

Part 5

Default, Statute of Limitations, Acceptance of Goods, Lessor Rights

70A-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 chapter.
- (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 chapter and, except as limited by this chapter, 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 chapter.
- (4) Except as otherwise provided in Subsection 70A-1a-305(1), in this chapter, or in 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 section as to the goods, or under other applicable law as to both the real property and the goods in accordance with that person's rights and remedies in respect of the real property, in which case this section does not apply.

Amended by Chapter 272, 2007 General Session

70A-2a-502 Notice after default.

Except as otherwise provided in this chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

Enacted by Chapter 197, 1990 General Session

70A-2a-503 Modification or impairment of rights and remedies.

- (1) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.
- (2) Resort to a remedy provided under this chapter 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 chapter.
- (3) Consequential damages may be liquidated under Section 70A-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 chapter.

Amended by Chapter 237, 1993 General Session

70A-2a-504 Liquidation of damages.

- (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement, but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.
- (2) If the lease agreement provides for liquidation of damages, and such provision does not comply with Subsection (1), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.
- (3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency as provided in Section 70A-2a-525 or 70A-2a-526, the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:
 - (a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with Subsection (1); or
 - (b) in the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or \$500.
- (4) A lessee's right to restitution under Subsection (3) is subject to offset to the extent the lessor establishes:
 - (a) a right to recover damages under the provisions of this chapter other than Subsection (1); and
 - (b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

Enacted by Chapter 197, 1990 General Session

70A-2a-505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.

- (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.
- (2) On termination of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives.
- (3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.
- (4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this chapter for default.
- (5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

Enacted by Chapter 197, 1990 General Session

70A-2a-506 Statute of limitations.

- (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract, the parties may reduce the period of limitation to not less than one year.

- (2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause for action of indemnity accrues:
 - (a) in the case of an indemnity against liability, when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later; or
 - (b) in the case of an indemnity against loss or damage, when the person indemnified makes payment thereof.
- (3) If 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 default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limit 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 that have accrued before July 1, 1990.

Amended by Chapter 13, 1998 General Session

70A-2a-507 Proof of market rent -- Time and place.

- (1) Damages based on market rent as provided in Section 70A-2a-519 or 70A-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 70A-2a-519 and 70A-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 chapter 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 chapter offered by one party is not admissible unless and until he 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.

Amended by Chapter 237, 1993 General Session

70A-2a-508 Lessee's remedies.

- (1) If a lessor fails to deliver the goods in conformity to the lease contract as provided in Section 70A-2a-509 or repudiates the lease contract as provided in Section 70A-2a-402, or a lessee rightfully rejects the goods as provided in Section 70A-2a-509 or justifiably revokes acceptance of the goods as provided in Section 70A-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 as provided in Section 70A-2a-510, the lessor is in default under the lease contract and the lessee may:

- (a) cancel the lease contract as provided in Subsection 70A-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 as provided in Sections 70A-2a-518 and 70A-2a-520, or recover damages for nondelivery as provided in Sections 70A-2a-519 and 70A-2a-520; or
 - (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 as provided in Section 70A-2a-522; or
 - (b) in a proper case, obtain specific performance or replevy the goods as provided in Section 70A-2a-521.
- (3) If a lessor is in default under the lease contract, the lessee may exercise the rights and pursue the remedies provided for in the lease contract, which may include the right to cancel the lease, and in Section 70A-2a-519.
- (4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages as provided in Subsection 70A-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 the provisions of Subsection 70A-2a-527(5).
- (6) Subject to the provisions of Section 70A-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.

Amended by Chapter 237, 1993 General Session

70A-2a-509 Lessee's rights on improper delivery -- Rightful rejection.

- (1) Subject to the provisions of Section 70A-2a-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.
- (2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

Enacted by Chapter 197, 1990 General Session

70A-2a-510 Installment lease contracts -- Rejection and default.

- (1) Under an installment lease contract, a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within Subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.
- (2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole, there is a default with respect to the

whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

Enacted by Chapter 197, 1990 General Session

70A-2a-511 Merchant lessee's duties as to rightfully rejected goods.

- (1) Subject to any security interest of a lessee as provided in Subsection 70A-2a-508(5), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.
- (2) If a merchant lessee under Subsection (1) or any other lessee under Section 70A-2a-512 disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.
- (3) In complying with this section or Section 70A-2a-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.
- (4) A purchaser who purchases in good faith from a lessee pursuant to this section or Section 70A-2a-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter.

Enacted by Chapter 197, 1990 General Session

70A-2a-512 Lessee's duties as to rightfully rejected goods.

- (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily as provided in Section 70A-2a-511 and subject to any security interest of a lessee as provided in Subsection 70A-2a-508(5):
 - (a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;
 - (b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in Section 70A-2a-511; but
 - (c) the lessee has no further obligations with regard to goods rightfully rejected.
- (2) Action by the lessee pursuant to Subsection (1) is not acceptance or conversion.

Enacted by Chapter 197, 1990 General Session

70A-2a-513 Cure by lessor of improper tender or delivery -- Replacement.

