of title (article 7).

History: 1991 c 171 art 2 s 2

336.2-725 STATUTE OF LIMITATIONS IN CONTRACTS FOR SALE.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

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

This section does not apply to actions for the breach of any contract for sale of a grain storage structure that is an improvement to real property. These actions are subject only to the statute of limitations set forth in section 541.051.

This section does not apply to claims against sellers of goods for damages to property caused by the goods where the property that is damaged is not the goods and the sale is not a sale between parties who are each merchants in goods of the kind.

History: 1991 c 352 s 1

336.2A-103 DEFINITIONS AND INDEX OF DEFINITIONS.

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

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means a unit of goods that by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease in which

(1) the lessor does not select, manufacture, or supply the goods,

(2) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease, and

(3) either

(i) the lessee receives a copy of the contract evidencing the lessor's purchase of the goods or a disclaimer statement on or before signing the lease contract, or

(ii) the lessee's approval of the contract evidencing the lessor's purchase of the goods or a disclaimer statement is a condition to effectiveness of the lease contract.

"Disclaimer statement" means a written statement that is part of or separate from the lease contract that discloses all warranties and other rights provided to the lessee by the lessor and supplier in connection with the lease contract and informs the lessee in a conspicuous manner that there are no warranties or other rights provided to the lessee by the lessor and supplier other than those disclosed in the statement.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 336.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease is in violation of the ownership rights or security inter-

est or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

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

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

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

(2) Other definitions applying to this article and the sections in which they appear are:

"Accessions." Section 336.2A-310(1).

"Construction mortgage." Section 336.2A-309(1)(d).

"Encumbrance." Section 336.2A-309(1)(e).

"Fixtures." Section 336.2A-309(1)(a).

"Fixture filing." Section 336.2A-309(1)(b).

"Purchase money lease." Section 336.2A-309(1)(c).

(3) The following definitions in other articles apply to this article:

"Account." Section 336.9-106.

"Between merchants." Section 336.2-104(3).

"Buyer." Section 336.2-103(1)(a).

"Chattel paper." Section 336.9-105(1)(b).

"Consumer goods." Section 336.9-109(1).

"Document." Section 336.9-105(1)(f).

"Entrusting." Section 336.2-403(3).

"General intangibles." Section 336.9-106.

"Good faith." Section 336.2-103(1)(b).

"Instrument." Section 336.9-105(1)(i).

“Merchant.” Section 336.2-104(1).

“Mortgage.” Section 336.9-105(1)(j).

“Pursuant to commitment.” Section 336.9-105(1)(k).

“Receipt.” Section 336.2-103(1)(c).

“Sale.” Section 336.2-106(1).

“Sale on approval.” Section 336.2-326.

“Sale or return.” Section 336.2-326.

“Seller.” Section 336.2-103(1)(d).

(4) In addition, sections 336.1-101 to 336.1-109 contain general definitions and principles of construction and interpretation applicable throughout this article.

History: 1991 c 171 art 1 s 1

336.2A-209 LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT.

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

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (section 336.2A-209(1)) does not: (i) modify the rights and obligations of the parties to the supply contract, whether arising from the supply contract or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

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

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

History: 1991 c 171 art 1 s 2

336.2A-303 ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS.

(1) As used in this section, “creation of a security interest” includes the sale of a lease contract that is subject to article 9, secured transactions, by reason of section 336.9-102(1)(b).

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

(3) A provision in a lease agreement that (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes the transfer an event of default, is not

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

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

(5) Subject to subsections (3) and (4):

(a) if a transfer is made that is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 336.2A-501(2);

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

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

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

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

History: 1991 c 171 art 1 s 3

336.2A-304 SUBSEQUENT LEASE OF GOODS BY LESSOR.

(1) Subject to section 336.2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) and section 336.2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

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

(2) If a lessee has entrusted leased goods to the lessee's lessor who is a merchant dealing in goods of that kind, a subsequent lessee from that lessor under a lease entered into after the entrustment and in the ordinary course of business takes those goods free of the existing lease contract and obtains, to the extent of the leasehold interest transferred, all of the lessor's and the earlier lessee's rights to the goods.

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

History: 1991 c 171 art 1 s 4

336.2A-307 PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS.

(1) Except as otherwise provided in section 336.2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) and in sections 336.2A-306 and 336.2A-308, a creditor of a lessor takes subject to the lease contract unless:

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

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

(c) the creditor holds a security interest in the goods which was perfected (section 336.9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (section 336.9-303) and the lessee knows of its existence.

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

History: 1991 c 171 art 1 s 5

336.2A-309 LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES.

(1) In this section:

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

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 336.9-402(5);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this article, or (ii) if necessary to enforce the lessor's or lessee's other rights and remedies under this article; remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to

remove until the party seeking removal gives adequate security for the performance of this obligation.

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

History: 1991 c 171 art 1 s 6

336.2A-311 PRIORITY SUBJECT TO SUBORDINATION.

