
SENATE BILL 5155

State of Washington

61st Legislature

2009 Regular Session

By Senators Kline and Rockefeller; by request of Uniform Legislation Commission

Read first time 01/15/09. Referred to Committee on Judiciary.

1 AN ACT Relating to the Uniform Commercial Code; amending RCW
2 62A.1-101, 62A.1-102, 62A.1-103, 62A.1-104, 62A.1-105, 62A.1-106,
3 62A.1-108, 62A.1-201, 62A.1-202, 62A.1-203, 62A.1-204, 62A.1-205,
4 62A.1-206, 62A.2-103, 62A.2-202, 62A.2A-103, 62A.2A-501, 62A.2A-518,
5 62A.2A-519, 62A.2A-527, 62A.2A-528, 62A.3-103, 62A.4-104, 62A.4A-105,
6 62A.4A-106, 62A.4A-204, 62A.5-103, 62A.8-102, and 62A.9A-102; adding
7 new sections to chapter 62A.1 RCW; creating a new section; and
8 repealing RCW 62A.1-107, 62A.1-109, 62A.1-207, 62A.1-208, 62A.2-208,
9 and 62A.2A-207.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 **Sec. 1.** RCW 62A.1-101 and 1965 ex.s. c 157 s 1-101 are each
12 amended to read as follows:

13 SHORT TITLES. (1) This Title (~~shall be known and~~) may be cited
14 as the Uniform Commercial Code.

15 (2) This article may be cited as Uniform Commercial Code--General
16 Provisions.

17 **Sec. 2.** RCW 62A.1-102 and 1965 ex.s. c 157 s 1-102 are each
18 amended to read as follows:

1 (~~(PURPOSES; RULES OF CONSTRUCTION; VARIATION BY AGREEMENT.)~~) SCOPE
2 OF ARTICLE. (~~((1) This Title shall be liberally construed and applied~~
3 ~~to promote its underlying purposes and policies.~~
4 ~~(2) Underlying purposes and policies of this Title are~~
5 ~~(a) to simplify, clarify and modernize the law governing commercial~~
6 ~~transactions;~~
7 ~~(b) to permit the continued expansion of commercial practices~~
8 ~~through custom, usage and agreement of the parties;~~
9 ~~(c) to make uniform the law among the various jurisdictions.~~
10 ~~(3) The effect of provisions of this Title may be varied by~~
11 ~~agreement, except as otherwise provided in this Title and except that~~
12 ~~the obligations of good faith, diligence, reasonableness and care~~
13 ~~prescribed by this Title may not be disclaimed by agreement but the~~
14 ~~parties may by agreement determine the standards by which the~~
15 ~~performance of such obligations is to be measured if such standards are~~
16 ~~not manifestly unreasonable.~~
17 ~~(4) The presence in certain provisions of this Title of the words~~
18 ~~"unless otherwise agreed" or words of similar import does not imply~~
19 ~~that the effect of other provisions may not be varied by agreement~~
20 ~~under subsection (3).~~
21 ~~(5) In this Title unless the context otherwise requires~~
22 ~~(a) words in the singular number include the plural, and in the~~
23 ~~plural include the singular;~~
24 ~~(b) words of the masculine gender include the feminine and the~~
25 ~~neuter, and when the sense so indicates words of the neuter gender may~~
26 ~~refer to any gender.)) This article applies to a transaction to the~~
27 extent that it is governed by another article of the Uniform Commercial
28 Code.

29 **Sec. 3.** RCW 62A.1-103 and 1965 ex.s. c 157 s 1-103 are each
30 amended to read as follows:

31 (~~(SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.)~~)
32 CONSTRUCTION OF UNIFORM COMMERCIAL CODE TO PROMOTE ITS PURPOSES AND
33 POLICIES; APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW. (1) The
34 Uniform Commercial Code must be liberally construed and applied to
35 promote its underlying purposes and policies, which are:
36 (a) To simplify, clarify, and modernize the law governing
37 commercial transactions;

1 (b) To permit the continued expansion of commercial practices
2 through custom, usage, and agreement of the parties; and

3 (c) To make uniform the law among the various jurisdictions.

4 (2) Unless displaced by the particular provisions of ((this Title))
5 the Uniform Commercial Code, the principles of law and equity,
6 including the law merchant and the law relative to capacity to
7 contract, principal and agent, estoppel, fraud, misrepresentation,
8 duress, coercion, mistake, bankruptcy, ((or)) and other validating or
9 invalidating cause ((shall)) supplement its provisions.

10 **Sec. 4.** RCW 62A.1-104 and 1965 ex.s. c 157 s 1-104 are each
11 amended to read as follows:

12 CONSTRUCTION AGAINST ((IMPLICIT)) IMPLIED REPEAL. ((This Title))
13 The Uniform Commercial Code being a general act intended as a unified
14 coverage of its subject matter, no part of it shall be deemed to be
15 impliedly repealed by subsequent legislation if such construction can
16 reasonably be avoided.

17 **Sec. 5.** RCW 62A.1-105 and 2001 c 32 s 8 are each amended to read
18 as follows:

19 ~~((TERRITORIAL APPLICATION OF THE TITLE; PARTIES' POWER TO CHOOSE~~
20 ~~APPLICABLE LAW.)) SEVERABILITY. ~~((1) Except as provided hereafter in~~
21 ~~this section, when a transaction bears a reasonable relation to this~~
22 ~~state and also to another state or nation the parties may agree that~~
23 ~~the law either of this state or of such other state or nation shall~~
24 ~~govern their rights and duties. Failing such agreement this Title~~
25 ~~applies to transactions bearing an appropriate relation to this state.~~~~

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

30 ~~Rights of creditors against sold goods. RCW 62A.2-402.~~

31 ~~Applicability of the Article on Leases. RCW 62A.2A-105 and~~
32 ~~62A.2A-106.~~

33 ~~Applicability of the Article on Bank Deposits and Collections. RCW~~
34 ~~62A.4-102.~~

35 ~~Governing law in the Article on Funds Transfers. RCW 62A.4A-507.~~

36 ~~Letters of Credit. RCW 62A.5-116.~~

1 ~~Applicability of the Article on Investment Securities. RCW~~
2 ~~62A.8-110.~~

3 ~~Law governing perfection, the effect of perfection or~~
4 ~~nonperfection, and the priority of security interests and agricultural~~
5 ~~liens. RCW 62A.9A-301 through 62A.9A-307.)~~ If any provision or clause
6 of the Uniform Commercial Code or its application to any person or
7 circumstance is held invalid, the invalidity does not affect other
8 provisions or applications of the Uniform Commercial Code which can be
9 given effect without the invalid provision or application, and to this
10 end the provisions of the Uniform Commercial Code are severable.

11 **Sec. 6.** RCW 62A.1-106 and 1965 ex.s. c 157 s 1-106 are each
12 amended to read as follows:

13 ~~((REMEDIES TO BE LIBERALLY ADMINISTERED.))~~ USE OF SINGULAR AND
14 PLURAL; GENDER. ~~((1) The remedies provided by this Title shall be~~
15 ~~liberally administered to the end that the aggrieved party may be put~~
16 ~~in as good a position as if the other party had fully performed but~~
17 ~~neither consequential or special nor penal damages may be had except as~~
18 ~~specifically provided in this Title or by other rule of law.~~

19 ~~(2) Any right or obligation declared by this Title is enforceable~~
20 ~~by action unless the provision declaring it specifies a different and~~
21 ~~limited effect.))~~ In the Uniform Commercial Code, unless the statutory
22 context otherwise requires:

23 (1) Words in the singular number include the plural, and those in
24 the plural include the singular; and

25 (2) Words of any gender also refer to any other gender.

26 **Sec. 7.** RCW 62A.1-108 and 1965 ex.s. c 157 s 1-108 are each
27 amended to read as follows:

28 ~~((SEVERABILITY.))~~ RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
29 NATIONAL COMMERCE ACT. ~~((If any provision or clause of this Title or~~
30 ~~application thereof to any person or circumstances is held invalid,~~
31 ~~such invalidity shall not affect other provisions or applications of~~
32 ~~the Title which can be given effect without the invalid provision or~~
33 ~~application, and to this end the provisions of this Title are declared~~
34 ~~to be severable.))~~ This article modifies, limits, and supersedes the
35 federal electronic signatures in global and national commerce act, 15
36 U.S.C. section 7001 et seq., except that nothing in this article

1 modifies, limits, or supersedes section 7001(c) of that act or
2 authorizes electronic delivery of any of the notices described in
3 section 7003(b) of that act.

4 **Sec. 8.** RCW 62A.1-201 and 2001 c 32 s 9 are each amended to read
5 as follows:

6 GENERAL DEFINITIONS. Unless the context otherwise requires, words
7 or phrases defined in this section, or in the additional definitions
8 contained in other articles of the Uniform Commercial Code that apply
9 to particular articles or parts thereof, have the meanings stated.

10 Subject to (~~additional~~) definitions contained in (~~the~~
11 ~~subsequent~~) other articles of (this Title which are applicable to
12 ~~specific)~~ the Uniform Commercial Code that apply to particular
13 articles or parts thereof(, and unless the context otherwise requires,
14 in this Title)):

15 (1) "Action₁" in the sense of a judicial proceeding₁ includes
16 recoupment, counterclaim, set-off, suit in equity₁ and any other
17 proceeding(~~s~~) in which rights are determined.

18 (2) "Aggrieved party" means a party entitled to (~~resort to~~)
19 pursue a remedy.

20 (3) "Agreement₁" as distinguished from "contract," means the
21 bargain of the parties in fact₁ as found in their language or (~~by~~
22 ~~implication~~) inferred from other circumstances₁ including course of
23 performance, course of dealing₁ or usage of trade (~~or course of~~
24 ~~performance~~) as provided in (~~this Title (RCW 62A.1-205, RCW 62A.2-~~
25 ~~208, and RCW 62A.2A-207).~~ Whether an agreement has legal consequences
26 ~~is determined by the provisions of this Title, if applicable; otherwise~~
27 ~~by the law of contracts (RCW 62A.1-103))~~ RCW 62A.1-303. (~~(Compare~~
28 ~~"Contract".)~~)

29 (4) "Bank" means any person engaged in the business of banking and
30 includes a savings bank, savings and loan association, credit union,
31 and trust company.