- (1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably

notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

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

Enacted by Chapter 197, 1990 General Session

70A-2a-514 Waiver of lessee's objections.

- (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:
 - (a) if, stated seasonably, the lessor or the supplier could have cured it as provided in Section 70A-2a-513; or
 - (b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.
- (2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

Amended by Chapter 42, 2006 General Session

70A-2a-515 Acceptance of goods.

- (1) Acceptance of goods occurs after:
 - (a) the lessee has had a reasonable opportunity to inspect the goods and the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or
 - (b) the lessee fails to make an effective rejection of the goods as provided in Subsection 70A-2a-509(2).
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Enacted by Chapter 197, 1990 General Session

70A-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 other than a consumer lease in which the supplier assisted in the preparation of the lease contract or participated in negotiating the terms of the lease contract with the lessor, 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 chapter 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, or be barred from any remedy against the lessor, and, in addition, in the case of a finance lease, the lessee shall notify the supplier or be barred from any remedy against the supplier;
 - (b) within a reasonable time after the lessee receives notice of litigation for infringement or the like, as provided in Section 70A-2a-211, the lessee shall notify the lessor or be barred from any remedy 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 lessor or the supplier may come in and defend and that if the lessor or the supplier does not do so, he will be bound in any action against him by the lessee by any determination of fact common to the two litigations, unless the lessor or the supplier, after seasonable receipt of the notice, does come in and so defend.
 - (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 as provided in Section 70A-2a-211, or else be barred from any remedy. 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 as provided in Section 70A-2a-211.

Amended by Chapter 237, 1993 General Session

70A-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 that is not a consumer 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.

Amended by Chapter 237, 1993 General Session

70A-2a-518 Cover -- Substitute goods.

- (1) After default by a lessor under the lease contract of the type described in Section 70A-2a-508, 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 as provided in Section 70A-2a-504 or otherwise determined pursuant to agreement of the parties as provided in Sections 70A-1a-302 and 70A-2a-503, if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:
 - (a) 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 that 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
 - (b) 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 qualifies for treatment under Subsection (2), the lessee may elect to proceed under Subsection (2) or Section 70A-2a-519. 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 under Section 70A-2a-519 as if the lessee had elected not to cover.

Amended by Chapter 272, 2007 General Session

70A-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 as provided in Section 70A-2a-504 or otherwise determined pursuant to agreement of the parties as provided in Sections 70A-1a-302 and 70A-2a-503, if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement whether or not the lease agreement qualifies for treatment under Subsection 70A-2a-518(2), or is by purchase or otherwise, the measure of damages for default by the lessor under Section 70A-2a-508 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 as provided in Subsection 70A-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.

Amended by Chapter 272, 2007 General Session

70A-2a-520 Lessee's incidental and consequential damages.

- (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses, or commissions in connection with effecting cover, and any other reasonable expense incident to the default.
- (2) Consequential damages resulting from a lessor's default include:
 - (a) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
 - (b) injury to person or property proximately resulting from any breach of warranty.

Enacted by Chapter 197, 1990 General Session

70A-2a-521 Lessee's right to specific performance or replevin.

- (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.
- (2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.
- (3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

Enacted by Chapter 197, 1990 General Session

70A-2a-522 Lessee's right to goods on lessor's insolvency.

- (1) Subject to Subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract as provided in Section 70A-2a-217 on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.
- (2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

Enacted by Chapter 197, 1990 General Session

70A-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 as provided in Section 70A-2a-510, the lessee is in default under the lease contract and the lessor may:
 - (a) cancel the lease contract as provided in Subsection 70A-2a-505(1);

- (b) proceed respecting goods not identified to the lease contract as provided in Section 70A-2a-524;
 - (c) withhold delivery of the goods and take possession of goods previously delivered as provided in Section 70A-2a-525;
 - (d) stop delivery of the goods by any bailee as provided in Section 70A-2a-526;
 - (e) dispose of the goods and recover damages as provided in Section 70A-2a-527, or retain the goods and recover damages as provided in Section 70A-2a-528, or in a proper case recover rent as provided in Section 70A-2a-529; or
 - (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 a 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 contract, 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 Subsections (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).

Amended by Chapter 237, 1993 General Session

70A-2a-524 Lessor's right to identify goods to lease contract.

- (1) A lessor aggrieved under Section 70A-2a-523 may:
- (a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and
 - (b) dispose of goods as provided in Subsection 70A-2a-527(1) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.
- (2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

Enacted by Chapter 197, 1990 General Session

70A-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 70A-2a-523, or if agreed, after the 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 as provided in Section 70A-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.

Amended by Chapter 237, 1993 General Session

70A-2a-526 Lessor's stoppage of delivery in transit or otherwise.