Nothing in this article prevents subordination by agreement by any person entitled to priority.

History: 1991 c 171 art 1 s 7

336.2A-407 IRREVOCABLE PROMISES: FINANCE LEASES.

(1) In the case of a finance lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1):

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

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

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

History: 1991 c 171 art 1 s 8

336.2A-501 DEFAULT: PROCEDURE.

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

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

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

(4) Except as otherwise provided in section 336.1-106(1) or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

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

History: 1991 c 171 art 1 s 9

336.2A-503 MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES.

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

(2) Resort to a remedy provided under this article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause

an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this article.

(3) Consequential damages may be liquidated under section 336.2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

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

History: 1991 c 171 art 1 s 10

336.2A-507 PROOF OF MARKET RENT: TIME AND PLACE.

(1) Damages based on market rent (section 336.2A-519 or 336.2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in sections 336.2A-519 and 336.2A-528.

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

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

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

History: 1991 c 171 art 1 s 11

336.2A-508 LESSEE'S REMEDIES.

(1) If a lessor fails to deliver the goods in conformity to the lease contract (section 336.2A-509) or repudiates the lease contract (section 336.2A-402), or a lessee rightfully rejects the goods (section 336.2A-509) or justifiably revokes acceptance of the goods (section 336.2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 336.2A-510), the lessor is in default under the lease contract and the lessee may pursue any or all of the following remedies:

(a) cancel the lease contract (section 336.2A-505(1));

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

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 336.2A-518 and 336.2A-520), or recover damages for nondelivery (sections 336.2A-519 and 336.2A-520);

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

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

(a) if the goods have been identified, recover them (section 336.2A-522); or
(b) in a proper case, obtain specific performance or replevy the goods (section 336.2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in section 336.2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 336.2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to section 336.2A-527(5).

(6) Subject to the provisions of section 336.2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

History: 1991 c 171 art 1 s 12

336.2A-516 EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER.

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

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

(3) If a tender has been accepted:

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

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 336.2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

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

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

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

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 336.2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 336.2A-211).

History: 1991 c 171 art 1 s 13

336.2A-517 REVOCATION OF ACCEPTANCE OF GOODS.

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

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

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

(2) Except in the case of a finance lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

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

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

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

History: 1991 c 171 art 1 s 14

336.2A-518 COVER; SUBSTITUTE GOODS.

(1) After a default by a lessor under the lease contract of the type described in section 336.2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 336.2A-504) or otherwise determined pursuant to agreement of the parties (sections 336.1-102(3) and 336.2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 336.2A-519 governs.

History: 1991 c 171 art 1 s 15

336.2A-519 LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 336.2A-504) or otherwise determined pursuant to agreement of the parties (sections 336.1-102(3) and 336.2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify

for treatment under section 336.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

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

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 336.2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

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

History: 1991 c 171 art 1 s 16

336.2A-523 LESSOR'S REMEDIES.

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 336.2A-510), the lessee is in default under the lease contract and the lessor may pursue any or all of the following remedies:

(a) cancel the lease contract (section 336.2A-505(1));

(b) proceed respecting goods not identified to the lease contract (section 336.2A-524);

(c) withhold delivery of the goods and take possession of goods previously delivered (section 336.2A-525);

(d) stop delivery of the goods by any bailee (section 336.2A-526);

(e) dispose of the goods and recover damages (section 336.2A-527), or retain the goods and recover damages (section 336.2A-528), or in a proper case recover rent (section 336.2A-529);

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

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

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

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

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

History: 1991 c 171 art 1 s 17

336.2A-525 LESSOR'S RIGHT TO POSSESSION OF GOODS.

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

(2) After a default by the lessee under the lease contract of the type described in section 336.2A-523(1) or 336.2A-523(3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 336.2A-527).

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

History: 1991 c 171 art 1 s 18

336.2A-527 LESSOR'S RIGHTS TO DISPOSE OF GOODS.

(1) After a default by a lessee under the lease contract of the type described in section 336.2A-523(1) or 336.2A-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (section 336.2A-525 or 336.2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 336.2A-504) or otherwise determined pursuant to agreement of the parties (sections 336.1-102(3) and 336.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the start of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 336.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 336.2A-528 governs.

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

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 336.2A-508(5)).

History: 1991 c 171 art 1 s 19

336.2A-528 LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 336.2A-504) or otherwise determined pursuant to agreement of the parties (sections 336.1-102(3) and 336.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 336.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type

described in section 336.2A-523(1) or 336.2A-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 336.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 336.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

History: 1991 c 171 art 1 s 20

336.2A-529 LESSOR'S ACTION FOR THE RENT.

(1) After default by the lessee under the lease contract of the type described in section 336.2A-523(1) or 336.2A-523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 336.2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 336.2A-530, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 336.2A-530, less expenses saved in consequence of the lessee's default.