32 (5) "Bearer" means (~~the~~) a person in possession of (~~an~~) a
33 negotiable instrument, document of title, or certificated security that
34 is payable to bearer or indorsed in blank.

35 (6) "Bill of lading" means a document evidencing the receipt of
36 goods for shipment issued by a person engaged in the business of
37 transporting or forwarding goods(~~, and includes an airbill. "Airbill"~~

1 ~~means a document serving for air transportation as a bill of lading~~
2 ~~does for marine or rail transportation, and includes an air consignment~~
3 ~~note or air waybill).~~

4 (7) "Branch" includes a separately incorporated foreign branch of
5 a bank.

6 (8) "Burden of establishing" a fact means the burden of persuading
7 the trier((s)) of fact that the existence of the fact is more probable
8 than its ((~~non-existence~~)) nonexistence.

9 (9) "Buyer in ordinary course of business" means a person that buys
10 goods in good faith, without knowledge that the sale violates the
11 rights of another person in the goods, and in the ordinary course from
12 a person, other than a pawnbroker, in the business of selling goods of
13 that kind. A person buys goods in the ordinary course if the sale to
14 the person comports with the usual or customary practices in the kind
15 of business in which the seller is engaged or with the seller's own
16 usual or customary practices. A person that sells oil, gas, or other
17 minerals at the wellhead or minehead is a person in the business of
18 selling goods of that kind. A buyer in ordinary course of business may
19 buy for cash, by exchange of other property, or on secured or unsecured
20 credit, and may acquire goods or documents of title under a ((~~pre-~~
21 ~~existing~~)) preexisting contract for sale. Only a buyer that takes
22 possession of the goods or has a right to recover the goods from the
23 seller under Article 62A.2 RCW may be a buyer in ordinary course of
24 business. "Buyer in the ordinary course of business" does not include
25 a person that acquires goods in a transfer in bulk or as security for
26 or in total or partial satisfaction of a money debt ((~~is not a buyer in~~
27 ordinary course of business)).

28 (10) "Conspicuous,"((÷)) with reference to a term ((~~or clause is~~
29 conspicuous when it is)), means so written, displayed, or presented
30 that a reasonable person against ((~~whom~~)) which it is to operate ought
31 to have noticed it. ((~~A printed heading in capitals (as: NON-~~
32 NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a
33 form is "conspicuous" if it is in larger or other contrasting type or
34 color. But in a telegram any stated term is "conspicuous".)) Whether
35 a term ((~~or clause~~)) is "conspicuous" or not is ((~~for~~)) a decision
36 ((~~by~~)) for the court. Conspicuous terms include the following:

37 (a) A heading in capitals equal to or greater in size than the

1 surrounding text, or in contrasting type, font, or color to the
2 surrounding text of the same or lesser size; and

3 (b) Language in the body of a record or display in larger type than
4 the surrounding text, or in contrasting type, font, or color to the
5 surrounding text of the same size, or set off from surrounding text of
6 the same size by symbols or other marks that call attention to the
7 language.

8 (11) "Consumer" means an individual who enters into a transaction
9 primarily for personal, family, or household purposes.

10 (12) "Contract," as distinguished from "agreement," means the total
11 legal obligation ((which)) that results from the parties' agreement as
12 ((affected)) determined by ((this Title and)) the Uniform Commercial
13 Code as supplemented by any other applicable ((rules of)) laws.
14 ((Compare "Agreement".))

15 ((12)) (13) "Creditor" includes a general creditor, a secured
16 creditor, a lien creditor, and any representative of creditors,
17 including an assignee for the benefit of creditors, a trustee in
18 bankruptcy, a receiver in equity, and an executor or administrator of
19 an insolvent debtor's or assignor's estate.

20 ((13)) (14) "Defendant" includes a person in the position of
21 defendant in a ((cross-action or)) counterclaim, cross-claim, or third-
22 party claim.

23 ((14)) (15) "Delivery," with respect to an instrument((s)),
24 document((s)) of title, or chattel paper, ((or certificated
25 securities)) means voluntary transfer of possession.

26 ((15)) (16) "Document of title" includes bill of lading, dock
27 warrant, dock receipt, warehouse receipt or order for the delivery of
28 goods, and also any other document which in the regular course of
29 business or financing is treated as adequately evidencing that the
30 person in possession of it is entitled to receive, hold, and dispose of
31 the document and the goods it covers. To be a document of title, a
32 document must purport to be issued by or addressed to a bailee and
33 purport to cover goods in the bailee's possession which are either
34 identified or are fungible portions of an identified mass.

35 ((16)) (17) "Fault" means a default, breach, or wrongful act((r))
36 or omission ((or breach)).

37 ((17)) (18) "Fungible goods" ((with respect to goods or
38 securities)) means:

1 ~~(a) Goods ((or securities)) of which any unit ((is)), by nature or~~
2 ~~usage of trade, is the equivalent of any other like unit(()); or~~

3 ~~(b) Goods ((which are not fungible shall be deemed fungible for the~~
4 ~~purposes of this Title to the extent)) that ((under a particular)) by~~
5 ~~agreement ((or document unlike units)) are treated as equivalent((s)).~~

6 ~~((+18))~~ (19) "Genuine" means free of forgery or counterfeiting.

7 ~~((+19))~~ (20) "Good faith," except as otherwise provided in Article
8 5, means honesty in fact ~~((in the conduct or transaction concerned))~~
9 and the observance of reasonable commercial standards of fair dealing.

10 ~~((+20))~~ (21) "Holder" ~~((with respect to a negotiable instrument,))~~
11 means:

12 (a) The person in possession ((if the)) of a negotiable instrument
13 that is payable either to bearer or((, in the case of an instrument
14 payable)) to an identified person((, if the identified)) that is the
15 person ((is)) in possession((. "Holder" with respect to)); or

16 (b) The person in possession of a document of title ((means the
17 person in possession)) if the goods are deliverable either to bearer or
18 to the order of the person in possession.

19 ~~((+21) To "honor" is to pay or to accept and pay, or where a credit~~
20 ~~so engages to purchase or discount a draft complying with the terms of~~
21 ~~the credit.))~~

22 (22) "Insolvency proceeding((s))" includes ~~((any))~~ an assignment
23 for the benefit of creditors or other proceeding((s)) intended to
24 liquidate or rehabilitate the estate of the person involved.

25 (23) ~~((A person is))~~ "Insolvent" ~~((who either has))~~ means:

26 (a) Having generally ceased to pay ~~((his or her))~~ debts in the
27 ordinary course of business ~~((or cannot))~~ other than as a result of a
28 bona fide dispute;

29 (b) Being unable to pay ((his or her)) debts as they become due; or
30 ((is))

31 (c) Being insolvent within the meaning of ~~((the))~~ federal
32 bankruptcy law.

33 (24) "Money" means a medium of exchange currently authorized or
34 adopted by a domestic or foreign government ~~((and)).~~ The term includes
35 a monetary unit of account established by an intergovernmental
36 organization or by agreement between two or more ~~((nations))~~ countries.

37 (25) ~~((A person has "notice" of a fact when~~

38 ~~(a) he or she has actual knowledge of it; or~~

1 ~~(b) he or she has received a notice or notification of it; or~~
2 ~~(c) from all the facts and circumstances known to him or her at the~~
3 ~~time in question he or she has reason to know that it exists.~~

4 A person "knows" or has "knowledge" of a fact when he or she has actual
5 knowledge of it. "Discover" or "learn" or a word or phrase of similar
6 import refers to knowledge rather than to reason to know. The time and
7 circumstances under which a notice or notification may cease to be
8 effective are not determined by this Title.

9 ~~(26) A person "notifies" or "gives" a notice or notification to~~
10 ~~another by taking such steps as may be reasonably required to inform~~
11 ~~the other in ordinary course whether or not such other actually comes~~
12 ~~to know of it. A person "receives" a notice or notification when~~

13 ~~(a) it comes to his or her attention; or~~

14 ~~(b) it is duly delivered at the place of business through which the~~
15 ~~contract was made or at any other place held out by him or her as the~~
16 ~~place for receipt of such communications.~~

17 ~~(27) Notice, knowledge or a notice or notification received by an~~
18 ~~organization is effective for a particular transaction from the time~~
19 ~~when it is brought to the attention of the individual conducting that~~
20 ~~transaction, and in any event from the time when it would have been~~
21 ~~brought to his or her attention if the organization had exercised due~~
22 ~~diligence. An organization exercises due diligence if it maintains~~
23 ~~reasonable routines for communicating significant information to the~~
24 ~~person conducting the transaction and there is reasonable compliance~~
25 ~~with the routines. Due diligence does not require an individual acting~~
26 ~~for the organization to communicate information unless such~~
27 ~~communication is part of his or her regular duties or unless he or she~~
28 ~~has reason to know of the transaction and that the transaction would be~~
29 ~~materially affected by the information.~~

30 ~~(28)) "Organization" ((includes a corporation, government or~~
31 ~~governmental subdivision or agency, business trust, estate, trust,~~
32 ~~partnership or association, two or more persons having a joint or~~
33 ~~common interest, or any other legal or commercial entity)) means a~~
34 ~~person other than an individual.~~

35 ~~((29)) (26) "Party_L"((τ)) as ((distinct)) distinguished from~~
36 ~~"third party_L"((τ)) means a person ((who)) that has engaged in a~~
37 ~~transaction or made an agreement ((within this Title)) subject to the~~
38 ~~Uniform Commercial Code.~~

1 ~~((+30+))~~ (27) "Person" ((includes)) means an individual ((or an
2 organization (See RCW 62A.1-102).

3 ~~(31) "Presumption" or "presumed" means that the trier of fact must~~
4 ~~find the existence of the fact presumed unless and until evidence is~~
5 ~~introduced which would support a finding of its nonexistence.~~

6 ~~(32+))~~, corporation, business trust, estate, trust, partnership,
7 limited liability company, association, joint venture, government,
8 governmental subdivision, agency, or instrumentality, public
9 corporation, or any other legal or commercial entity.