- (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.
- (2) In pursuing its remedies under Subsection (1), the lessor may stop delivery until:
 - (a) receipt of the goods by the lessee;
 - (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
 - (c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.
- (3)
 - (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
 - (b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.
 - (c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Amended by Chapter 42, 2006 General Session

70A-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 70A-2a-523 or after the lessor refuses to deliver or takes possession of goods as provided in Section 70A-2a-525 or 70A-2a-526, or if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.
- (2) Except as otherwise provided with respect to damages liquidated in the lease agreement as provided in Section 70A-2a-504 or otherwise determined pursuant to agreement of the parties as provided in Sections 70A-1a-302 and 70A-2a-503, if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:
 - (a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;
 - (b) the present value, as of the date of the commencement of the term of the new lease agreement, of the difference between 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 which is comparable to the then remaining term of the original lease agreement; and
 - (c) any incidental damages allowed under Section 70A-2a-530, less expenses saved in consequence of the lessee's default.
- (3) If the lessor's disposition is by lease agreement that qualifies for treatment under Subsection (2), the lessor may elect to proceed under Subsection (2) or Section 70A-2a-528. 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 under Section 70A-2a-528 as if the lessor had elected not to dispose of the goods.

- (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 chapter.
- (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 as provided in Subsection 70A-2a-508(5).

Amended by Chapter 272, 2007 General Session

70A-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 as provided in Section 70A-2a-504 or otherwise determined pursuant to agreement of the parties as provided in Sections 70A-1a-302 and 70A-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 whether or not the lease agreement qualifies for treatment under Subsection 70A-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 70A-2a-523 or, if agreed, for any other default of the lessee:
 - (a) 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 on which the lessee makes a tender of the goods to the lessor;
 - (b) the present value as of the date determined under Subsection (1)(a) of default of the total rent for the then remaining lease term of the original lease agreement and 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
 - (c) any incidental damages allowed under Section 70A-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 70A-2a-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

Amended by Chapter 272, 2007 General Session

70A-2a-529 Lessor's damages for lessee's default.

- (1) After default by the lessee under the lease contract of the type described in Subsection 70A-2a-523(1) or (3)(a), or, if agreed, after any 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 back to the lessor and for conforming goods lost or damaged after risk of loss passes to the lessee as provided in Section 70A-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 date determined under Subsection (1)(a)(i) of the rent for the then remaining lease term of the lease agreement; and
 - (iii) any incidental damages allowed under Section 70A-2a-530, less expenses saved in consequence of the lessee's default; and
- (b) for goods identified to the lease contract where the lessor has never delivered the goods or has taken possession of them or the lessee has effectively tendered them back to the lessor, if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that such an 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 date determined under Subsection (1)(b)(i) of the rent for the then remaining lease term of the lease agreement; and
 - (iii) any incidental damages allowed under Section 70A-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 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 will be governed by Section 70A-2a-527 or 70A-2a-528, and the lessor will cause an appropriate credit to be provided against any judgment for damages to the extent that the amount of the judgment exceeds the recovery available under Section 70A-2a-527 or 70A-2a-528.
- (4) Payment of the judgment for damages obtained pursuant to Subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement if the lessee complies with all other terms and conditions of 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 as provided in Section 70A-2a-402, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under Sections 70A-2a-527 and 70A-2a-528.

Amended by Chapter 324, 2010 General Session

70A-2a-530 Lessor's incidental damages.

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care, and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

Enacted by Chapter 197, 1990 General Session

70A-2a-531 Standing to sue third parties for injury to goods.

- (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:
 - (a) the lessor has a right of action against the third party; and
 - (b) the lessee also has a right of action against the third party if the lessee:
 - (i) has a security interest in the goods;
 - (ii) has an insurable interest in the goods; or

- (iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.
- (2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.
- (3) Either party with the consent of the other may sue for the benefit of whom it may concern.

Enacted by Chapter 197, 1990 General Session

70A-2a-532 Additional remedies for loss of residual interest.

In addition to any other recovery permitted by this chapter, the lessor shall be entitled to 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.

Enacted by Chapter 197, 1990 General Session

70A-2a-533 Effective date.

- (1) Except as provided in Subsection (2), this act takes effect on July 1, 1990 and shall apply to all lease contracts that are first made or that first become effective between the parties on or after that date, but shall not apply to lease contracts first made or that first became effective prior to that date unless the parties thereto specifically agree in writing that the lease contract as extended, amended, modified, renewed or supplemented, shall be governed by applicable law as supplemented or amended by this act. Absent such specific agreement transactions validly entered into before that date and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as though this act had not taken effect.
- (2) The amendments to former Sections 70A-1-201, 70A-9-113, 70A-9-306, and 70A-9-318 take effect on July 1, 1990.

Amended by Chapter 189, 2014 General Session

70A-2a-534 Other remedies.

In addition to the rights and remedies provided for lease agreements and lease disputes in this chapter, a consumer, dealer, lessee, lessor, and manufacturer of assistive technology as defined in Section 70A-2-802 may exercise rights and seek remedies pursuant to any lease agreement under Title 70A, Chapter 2, Part 8, Assistive Technology Warranty Act, as limited by Subsections 70A-2-805(4) and 70A-2-807(4).

Amended by Chapter 21, 1999 General Session