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

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by section 336.2A-527 or 336.2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to section 336.2A-527 or 336.2A-528.

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

(5) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (section 336.2A-402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under sections 336.2A-527 and 336.2A-528.

In addition to any other recovery permitted by this article or other law, the lessor

may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

History: 1991 c 171 art 1 s 21

- 336.6-101 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-102 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-103 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-104 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-105 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-106 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-107 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-108 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-109 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-110 [Repealed, 1991 c 171 art 2 s 4]
- 336.6-111 [Repealed, 1991 c 171 art 2 s 4]
- 336.9-111 [Repealed, 1991 c 171 art 2 s 4]

336.9-411 COMPUTERIZED FILING SYSTEM.

(a) The secretary of state shall develop and implement a statewide computerized filing system to accumulate and disseminate information relative to lien statements, financing statements, state and federal tax lien notices, and other uniform commercial code documents. The computerized filing system must allow information to be entered and retrieved from the computerized filing system by county recorders, the department of revenue, the department of jobs and training, and the Internal Revenue Service.

(b) County recorders shall enter information relative to lien statements, financing statements, state and federal tax lien notices, and other uniform commercial code documents filed in their offices into a central data base maintained by the secretary of state. The information must be entered under the rules of the secretary of state. This requirement does not apply to tax lien notices filed under sections 268.161, subdivision 1, paragraph (b), clause (2); 270.69, subdivision 2, paragraph (b), clause (2); and 272.488, subdivision 1, but does apply to entry of the date and time of receipt and county recorder's file number of those notices.

(c) The secretary of state may allow private parties to have electronic-view-only access to the computerized filing system and to other computerized records maintained by the secretary of state on a fee basis, except that visual access to electronic display terminals at the public counters at the secretary of state's office will be without charge and available during public counter hours. If the computerized filing system allows a form of electronic access to information regarding the obligations of debtors, the access must be available 24 hours a day, every day of the year.

(d) The secretary of state shall adopt rules to implement the computerized filing system. The secretary of state may adopt permanent and emergency rules. The rules must:

(1) allow filings to be made at the offices of all county recorders and the secretary of state's office as required by section 336.9-401;

(2) establish a central data base for all information relating to liens and security interests that are filed at the offices of county recorders and the secretary of state;

(3) provide procedures for entering data into a central data base;

(4) allow the offices of all county recorders and the secretary of state's office to add, modify, and delete information in the central data base as required by the uniform commercial code;

(5) allow the offices of all county recorders and the secretary of state's office to have access to the central data base for review and search capabilities;

- (6) allow the offices of all county recorders to have electronic-view-only access to the computerized business information records on file with the secretary of state;
- (7) require the secretary of state to maintain the central data base;
- (8) provide security and protection of all information in the central data base and monitor the central data base to ensure that unauthorized entry is not allowed;
- (9) require standardized information for entry into the central data base;
- (10) prescribe an identification procedure for debtors and secured parties that will enhance lien and financing statement searches; and
- (11) prescribe a procedure for phasing-in or converting from the existing filing system to a computerized filing system.

(e) The secretary of state, county recorders, and their employees and agents shall not be liable for any loss or damages arising from errors in or omissions from information entered into the computerized filing system as a result of the electronic transmission of tax lien notices under sections 268.161, subdivision 1, paragraph (b), clause (2); 270.69, subdivision 2, paragraph (b), clause (2); and 272.488, subdivision 1.

History: 1991 c 267 s 1; 1991 c 291 art 18 s 11

336.9-413 UNIFORM COMMERCIAL CODE ACCOUNT.

(a) The uniform commercial code account is established as an account in the state treasury.

(b) The filing officer with whom a financing statement, amendment, assignment, statement of release, or continuation statement is filed, or to whom a request for search is made, shall collect a \$4 surcharge on each filing or search. By the 15th day following the end of each fiscal quarter, each county recorder shall forward the receipts from the surcharge accumulated during that fiscal quarter to the secretary of state. The surcharge does not apply to a search request made by a natural person who is the subject of the data to be searched except when a certificate is requested as a part of the search.

(c) The surcharge amounts received from county recorders and the surcharge amounts collected by the secretary of state's office must be deposited in the state treasury and credited to the general fund.

(d) Fees that are not expressly set by statute but are charged by the secretary of state to offset the costs of providing a service under sections 336.9-411 to 336.9-413 must be deposited in the state treasury and credited to the uniform commercial code account.

(e) Fees that are not expressly set by statute but are charged by the secretary of state to offset the costs of providing information contained in the computerized records maintained by the secretary of state must be deposited in the state treasury and credited to the uniform commercial code account.

(f) Money in the uniform commercial code account is continuously appropriated to the secretary of state to implement and maintain the computerized uniform commercial code filing system under section 336.9-411 and to provide electronic-view-only access to other computerized records maintained by the secretary of state.

History: 1991 c 233 s 99