10 (28) "Present value" means the amount as of a date certain of one
11 or more sums payable in the future, discounted to the date certain by
12 use of either an interest rate specified by the parties if that rate is
13 not manifestly unreasonable at the time the transaction is entered into
14 or, if an interest rate is not so specified, a commercially reasonable
15 rate that takes into account the facts and circumstances at the time
16 the transaction is entered into.

17 (29) "Purchase" ((includes)) means taking by sale, lease, discount,
18 negotiation, mortgage, pledge, lien, security interest, issue or ((re-
19 issue)) reissue, gift, or any other voluntary transaction creating an
20 interest in property.

21 ~~((+33+))~~ (30) "Purchaser" means a person ((who)) that takes by
22 purchase.

23 ~~((+34+))~~ (31) "Record" means information that is inscribed on a
24 tangible medium or that is stored in an electronic or other medium and
25 is retrievable in perceivable form.

26 (32) "Remedy" means any remedial right to which an aggrieved party
27 is entitled with or without resort to a tribunal.

28 ~~((+35+))~~ (33) "Representative" ((includes)) means a person
29 empowered to act for another, including an agent, an officer of a
30 corporation or association, and a trustee, executor, or administrator
31 of an estate(~~, or any other person empowered to act for another~~)).

32 ~~((+36+))~~ (34) "Right(~~s~~)" includes ((remedies)) remedy.

33 ~~((+37+))~~ (35) "Security interest" means an interest in personal
34 property or fixtures which secures payment or performance of an
35 obligation(~~, except for lease purchase agreements under chapter 63.19~~
36 RCW. ~~The term also~~)). "Security interest" includes any interest of a
37 consignor and a buyer of accounts, chattel paper, a payment intangible,
38 or a promissory note in a transaction that is subject to Article 9A.

1 "Security interest" does not include the special property interest of
2 a buyer of goods on identification of ((such)) those goods to a
3 contract for sale under RCW 62A.2-401 ((is not a "security interest")),
4 but a buyer may also acquire a "security interest" by complying with
5 Article 9A. Except as otherwise provided in RCW 62A.2-505, the right
6 of a seller or lessor of goods under Article 2 or 2A to retain or
7 acquire possession of the goods is not a "security interest," but a
8 seller or lessor may also acquire a "security interest" by complying
9 with Article 9A. The retention or reservation of title by a seller of
10 goods notwithstanding shipment or delivery to the buyer ((+)) under
11 RCW 62A.2-401((+)) is limited in effect to a reservation of a "security
12 interest." Whether a transaction in the form of a lease creates a
13 ((lease or)) "security interest" is determined ((by the facts of each
14 case. However, a transaction creates a security interest if the
15 consideration the lessee is to pay the lessor for the right to
16 possession and use of the goods is an obligation for the term of the
17 lease not subject to termination by the lessee, and:

18 ~~(a) The original term of the lease is equal to or greater than the~~
19 ~~remaining economic life of the goods;~~

20 ~~(b) The lessee is bound to renew the lease for the remaining~~
21 ~~economic life of the goods or is bound to become the owner of the~~
22 ~~goods;~~

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

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

29 ~~A transaction does not create a security interest merely because it~~
30 ~~provides that:~~

31 ~~(a) The present value of the consideration the lessee is obligated~~
32 ~~to pay the lessor for the right to possession and use of the goods is~~
33 ~~substantially equal to or is greater than the fair market value of the~~
34 ~~goods at the time the lease is entered into;~~

35 ~~(b) The lessee assumes risk of loss of the goods, or agrees to pay~~
36 ~~taxes, insurance, filing, recording, or registration fees, or service~~
37 ~~or maintenance costs with respect to the goods;~~

1 ~~(c) The lessee has an option to renew the lease or to become the~~
2 ~~owner of the goods;~~

3 ~~(d) The lessee has an option to renew the lease for a fixed rent~~
4 ~~that is equal to or greater than the reasonably predictable fair market~~
5 ~~rent for the use of the goods for the term of the renewal at the time~~
6 ~~the option is to be performed;~~

7 ~~(e) The lessee has an option to become the owner of the goods for~~
8 ~~a fixed price that is equal to or greater than the reasonably~~
9 ~~predictable fair market value of the goods at the time the option is to~~
10 ~~be performed; or~~

11 ~~(f) The amount of rental payments may or will be increased or~~
12 ~~decreased by reference to the amount realized by the lessor upon sale~~
13 ~~or disposition of the goods.~~

14 ~~For purposes of this subsection (37):~~

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

25 ~~(b) "Reasonably predictable" and "remaining economic life of the~~
26 ~~goods" are to be determined with reference to the facts and~~
27 ~~circumstances at the time the transaction is entered into; and~~

28 ~~(c) "Present value" means the amount as of a date certain of one or~~
29 ~~more sums payable in the future, discounted to the date certain. The~~
30 ~~discount is determined by the interest rate specified by the parties if~~
31 ~~the rate is not manifestly unreasonable at the time the transaction is~~
32 ~~entered into; otherwise, the discount is determined by a commercially~~
33 ~~reasonable rate that takes into account the facts and circumstances of~~
34 ~~each case at the time the transaction was entered into)) pursuant to~~
35 ~~RCW 62A.1-203.~~

36 ~~((+38)) (36) "Send" in connection ((with any)) a writing, record,~~
37 ~~or notice means:~~

1 (a) To deposit in the mail or deliver for transmission by any other
2 usual means of communication with postage or cost of transmission
3 provided for and properly addressed and, in the case of an instrument,
4 to an address specified thereon or otherwise agreed, or if there be
5 none to any address reasonable under the circumstances~~((The receipt~~
6 ~~of any writing)); or~~

7 (b) In any other way to cause to be received any record or notice
8 within the time ~~((at which))~~ it would have arrived if properly sent
9 ~~((has the effect of a proper sending)).~~

10 ~~((+39))~~ (37) "Signed" includes any symbol executed or adopted ~~((by~~
11 ~~a party))~~ with present intention to ~~((authenticate))~~ adopt or accept a
12 writing.

13 ~~((+40))~~ (38) "State" means a State of the United States, the
14 District of Columbia, Puerto Rico, the United States Virgin Islands, or
15 any territory or insular possession subject to the jurisdiction of the
16 United States.

17 (39) "Surety" includes a guarantor or other secondary obligor.

18 ~~((+41))~~ ~~"Telegram" includes a message transmitted by radio,~~
19 ~~teletype, cable, any mechanical method of transmission, or the like.~~

20 ~~((+42))~~ (40) "Term" means ~~((that))~~ a portion of an agreement
21 ~~((which))~~ that relates to a particular matter.

22 ~~((+43))~~ (41) "Unauthorized ~~(("))~~ signature" means ~~((one))~~ a
23 signature made without actual, implied, or apparent authority ~~((and)).~~
24 The term includes a forgery.

25 ~~((+44))~~ ~~"Value". Except as otherwise provided with respect to~~
26 ~~negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-~~
27 ~~210, and RCW 62A.4-211) a person gives "value" for rights if he or she~~
28 ~~acquires them~~

29 ~~(a) in return for a binding commitment to extend credit or for the~~
30 ~~extension of immediately available credit whether or not drawn upon and~~
31 ~~whether or not a charge back is provided for in the event of~~
32 ~~difficulties in collection; or~~

33 ~~(b) as security for or in total or partial satisfaction of a~~
34 ~~preexisting claim; or~~

35 ~~(c) by accepting delivery pursuant to a pre-existing contract for~~
36 ~~purchase; or~~

37 ~~(d) generally, in return for any consideration sufficient to~~
38 ~~support a simple contract.~~

1 ~~(45))~~ (42) "Warehouse receipt" means a receipt issued by a person
2 engaged in the business of storing goods for hire.

3 ~~((46) — "Written" — or))~~ (43) "Writing" includes printing,
4 typewriting, or any other intentional reduction to tangible form.
5 "Written" has a corresponding meaning.

6 **Sec. 9.** RCW 62A.1-202 and 1965 ex.s. c 157 s 1-202 are each
7 amended to read as follows:

8 ~~((PRIMA FACIE EVIDENCE BY THIRD PARTY DOCUMENTS.))~~ NOTICE;
9 KNOWLEDGE. ~~((A document in due form purporting to be a bill of lading,~~
10 ~~policy or certificate of insurance, official weigher's or inspector's~~
11 ~~certificate, consular invoice, or any other document authorized or~~
12 ~~required by the contract to be issued by a third party shall be prima~~
13 ~~facie evidence of its own authenticity and genuineness and of the facts~~
14 ~~stated in the document by the third party.))~~ (1) Subject to subsection
15 (6) of this section, a person has "notice" of a fact if the person:

16 (a) Has actual knowledge of it;

17 (b) Has received a notice or notification of it; or

18 (c) From all the facts and circumstances known to the person at the
19 time in question, has reason to know that it exists.

20 (2) "Knowledge" means actual knowledge. "Knows" has a
21 corresponding meaning.

22 (3) "Discover," "learn," or words of similar import refer to
23 knowledge rather than to reason to know.

24 (4) A person "notifies" or "gives" a notice or notification to
25 another person by taking such steps as may be reasonably required to
26 inform the other person in ordinary course, whether or not the other
27 person actually comes to know of it.

28 (5) Subject to subsection (6) of this section, a person "receives"
29 a notice or notification when:

30 (a) It comes to that person's attention; or

31 (b) It is duly delivered in a form reasonable under the
32 circumstances at the place of business through which the contract was
33 made or at another location held out by that person as the place for
34 receipt of such communications.

35 (6) Notice, knowledge, or a notice or notification received by an
36 organization is effective for a particular transaction from the time it
37 is brought to the attention of the individual conducting that

1 transaction and, in any event, from the time it would have been brought
2 to the individual's attention if the organization had exercised due
3 diligence. An organization exercises due diligence if it maintains
4 reasonable routines for communicating significant information to the
5 person conducting the transaction and there is reasonable compliance
6 with the routines. Due diligence does not require an individual acting
7 for the organization to communicate information unless the
8 communication is part of the individual's regular duties or the
9 individual has reason to know of the transaction and that the
10 transaction would be materially affected by the information.

11 **Sec. 10.** RCW 62A.1-203 and 1965 ex.s. c 157 s 1-203 are each
12 amended to read as follows:

13 ~~((OBLIGATION OF GOOD FAITH.))~~ LEASE DISTINGUISHED FROM SECURITY
14 INTEREST. ((Every contract or duty within this Title imposes an
15 obligation of good faith in its performance or enforcement.)) (1)
16 Whether a transaction in the form of a lease creates a lease or
17 security interest is determined by the facts of each case.

18 (2) A transaction in the form of a lease creates a security
19 interest if the consideration that the lessee is to pay the lessor for
20 the right to possession and use of the goods is an obligation for the
21 term of the lease and is not subject to termination by the lessee, and:

22 (a) The original term of the lease is equal to or greater than the
23 remaining economic life of the goods;

24 (b) The lessee is bound to renew the lease for the remaining
25 economic life of the goods or is bound to become the owner of the
26 goods;

27 (c) The lessee has an option to renew the lease for the remaining
28 economic life of the goods for no additional consideration or for
29 nominal additional consideration upon compliance with the lease
30 agreement; or

31 (d) The lessee has an option to become the owner of the goods for
32 no additional consideration or for nominal additional consideration
33 upon compliance with the lease agreement.

34 (3) A transaction in the form of a lease does not create a security
35 interest merely because:

36 (a) The present value of the consideration the lessee is obligated

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

4 (b) The lessee assumes risk of loss of the goods;

5 (c) The lessee agrees to pay, with respect to the goods, taxes,
6 insurance, filing, recording, or registration fees, or service or
7 maintenance costs;

8 (d) The lessee has an option to renew the lease or to become the
9 owner of the goods;

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

14 (f) The lessee has an option to become the owner of the goods for
15 a fixed price that is equal to or greater than the reasonably
16 predictable fair market value of the goods at the time the option is to
17 be performed.

18 (4) Additional consideration is nominal if it is less than the
19 lessee's reasonably predictable cost of performing under the lease
20 agreement if the option is not exercised. Additional consideration is
21 not nominal if:

22 (a) When the option to renew the lease is granted to the lessee,
23 the rent is stated to be the fair market rent for the use of the goods
24 for the term of the renewal determined at the time the option is to be
25 performed; or

26 (b) When the option to become the owner of the goods is granted to
27 the lessee, the price is stated to be the fair market value of the
28 goods determined at the time the option is to be performed.

29 (5) The "remaining economic life of the goods" and "reasonably
30 predictable" fair market rent, fair market value, or cost of performing
31 under the lease agreement must be determined with reference to the
32 facts and circumstances at the time the transaction is entered into.

33 **Sec. 11.** RCW 62A.1-204 and 1965 ex.s. c 157 s 1-204 are each
34 amended to read as follows:

35 ~~((TIME; REASONABLE TIME; "SEASONABLY".)) VALUE. ((-1) Whenever~~
36 ~~this Title requires any action to be taken within a reasonable time,~~

1 any time which is not manifestly unreasonable may be fixed by
2 agreement.

3 (2) What is a reasonable time for taking any action depends on the
4 nature, purpose and circumstances of such action.

5 (3) An action is taken "seasonably" when it is taken at or within
6 the time agreed or if no time is agreed at or within a reasonable
7 time.)) Except as otherwise provided in Articles 3, 4, and 5, a person
8 gives value for rights if the person acquires them:

9 (1) In return for a binding commitment to extend credit or for the
10 extension of immediately available credit, whether or not drawn upon
11 and whether or not a charge-back is provided for in the event of
12 difficulties in collection;

13 (2) As security for, or in total or partial satisfaction of, a
14 preexisting claim;

15 (3) By accepting delivery under a preexisting contract for
16 purchase; or

17 (4) In return for any consideration sufficient to support a simple
18 contract.

19 **Sec. 12.** RCW 62A.1-205 and 1965 ex.s. c 157 s 1-205 are each
20 amended to read as follows:

21 ((COURSE OF DEALING AND USAGE OF TRADE.)) REASONABLE TIME;
22 SEASONABLENESS. ((1) A course of dealing is a sequence of previous
23 conduct between the parties to a particular transaction which is fairly
24 to be regarded as establishing a common basis of understanding for
25 interpreting their expressions and other conduct.

26 (2) A usage of trade is any practice or method of dealing having
27 such regularity of observance in a place, vocation or trade as to
28 justify an expectation that it will be observed with respect to the
29 transaction in question. The existence and scope of such a usage are
30 to be proved as facts. If it is established that such a usage is
31 embodied in a written trade code or similar writing the interpretation
32 of the writing is for the court.

33 (3) A course of dealing between parties and any usage of trade in
34 the vocation or trade in which they are engaged or of which they are or
35 should be aware give particular meaning to and supplement or qualify
36 terms of an agreement.

1 ~~(4) The express terms of an agreement and an applicable course of~~
2 ~~dealing or usage of trade shall be construed wherever reasonable as~~
3 ~~consistent with each other; but when such construction is unreasonable~~
4 ~~express terms control both course of dealing and usage of trade and~~
5 ~~course of dealing controls usage of trade.~~

6 ~~(5) An applicable usage of trade in the place where any part of~~
7 ~~performance is to occur shall be used in interpreting the agreement as~~
8 ~~to that part of the performance.~~

9 ~~(6) Evidence of a relevant usage of trade offered by one party is~~
10 ~~not admissible unless and until he has given the other party such~~
11 ~~notice as the court finds sufficient to prevent unfair surprise to the~~
12 ~~latter.)~~ (1) Whether a time for taking an action required by the
13 Uniform Commercial Code is reasonable depends on the nature, purpose,
14 and circumstances of the action.

15 (2) An action is taken seasonably if it is taken at or within the
16 time agreed or, if no time is agreed, at or within a reasonable time.

17 **Sec. 13.** RCW 62A.1-206 and 1995 c 48 s 55 are each amended to read
18 as follows:

19 ~~((STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY NOT OTHERWISE~~
20 ~~COVERED.))~~ PRESUMPTIONS. ~~((1) Except in the cases described in~~
21 ~~subsection (2) of this section a contract for the sale of personal~~
22 ~~property is not enforceable by way of action or defense beyond five~~
23 ~~thousand dollars in amount or value of remedy unless there is some~~
24 ~~writing which indicates that a contract for sale has been made between~~
25 ~~the parties at a defined or stated price, reasonably identifies the~~
26 ~~subject matter, and is signed by the party against whom enforcement is~~
27 ~~sought or by his authorized agent.~~

28 ~~(2) Subsection (1) of this section does not apply to contracts for~~
29 ~~the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-113) nor~~
30 ~~to security agreements (RCW 62A.9-203).))~~ Whenever the Uniform
31 Commercial Code creates a "presumption" with respect to a fact, or
32 provides that a fact is "presumed," the trier of fact must find the
33 existence of the fact unless and until evidence is introduced that
34 supports a finding of its nonexistence.

35 NEW SECTION. **Sec. 14.** A new section is added to Article 62A.1
36 RCW, to be codified as RCW 62A.1-301, to read as follows:

TERRITORIAL APPLICABILITY; PARTIES' POWER TO CHOOSE APPLICABLE LAW.

(1) In this section:

(a) "Domestic transaction" means a transaction other than an international transaction.

(b) "International transaction" means a transaction that bears a reasonable relation to a country other than the United States.

(2) This section applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

(3) Except as otherwise provided in this section:

(a) An agreement by parties to a domestic transaction that any or all of their rights and obligations are to be determined by the law of this State or of another State is effective, whether or not the transaction bears a relation to the State designated; and

(b) An agreement by parties to an international transaction that any or all of their rights and obligations are to be determined by the law of this State or of another State or country is effective, whether or not the transaction bears a relation to the State or country designated.

(4) In the absence of an agreement effective under subsection (3) of this section, and except as provided in subsections (5) and (7) of this section, the rights and obligations of the parties are determined by the law that would be selected by application of this State's conflict of laws principles.

(5) If one of the parties to a transaction is a consumer, the following rules apply:

(a) An agreement referred to in subsection (3) of this section is not effective unless the transaction bears a reasonable relation to the State or country designated.

(b) Application of the law of the State or country determined pursuant to subsection (3) or (4) of this section may not deprive the consumer of the protection of any rule of law governing a matter within the scope of this section, which both is protective of consumers and may not be varied by agreement:

(i) Of the State or country in which the consumer principally resides, unless (b)(ii) of this subsection applies; or

(ii) If the transaction is a sale of goods, of the State or country in which the consumer both makes the contract and takes delivery of

1 those goods, if such State or country is not the State or country in
2 which the consumer principally resides.

3 (6) An agreement otherwise effective under subsection (3) of this
4 section is not effective to the extent that application of the law of
5 the State or country designated would be contrary to a fundamental
6 policy of the State or country whose law would govern in the absence of
7 agreement under subsection (4) of this section.

8 (7) To the extent that the Uniform Commercial Code governs a
9 transaction, if one of the following provisions of the Uniform
10 Commercial Code specifies the applicable law, that provision governs
11 and a contrary agreement is effective only to the extent permitted by
12 the law so specified:

- 13 (a) RCW 62A.2-402;
- 14 (b) RCW 62A.2A-105 and 62A.2A-106;
- 15 (c) RCW 62A.4-102;
- 16 (d) RCW 62A.4A-507;
- 17 (e) RCW 62A.5-116;
- 18 (f) [Reserved.];
- 19 (g) RCW 62A.8-110;
- 20 (h) RCW 62A.9-301 through 62A.9-307.

21 NEW SECTION. **Sec. 15.** A new section is added to Article 62A.1
22 RCW, to be codified as RCW 62A.1-302, to read as follows:

23 VARIATION BY AGREEMENT. (1) Except as otherwise provided in
24 subsection (2) of this section or elsewhere in the Uniform Commercial
25 Code, the effect of provisions of the Uniform Commercial Code may be
26 varied by agreement.

27 (2) The obligations of good faith, diligence, reasonableness, and
28 care prescribed by the Uniform Commercial Code may not be disclaimed by
29 agreement. The parties, by agreement, may determine the standards by
30 which the performance of those obligations is to be measured if those
31 standards are not manifestly unreasonable. Whenever the Uniform
32 Commercial Code requires an action to be taken within a reasonable
33 time, a time that is not manifestly unreasonable may be fixed by
34 agreement.

35 (3) The presence in certain provisions of the Uniform Commercial
36 Code of the phrase "unless otherwise agreed," or words of similar

1 import, does not imply that the effect of other provisions may not be
2 varied by agreement under this section.

3 NEW SECTION. **Sec. 16.** A new section is added to Article 62A.1
4 RCW, to be codified as RCW 62A.1-303, to read as follows:

5 COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE. (1)
6 A "course of performance" is a sequence of conduct between the parties
7 to a particular transaction that exists if:

8 (a) The agreement of the parties with respect to the transaction
9 involves repeated occasions for performance by a party; and

10 (b) The other party, with knowledge of the nature of the
11 performance and opportunity for objection to it, accepts the
12 performance or acquiesces in it without objection.

13 (2) A "course of dealing" is a sequence of conduct concerning
14 previous transactions between the parties to a particular transaction
15 that is fairly to be regarded as establishing a common basis of
16 understanding for interpreting their expressions and other conduct.

17 (3) A "usage of trade" is any practice or method of dealing having
18 such regularity of observance in a place, vocation, or trade as to
19 justify an expectation that it will be observed with respect to the
20 transaction in question. The existence and scope of such a usage must
21 be proved as facts. If it is established that such a usage is embodied
22 in a trade code or similar record, the interpretation of the record is
23 a question of law.

24 (4) A course of performance or course of dealing between the
25 parties or usage of trade in the vocation or trade in which they are
26 engaged or of which they are or should be aware is relevant in
27 ascertaining the meaning of the parties' agreement, may give particular
28 meaning to specific terms of the agreement, and may supplement or
29 qualify the terms of the agreement. A usage of trade applicable in the
30 place in which part of the performance under the agreement is to occur
31 may be so utilized as to that part of the performance.

32 (5) Except as otherwise provided in subsection (6) of this section,
33 the express terms of an agreement and any applicable course of
34 performance, course of dealing, or usage of trade must be construed
35 whenever reasonable as consistent with each other. If such a
36 construction is unreasonable:

1 (a) Express terms prevail over course of performance, course of
2 dealing, and usage of trade;

3 (b) Course of performance prevails over course of dealing and usage
4 of trade; and

5 (c) Course of dealing prevails over usage of trade.

6 (6) Subject to RCW 62A.2-209, a course of performance is relevant
7 to show a waiver or modification of any term inconsistent with the
8 course of performance.

9 (7) Evidence of a relevant usage of trade offered by one party is
10 not admissible unless that party has given the other party notice that
11 the court finds sufficient to prevent unfair surprise to the other
12 party.

13 NEW SECTION. **Sec. 17.** A new section is added to Article 62A.1
14 RCW, to be codified as RCW 62A.1-304, to read as follows:

15 OBLIGATION OF GOOD FAITH. Every contract or duty within the
16 Uniform Commercial Code imposes an obligation of good faith in its
17 performance and enforcement.

18 NEW SECTION. **Sec. 18.** A new section is added to Article 62A.1
19 RCW, to be codified as RCW 62A.1-305, to read as follows:

20 REMEDIES TO BE LIBERALLY ADMINISTERED. (1) The remedies provided
21 by the Uniform Commercial Code must be liberally administered to the
22 end that the aggrieved party may be put in as good a position as if the
23 other party had fully performed but neither consequential or special
24 damages nor penal damages may be had except as specifically provided in
25 the Uniform Commercial Code or by other rule of law.

26 (2) Any right or obligation declared by the Uniform Commercial Code
27 is enforceable by action unless the provision declaring it specifies a
28 different and limited effect.

29 NEW SECTION. **Sec. 19.** A new section is added to Article 62A.1
30 RCW, to be codified as RCW 62A.1-306, to read as follows:

31 WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH. A claim or
32 right arising out of an alleged breach may be discharged in whole or in
33 part without consideration by agreement of the aggrieved party in an
34 authenticated record.

1 NEW SECTION. **Sec. 20.** A new section is added to Article 62A.1
2 RCW, to be codified as RCW 62A.1-307, to read as follows:

3 PRIMA FACIE EVIDENCE BY THIRD-PARTY DOCUMENTS. A document in due
4 form purporting to be a bill of lading, policy or certificate of
5 insurance, official weigher's or inspector's certificate, consular
6 invoice, or any other document authorized or required by the contract
7 to be issued by a third party is prima facie evidence of its own
8 authenticity and genuineness and of the facts stated in the document by
9 the third party.

10 NEW SECTION. **Sec. 21.** A new section is added to Article 62A.1
11 RCW, to be codified as RCW 62A.1-308, to read as follows:

12 PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS. (1) A party
13 that with explicit reservation of rights performs or promises
14 performance or assents to performance in a manner demanded or offered
15 by the other party does not thereby prejudice the rights reserved.
16 Such words as "without prejudice," "under protest," or the like are
17 sufficient.

18 (2) Subsection (1) of this section does not apply to an accord and
19 satisfaction.

20 NEW SECTION. **Sec. 22.** A new section is added to Article 62A.1
21 RCW, to be codified as RCW 62A.1-309, to read as follows:

22 OPTION TO ACCELERATE AT WILL. A term providing that one party or
23 that party's successor in interest may accelerate payment or
24 performance or require collateral or additional collateral "at will" or
25 when the party "deems itself insecure," or words of similar import,
26 means that the party has power to do so only if that party in good
27 faith believes that the prospect of payment or performance is impaired.
28 The burden of establishing lack of good faith is on the party against
29 which the power has been exercised.

30 NEW SECTION. **Sec. 23.** A new section is added to Article 62A.1
31 RCW, to be codified as RCW 62A.1-310, to read as follows:

32 SUBORDINATED OBLIGATIONS. An obligation may be issued as
33 subordinated to performance of another obligation of the person
34 obligated, or a creditor may subordinate its right to performance of an
35 obligation by agreement with either the person obligated or another

1 creditor of the person obligated. Subordination does not create a
2 security interest as against either the common debtor or a subordinated
3 creditor.

4 **Sec. 24.** RCW 62A.2-103 and 2000 c 250 s 9A-803 are each amended to
5 read as follows:

6 DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless
7 the context otherwise requires:

8 (a) "Buyer" means a person who buys or contracts to buy goods.

9 (b) (~~"Good faith" in the case of a merchant means honesty in fact
10 and the observance of reasonable commercial standards of fair dealing
11 in the trade.~~) [Reserved.]

12 (c) "Receipt" of goods means taking physical possession of them.

13 (d) "Seller" means a person who sells or contracts to sell goods.

14 (2) Other definitions applying to this Article or to specified
15 Parts thereof, and the sections in which they appear are:

16	"Acceptance."	RCW 62A.2-606.
17	"Banker's credit."	RCW 62A.2-325.
18	"Between merchants."	RCW 62A.2-104.
19	"Cancellation."	RCW 62A.2-106(((4))).
20	"Commercial unit."	RCW 62A.2-105.
21	"Confirmed credit."	RCW 62A.2-325.
22	"Conforming to contract."	RCW 62A.2-106.
23	"Contract for sale."	RCW 62A.2-106.
24	"Cover."	RCW 62A.2-712.
25	"Entrusting."	RCW 62A.2-403.
26	"Financing agency."	RCW 62A.2-104.
27	"Future goods."	RCW 62A.2-105.
28	"Goods."	RCW 62A.2-105.
29	"Identification."	RCW 62A.2-501.
30	"Installment contract."	RCW 62A.2-612.
31	"Letter of credit."	RCW 62A.2-325.
32	"Lot."	RCW 62A.2-105.
33	"Merchant."	RCW 62A.2-104.
34	"Overseas."	RCW 62A.2-323.

1	"Person in position of	
2	seller."	RCW 62A.2-707.
3	"Present sale."	RCW 62A.2-106.
4	"Sale."	RCW 62A.2-106.
5	"Sale on approval."	RCW 62A.2-326.
6	"Sale or return."	RCW 62A.2-326.
7	"Termination."	RCW 62A.2-106.

8 (3) The following definitions in other Articles apply to this
9 Article:

10	"Check."	RCW 62A.3-104.
11	"Consignee."	RCW 62A.7-102.
12	"Consignor."	RCW 62A.7-102.
13	"Consumer goods."	RCW 62A.9A-102.
14	"Dishonor."	RCW 62A.3-502.
15	"Draft."	RCW 62A.3-104.

16 (4) In addition Article 1 contains general definitions and
17 principles of construction and interpretation applicable throughout
18 this Article.

19 **Sec. 25.** RCW 62A.2-202 and 1965 ex.s. c 157 s 2-202 are each
20 amended to read as follows:

21 FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE. Terms with
22 respect to which the confirmatory memoranda of the parties agree or
23 which are otherwise set forth in a writing intended by the parties as
24 a final expression of their agreement with respect to such terms as are
25 included therein may not be contradicted by evidence of any prior
26 agreement or of a contemporaneous oral agreement but may be explained
27 or supplemented:

28 ((+a)) (1) By course of performance, course of dealing, or usage
29 of trade ((RCW 62A.1-205) or by course of performance (RCW 62A.2-
30 208)) (RCW 62A.1-303); and

31 ((+b)) (2) By evidence of consistent additional terms unless the
32 court finds the writing to have been intended also as a complete and
33 exclusive statement of the terms of the agreement.

1 **Sec. 26.** RCW 62A.2A-103 and 2000 c 250 s 9A-808 are each amended
2 to read as follows:

3 DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless
4 the context otherwise requires:

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

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

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

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

27 (e) "Consumer lease" means a lease that a lessor regularly engaged
28 in the business of leasing or selling makes to a lessee who is an
29 individual who takes under the lease primarily for a personal, family,
30 or household purpose, if the total payments to be made under the lease
31 contract, excluding payments for options to renew or buy, do not exceed
32 twenty-five thousand dollars.

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

34 (g) "Finance lease" means a lease with respect to which:

35 (i) The lessor does not select, manufacture, or supply the goods;

36 (ii) The lessor acquires the goods or the right to possession and
37 use of the goods in connection with the lease; and

38 (iii) Only in the case of a consumer lease, either:

1 (A) The lessee receives a copy of the contract by which the lessor
2 acquired the goods or the right to possession and use of the goods
3 before signing the lease contract;

4 (B) The lessee's approval of the contract by which the lessor
5 acquired the goods or the right to possession and use of the goods is
6 a condition to effectiveness of the lease contract; or

7 (C) The lessee, before signing the lease contract, receives an
8 accurate and complete statement designating the promises and
9 warranties, and any disclaimers of warranties, limitations or
10 modifications of remedies, or liquidated damages, including those of a
11 third party, such as the manufacturer of the goods, provided to the
12 lessor by the person supplying the goods in connection with or as part
13 of the contract by which the lessor acquired the goods or the right to
14 possession and use of the goods.

15 (h) "Goods" means all things that are movable at the time of
16 identification to the lease contract, or are fixtures (RCW 62A.2A-309),
17 but the term does not include money, documents, instruments, accounts,
18 chattel paper, general intangibles, or minerals or the like, including
19 oil and gas, before extraction. The term also includes the unborn
20 young of animals.

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

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

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

36 (l) "Lease contract" means the total legal obligation that results
37 from the lease agreement as affected by this Article and any other

1 applicable rules of law. Unless the context clearly indicates
2 otherwise, the term includes a sublease contract.

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

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

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

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

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

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

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

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

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

1 circumstances of each case at the time the transaction was entered
2 into.

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

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

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

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

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

16 (2) Other definitions applying to this Article or to specified
17 Parts thereof, and the sections in which they appear are:

18	"Accessions."	RCW 62A.2A-310(((+))).
19	"Construction	RCW
20	mortgage."	62A.2A-309(((+)(d))).
21	"Encumbrance."	RCW
22		62A.2A-309(((+)(e))).
23	"Fixtures."	RCW
24		62A.2A-309(((+)(a))).
25	"Fixture filing."	RCW
26		62A.2A-309(((+)(b))).
27	"Purchase money	RCW
28	lease."	62A.2A-309(((+)(c))).

29 (3) The following definitions in other Articles apply to this
30 Article:

31	"Account."	RCW 62A.9A-102(((+)(2))).
32	"Between	
33	merchants."	RCW 62A.2-104(((+)(3))).
34	"Buyer."	RCW 62A.2-103(((+)(a))).

1	"Chattel paper."	RCW
2		62A.9A-102(((a)(14))).
3	"Consumer goods."	RCW
4		62A.9A-102(((a)(23))).
5	"Document."	RCW
6		62A.9A-102(((a)(30))).
7	"Entrusting."	RCW 62A.2-403(((3))).
8	"General intangible."	RCW
9		62A.9A-102(((a)(42))).
10	(("Good faith."	RCW 62A.2-103(1)(b);)
11	"Instrument."	RCW
12		62A.9A-102(((a)(47))).
13	"Merchant."	RCW 62A.2-104(((1))).
14	"Mortgage."	RCW
15		62A.9A-102(((a)(55))).
16	"Pursuant to	RCW
17	commitment."	62A.9A-102(((a)(68))).
18	"Receipt."	RCW 62A.2-103(((1)(e))).
19	"Sale."	RCW 62A.2-106(((1))).
20	"Sale on approval."	RCW 62A.2-326.
21	"Sale or return."	RCW 62A.2-326.
22	"Seller."	RCW 62A.2-103(((1)(d))).

23 (4) In addition, Article 62A.1 RCW contains general definitions and
24 principles of construction and interpretation applicable throughout
25 this Article.

26 **Sec. 27.** RCW 62A.2A-501 and 1993 c 230 s 2A-501 are each amended
27 to read as follows:

28 DEFAULT: PROCEDURE. (1) Whether the lessor or the lessee is in
29 default under a lease contract is determined by the lease agreement and
30 this Article.

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

35 (3) If the lessor or the lessee is in default under the lease
36 contract, the party seeking enforcement may reduce the party's claim to
37 judgment, or otherwise enforce the lease contract by self help or any

1 available judicial procedure or nonjudicial procedure, including
2 administrative proceeding, arbitration, or the like, in accordance with
3 this Article.

4 (4) Except as otherwise provided in (~~RCW 62A.1-106(1)~~) RCW 62A.1-
5 305 or this Article or the lease agreement, the rights and remedies
6 referred to in subsections (2) and (3) of this section are cumulative.

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

12 **Sec. 28.** RCW 62A.2A-518 and 1993 c 230 s 2A-518 are each amended
13 to read as follows:

14 COVER; SUBSTITUTE GOODS. (1) After a default by a lessor under the
15 lease contract of the type described in (~~(+)~~)RCW 62A.2A-508(1)(~~(+)~~),
16 or, if agreed, after other default by the lessor, the lessee may cover
17 by making any purchase or lease of or contract to purchase or lease
18 goods in substitution for those due from the lessor.

19 (2) Except as otherwise provided with respect to damages liquidated
20 in the lease agreement (RCW 62A.2A-504) or otherwise determined
21 pursuant to agreement of the parties (~~(+RCW 62A.1-102(3))~~) (RCW 62A.1-
22 302 and 62A.2A-503), if a lessee's cover is by a lease agreement
23 substantially similar to the original lease agreement and the new lease
24 agreement is made in good faith and in a commercially reasonable
25 manner, the lessee may recover from the lessor as damages (~~(+i)~~) (a)
26 the present value, as of the date of the commencement of the term of
27 the new lease agreement, of the rent under the new lease applicable to
28 that period of the new lease term which is comparable to the then
29 remaining term of the original lease agreement minus the present value
30 as of the same date of the total rent for the then remaining lease term
31 of the original lease agreement, and (~~(+ii)~~) (b) any incidental or
32 consequential damages, less expenses saved in consequence of the
33 lessor's default.

34 (3) If a lessee's cover is by lease agreement that for any reason
35 does not qualify for treatment under subsection (2) of this section, or
36 is by purchase or otherwise, the lessee may recover from the lessor as
37 if the lessee had elected not to cover and RCW 62A.2A-519 governs.

1 **Sec. 29.** RCW 62A.2A-519 and 1993 c 230 s 2A-519 are each amended
2 to read as follows:

3 LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH
4 OF WARRANTY IN REGARD TO ACCEPTED GOODS. (1) Except as otherwise
5 provided with respect to damages liquidated in the lease agreement (RCW
6 62A.2A-504) or otherwise determined pursuant to agreement of the
7 parties (~~((RCW 62A.1-102(3)))~~) (RCW 62A.1-302 and 62A.2A-503), if a
8 lessee elects not to cover or a lessee elects to cover and the cover is
9 by lease agreement that for any reason does not qualify for treatment
10 under RCW 62A.2A-518(2), or is by purchase or otherwise, the measure of
11 damages for nondelivery or repudiation by the lessor or for rejection
12 or revocation of acceptance by the lessee is the present value, as of
13 the date of the default, of the then market rent minus the present
14 value as of the same date of the original rent, computed for the
15 remaining lease term of the original lease agreement, together with
16 incidental and consequential damages, less expenses saved in
17 consequence of the lessor's default.

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

21 (3) Except as otherwise agreed, if the lessee has accepted goods
22 and given notification (RCW 62A.2A-516(~~((+3))~~)), the measure of damages
23 for nonconforming tender or delivery or other default by a lessor is
24 the loss resulting in the ordinary course of events from the lessor's
25 default as determined in any manner that is reasonable together with
26 incidental and consequential damages, less expenses saved in
27 consequence of the lessor's default.

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

35 **Sec. 30.** RCW 62A.2A-527 and 1993 c 230 s 2A-527 are each amended
36 to read as follows:

37 LESSOR'S RIGHTS TO DISPOSE OF GOODS. (1) After a default by a

1 lessee under the lease contract of the type described in RCW 62A.2A-523
2 (1) or (3)(a) or after the lessor refuses to deliver or takes
3 possession of goods (RCW 62A.2A-525 or 62A.2A-526), or, if agreed,
4 after other default by a lessee, the lessor may dispose of the goods
5 concerned or the undelivered balance thereof by lease, sale, or
6 otherwise.

7 (2) Except as otherwise provided with respect to damages liquidated
8 in the lease agreement (RCW 62A.2A-504) or otherwise determined
9 pursuant to agreement of the parties (~~((RCW 62A.1-102(3)))~~) (RCW 62A.1-
10 302 and 62A.2A-503), if the disposition is by lease agreement
11 substantially similar to the original lease agreement and the new lease
12 agreement is made in good faith and in a commercially reasonable
13 manner, the lessor may recover from the lessee as damages (~~((+i+))~~) (a)
14 accrued and unpaid rent as of the date of the commencement of the term
15 of the new lease agreement, (~~((+ii+))~~) (b) the present value, as of the
16 same date, of the total rent for the then remaining lease term of the
17 original lease agreement minus the present value, as of the same date,
18 of the rent under the new lease agreement applicable to that period of
19 the new lease term which is comparable to the then remaining term of
20 the original lease agreement, and (~~((+iii+))~~) (c) any incidental damages
21 allowed under RCW 62A.2A-530, less expenses saved in consequence of the
22 lessee's default.

23 (3) If the lessor's disposition is by lease agreement that for any
24 reason does not qualify for treatment under subsection (2) of this
25 section, or is by sale or otherwise, the lessor may recover from the
26 lessee as if the lessor had elected not to dispose of the goods and RCW
27 62A.2A-528 governs.

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

33 (5) The lessor is not accountable to the lessee for any profit made
34 on any disposition. A lessee who has rightfully rejected or
35 justifiably revoked acceptance shall account to the lessor for any
36 excess over the amount of the lessee's security interest (RCW 62A.2A-
37 508(~~((+5+))~~)).

1 **Sec. 31.** RCW 62A.2A-528 and 1993 c 230 s 2A-528 are each amended
2 to read as follows:

3 LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR
4 OTHER DEFAULT. (1) Except as otherwise provided with respect to
5 damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise
6 determined pursuant to agreement of the parties (~~((RCW 62A.1-102(3)))~~)
7 (RCW 62A.1-302 and 62A.2A-503), if a lessor elects to retain the goods
8 or a lessor elects to dispose of the goods and the disposition is by
9 lease agreement that for any reason does not qualify for treatment
10 under RCW 62A.2A-527(2), or is by sale or otherwise, the lessor may
11 recover from the lessee as damages for a default of the type described
12 in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other default of
13 the lessee, (~~((i))~~) (a) accrued and unpaid rent as of the date of
14 default if the lessee has never taken possession of the goods, or, if
15 the lessee has taken possession of the goods, as of the date the lessor
16 repossesses the goods or an earlier date on which the lessee makes a
17 tender of the goods to the lessor, (~~((ii))~~) (b) the present value as of
18 the date determined under (a) of this subsection (~~((1)(i) of this~~
19 ~~section))~~) of the total rent for the then remaining lease term of the
20 original lease agreement minus the present value as of the same date of
21 the market rent at the place where the goods are located computed for
22 the same lease term, and (~~((iii))~~) (c) any incidental damages allowed
23 under RCW 62A.2A-530, less expenses saved in consequence of the
24 lessee's default.

25 (2) If the measure of damages provided in subsection (1) of this
26 section is inadequate to put a lessor in as good a position as
27 performance would have, the measure of damages is the present value of
28 the profit, including reasonable overhead, the lessor would have made
29 from full performance by the lessee, together with any incidental
30 damages allowed under RCW 62A.2A-530, due allowance for costs
31 reasonably incurred and due credit for payments or proceeds of
32 disposition.

33 **Sec. 32.** RCW 62A.3-103 and 1993 c 229 s 5 are each amended to read
34 as follows:

35 DEFINITIONS. (~~((a))~~) (1) In this Article:

36 (~~((1))~~) (a) "Acceptor" means a drawee who has accepted a draft.

1 ((+2)) (b) "Drawee" means a person ordered in a draft to make
2 payment.

3 ((+3)) (c) "Drawer" means a person who signs or is identified in
4 a draft as a person ordering payment.

5 ~~((+4)) "Good faith" means honesty in fact and the observance of
6 reasonable commercial standards of fair dealing.~~

7 (+5)) (d) [Reserved.]

8 (e) "Maker" means a person who signs or is identified in a note as
9 a person undertaking to pay.

10 ((+6)) (f) "Order" means a written instruction to pay money signed
11 by the person giving the instruction. The instruction may be addressed
12 to any person, including the person giving the instruction, or to one
13 or more persons jointly or in the alternative but not in succession.
14 An authorization to pay is not an order unless the person authorized to
15 pay is also instructed to pay.

16 ((+7)) (g) "Ordinary care" in the case of a person engaged in
17 business means observance of reasonable commercial standards,
18 prevailing in the area in which the person is located, with respect to
19 the business in which the person is engaged. In the case of a bank
20 that takes an instrument for processing for collection or payment by
21 automated means, reasonable commercial standards do not require the
22 bank to examine the instrument if the failure to examine does not
23 violate the bank's prescribed procedures and the bank's procedures do
24 not vary unreasonably from general banking usage not disapproved by
25 this Article or Article 4.

26 ((+8)) (h) "Party" means a party to an instrument.

27 ((+9)) (i) "Promise" means a written undertaking to pay money
28 signed by the person undertaking to pay. An acknowledgment of an
29 obligation by the obligor is not a promise unless the obligor also
30 undertakes to pay the obligation.

31 ((+10)) (j) "Prove" with respect to a fact means to meet the
32 burden of establishing the fact (RCW 62A.1-201((+8))).

33 ((+11)) (k) "Remitter" means a person who purchases an instrument
34 from its issuer if the instrument is payable to an identified person
35 other than the purchaser.

36 ((+b)) (2) Other definitions applying to this Article and the

1 sections in which they appear are:

2	"Acceptance"	RCW 62A.3-409
3	"Accommodated party"	RCW 62A.3-419
4	"Accommodation party"	RCW 62A.3-419
5	"Alteration"	RCW 62A.3-407
6	"Anomalous indorsement"	RCW 62A.3-205
7	"Blank indorsement"	RCW 62A.3-205
8	"Cashier's check"	RCW 62A.3-104
9	"Certificate of deposit"	RCW 62A.3-104
10	"Certified check"	RCW 62A.3-409
11	"Check"	RCW 62A.3-104
12	"Consideration"	RCW 62A.3-303
13	"Draft"	RCW 62A.3-104
14	"Holder in due course"	RCW 62A.3-302
15	"Incomplete instrument"	RCW 62A.3-115
16	"Indorsement"	RCW 62A.3-204
17	"Indorser"	RCW 62A.3-204
18	"Instrument"	RCW 62A.3-104
19	"Issue"	RCW 62A.3-105
20	"Issuer"	RCW 62A.3-105
21	"Negotiable instrument"	RCW 62A.3-104
22	"Negotiation"	RCW 62A.3-201
23	"Note"	RCW 62A.3-104
24	"Payable at a definite time"	RCW 62A.3-108
25	"Payable on demand"	RCW 62A.3-108
26	"Payable to bearer"	RCW 62A.3-109
27	"Payable to order"	RCW 62A.3-109
28	"Payment"	RCW 62A.3-602
29	"Person entitled to enforce"	RCW 62A.3-301
30	"Presentment"	RCW 62A.3-501
31	"Reacquisition"	RCW 62A.3-207
32	"Special indorsement"	RCW 62A.3-205
33	"Teller's check"	RCW 62A.3-104
34	"Transfer of instrument"	RCW 62A.3-203
35	"Traveler's check"	RCW 62A.3-104
36	"Value"	RCW 62A.3-303

1 ~~((c))~~ (3) The following definitions in other Articles apply to
2 this Article:

3 "Bank"	RCW 62A.4-105
4 "Banking day"	RCW 62A.4-104
5 "Clearing house"	RCW 62A.4-104
6 "Collecting bank"	RCW 62A.4-105
7 "Depository bank"	RCW 62A.4-105
8 "Documentary draft"	RCW 62A.4-104
9 "Intermediary bank"	RCW 62A.4-105
10 "Item"	RCW 62A.4-104
11 "Payor bank"	RCW 62A.4-105
12 "Suspends payments"	RCW 62A.4-104

13 ~~((d))~~ (4) In addition, Article 1 contains general definitions and
14 principles of construction and interpretation applicable throughout
15 this Article.

16 **Sec. 33.** RCW 62A.4-104 and 1995 c 48 s 56 are each amended to read
17 as follows:

18 DEFINITIONS AND INDEX OF DEFINITIONS. ~~((a))~~ (1) In this Article,
19 unless the context otherwise requires:

20 ~~((1))~~ (a) "Account" means any deposit or credit account with a
21 bank, including a demand, time, savings, passbook, share draft, or like
22 account, other than an account evidenced by a certificate of deposit;

23 ~~((2))~~ (b) "Afternoon" means the period of a day between noon and
24 midnight;

25 ~~((3))~~ (c) "Banking day" means the part of a day on which a bank
26 is open to the public for carrying on substantially all of its banking
27 functions, except that it shall not include a Saturday, Sunday, or
28 legal holiday;

29 ~~((4))~~ (d) "Clearing house" means an association of banks or other
30 payors regularly clearing items;

31 ~~((5))~~ (e) "Customer" means a person having an account with a bank
32 or for whom a bank has agreed to collect items, including a bank that
33 maintains an account at another bank;

34 ~~((6))~~ (f) "Documentary draft" means a draft to be presented for
35 acceptance or payment if specified documents, certificated securities
36 (RCW 62A.8-102) or instructions for uncertificated securities (RCW

1 62A.8-102), or other certificates, statements, or the like are to be
2 received by the drawee or other payor before acceptance or payment of
3 the draft;

4 ~~((+7))~~ (g) "Draft" means a draft as defined in RCW 62A.3-104 or an
5 item, other than an instrument, that is an order;

6 ~~((+8))~~ (h) "Drawee" means a person ordered in a draft to make
7 payment;

8 ~~((+9))~~ (i) "Item" means an instrument or a promise or order to pay
9 money handled by a bank for collection or payment. The term does not
10 include a payment order governed by Article 4A or a credit or debit
11 card slip;

12 ~~((+10))~~ (j) "Midnight deadline" with respect to a bank is midnight
13 on its next banking day following the banking day on which it receives
14 the relevant item or notice or from which the time for taking action
15 commences to run, whichever is later;

16 ~~((+11))~~ (k) "Settle" means to pay in cash, by clearing-house
17 settlement, in a charge or credit or by remittance, or otherwise as
18 agreed. A settlement may be either provisional or final;

19 ~~((+12))~~ (l) "Suspends payments" with respect to a bank means that
20 it has been closed by order of the supervisory authorities, that a
21 public officer has been appointed to take it over or that it ceases or
22 refuses to make payments in the ordinary course of business.

23 ~~((+b))~~ (2) Other definitions applying to this Article and the
24 sections in which they appear are:

25	"Agreement for electronic	
26	presentment"	RCW 62A.4-110.
27	"Bank"	RCW 62A.4-105.
28	"Collecting bank"	RCW 62A.4-105.
29	"Depository bank"	RCW 62A.4-105.
30	"Intermediary bank"	RCW 62A.4-105.
31	"Payor bank"	RCW 62A.4-105.
32	"Presenting bank"	RCW 62A.4-105.
33	"Presentment notice"	RCW 62A.4-110.

34 ~~((+e))~~ (3) The following definitions in other Articles apply to

1 this Article:

2	"Acceptance"	RCW 62A.3-409.
3	"Alteration"	RCW 62A.3-407.
4	"Cashier's check"	RCW 62A.3-104.
5	"Certificate of deposit"	RCW 62A.3-104.
6	"Certified check"	RCW 62A.3-409.
7	"Check"	RCW 62A.3-104.
8	"Draft"	RCW 62A.3-104.
9	("Good faith"	RCW 62A.3-103.)
10	"Holder in due course"	RCW 62A.3-302.
11	"Instrument"	RCW 62A.3-104.
12	"Notice of dishonor"	RCW 62A.3-503.
13	"Order"	RCW 62A.3-103.
14	"Ordinary care"	RCW 62A.3-103.
15	"Person entitled to enforce"	RCW 62A.3-301.
16	"Presentment"	RCW 62A.3-501.
17	"Promise"	RCW 62A.3-103.
18	"Prove"	RCW 62A.3-103.
19	"Teller's check"	RCW 62A.3-104.
20	"Unauthorized signature"	RCW 62A.3-403.

21 ~~((d))~~ (4) In addition Article 1 contains general definitions and
22 principles of construction and interpretation applicable throughout
23 this Article.

24 **Sec. 34.** RCW 62A.4A-105 and 1991 sp.s. c 21 s 4A-105 are each
25 amended to read as follows:

26 OTHER DEFINITIONS. (1) In this Article:

27 (a) "Authorized account" means a deposit account of a customer in
28 a bank designated by the customer as a source of payment orders issued
29 by the customer to the bank. If a customer does not so designate an
30 account, any account of the customer is an authorized account if
31 payment of a payment order from that account is not inconsistent with
32 a restriction on the use of the account.

33 (b) "Bank" means a person engaged in the business of banking and
34 includes a savings bank, savings and loan association, credit union,
35 and trust company. A branch or separate office of a bank is a separate
36 bank for purposes of this Article.

1 (c) "Customer" means a person, including a bank, having an account
2 with a bank or from whom a bank has agreed to receive payment orders.

3 (d) "Funds-transfer business day" of a receiving bank means the
4 part of a day during which the receiving bank is open for the receipt,
5 processing, and transmittal of payment orders and cancellations and
6 amendments of payment orders.

7 (e) "Funds-transfer system" means a wire transfer network,
8 automated clearing house, or other communication system of a clearing
9 house or other association of banks through which a payment order by a
10 bank may be transmitted to the bank to which the order is addressed.

11 (f) (~~"Good faith" means honesty in fact and the observance of~~
12 ~~reasonable commercial standards of fair dealing.~~) [Reserved.]

13 (g) "Prove" with respect to a fact means to meet the burden of
14 establishing the fact (RCW 62A.1-201(~~(+8)~~)).

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

17	"Acceptance"	RCW 62A.4A-209
18	"Beneficiary"	RCW 62A.4A-103
19	"Beneficiary's bank"	RCW 62A.4A-103
20	"Executed"	RCW 62A.4A-301
21	"Execution date"	RCW 62A.4A-301
22	"Funds transfer"	RCW 62A.4A-104
23	"Funds-transfer system rule"	RCW 62A.4A-501
24	"Intermediary bank"	RCW 62A.4A-104
25	"Originator"	RCW 62A.4A-104
26	"Originator's bank"	RCW 62A.4A-104
27	"Payment by beneficiary's 28 bank to beneficiary"	RCW 62A.4A-405
29	"Payment by originator to 30 beneficiary"	RCW 62A.4A-406
31	"Payment by sender to 32 receiving bank"	RCW 62A.4A-403
33	"Payment date"	RCW 62A.4A-401
34	"Payment order"	RCW 62A.4A-103
35	"Receiving bank"	RCW 62A.4A-103
36	"Security procedure"	RCW 62A.4A-201

1 "Sender" RCW 62A.4A-103

2 (3) The following definitions in Article 4 (RCW 62A.4-101 through
3 62A.4-504) apply to this Article:

4 "Clearing house" ((section 4-104 of this act))

5 RCW 62A.4-104

6 "Item" ((section 4-104 of this act))

7 RCW 62A.4-104

8 "Suspends payments" ((section 4-104 of this act))

9 RCW 62A.4-104

10 (4) In addition ((to)) Article 1 ((~~(RCW 62A.1-101 through~~
11 ~~62A.1-208))~~) contains general definitions and principles of
12 construction and interpretation applicable throughout this Article.

13 **Sec. 35.** RCW 62A.4A-106 and 1991 sp.s. c 21 s 4A-106 are each
14 amended to read as follows:

15 TIME PAYMENT ORDER IS RECEIVED. (1) The time of receipt of a
16 payment order or communication canceling or amending a payment order is
17 determined by the rules applicable to receipt of a notice stated in
18 ((RCW 62A.1-201(27))) RCW 62A.1-202. A receiving bank may fix a cut-
19 off time or times on a funds-transfer business day for the receipt and
20 processing of payment orders and communications canceling or amending
21 payment orders. Different cut-off times may apply to payment orders,
22 cancellations, or amendments, or to different categories of payment
23 orders, cancellations, or amendments. A cut-off time may apply to
24 senders generally or different cut-off times may apply to different
25 senders or categories of payment orders. If a payment order or
26 communication canceling or amending a payment order is received after
27 the close of a funds-transfer business day or after the appropriate
28 cut-off time on a funds-transfer business day, the receiving bank may
29 treat the payment order or communication as received at the opening of
30 the next funds-transfer business day.

31 (2) If this Article refers to an execution date or payment date or
32 states a day on which a receiving bank is required to take action, and
33 the date or day does not fall on a funds-transfer business day, the
34 next day that is a funds-transfer business day is treated as the date
35 or day stated, unless the contrary is stated in this Article.

1 **Sec. 36.** RCW 62A.4A-204 and 1991 sp.s. c 21 s 4A-204 are each
2 amended to read as follows:

3 REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT
4 UNAUTHORIZED PAYMENT ORDER. (1) If a receiving bank accepts a payment
5 order issued in the name of its customer as sender which is (a) not
6 authorized and not effective as the order of the customer under RCW
7 62A.4A-202, or (b) not enforceable, in whole or in part, against the
8 customer under RCW 62A.4A-203, the bank shall refund any payment of the
9 payment order received from the customer to the extent the bank is not
10 entitled to enforce payment and shall pay interest on the refundable
11 amount calculated from the date the bank received payment to the date
12 of the refund. However, the customer is not entitled to interest from
13 the bank on the amount to be refunded if the customer fails to exercise
14 ordinary care to determine that the order was not authorized by the
15 customer and to notify the bank of the relevant facts within a
16 reasonable time not exceeding ninety days after the date the customer
17 received notification from the bank that the order was accepted or that
18 the customer's account was debited with respect to the order. The bank
19 is not entitled to any recovery from the customer on account of a
20 failure by the customer to give notification as stated in this section.

21 (2) Reasonable time under subsection (1) of this section may be
22 fixed by agreement as stated in ((~~RCW 62A.1-204(1)~~)) RCW 62A.1-302, but
23 the obligation of a receiving bank to refund payment as stated in
24 subsection (1) of this subsection may not otherwise be varied by
25 agreement.

26 **Sec. 37.** RCW 62A.5-103 and 1997 c 56 s 4 are each amended to read
27 as follows:

28 SCOPE. (1) This Article applies to letters of credit and to
29 certain rights and obligations arising out of transactions involving
30 letters of credit.

31 (2) The statement of a rule in this Article does not by itself
32 require, imply, or negate application of the same or a different rule
33 to a situation not provided for, or to a person not specified, in this
34 Article.

35 (3) With the exception of this subsection, subsections (1) and (4)
36 of this section, RCW 62A.5-102(1) (i) and (j), 62A.5-106(4), and 62A.5-
37 114(4), and except to the extent prohibited in ((~~RCW 62A.1-102(3)~~)) RCW

1 62A.1-302 and 62A.5-117(~~(+4)~~), the effect of this Article may be
2 varied by agreement or by a provision stated or incorporated by
3 reference in an undertaking. A term in an agreement or undertaking
4 generally excusing liability or generally limiting remedies for failure
5 to perform obligations is not sufficient to vary obligations prescribed
6 by this Article.

7 (4) Rights and obligations of an issuer to a beneficiary or a
8 nominated person under a letter of credit are independent of the
9 existence, performance, or nonperformance of a contract or arrangement
10 out of which the letter of credit arises or which underlies it,
11 including contracts or arrangements between the issuer and the
12 applicant and between the applicant and the beneficiary.

13 **Sec. 38.** RCW 62A.8-102 and 1995 c 48 s 2 are each amended to read
14 as follows:

15 DEFINITIONS. (1) In this Article:

16 (a) "Adverse claim" means a claim that a claimant has a property
17 interest in a financial asset and that it is a violation of the rights
18 of the claimant for another person to hold, transfer, or deal with the
19 financial asset.

20 (b) "Bearer form," as applied to a certificated security, means a
21 form in which the security is payable to the bearer of the security
22 certificate according to its terms but not by reason of an indorsement.

23 (c) "Broker" means a person defined as a broker or dealer under the
24 federal securities laws, but without excluding a bank acting in that
25 capacity.

26 (d) "Certificated security" means a security that is represented by
27 a certificate.

28 (e) "Clearing corporation" means:

29 (i) A person that is registered as a "clearing agency" under the
30 federal securities laws;

31 (ii) A federal reserve bank; or

32 (iii) Any other person that provides clearance or settlement
33 services with respect to financial assets that would require it to
34 register as a clearing agency under the federal securities laws but for
35 an exclusion or exemption from the registration requirement, if its
36 activities as a clearing corporation, including adoption of rules, are
37 subject to regulation by a federal or state governmental authority.

1 (f) "Communicate" means to:
2 (i) Send a signed writing; or
3 (ii) Transmit information by any mechanism agreed upon by the
4 persons transmitting and receiving the information.
5 (g) "Entitlement holder" means a person identified in the records
6 of a securities intermediary as the person having a security
7 entitlement against the securities intermediary. If a person acquires
8 a security entitlement by virtue of RCW 62A.8-501(2) (b) or (c), that
9 person is the entitlement holder.
10 (h) "Entitlement order" means a notification communicated to a
11 securities intermediary directing transfer or redemption of a financial
12 asset to which the entitlement holder has a security entitlement.
13 (i) "Financial asset," except as otherwise provided in RCW 62A.8-
14 103, means:
15 (i) A security;
16 (ii) An obligation of a person or a share, participation, or other
17 interest in a person or in property or an enterprise of a person, which
18 is, or is of a type, dealt in or traded on financial markets, or which
19 is recognized in any area in which it is issued or dealt in as a medium
20 for investment; or
21 (iii) Any property that is held by a securities intermediary for
22 another person in a securities account if the securities intermediary
23 has expressly agreed with the other person that the property is to be
24 treated as a financial asset under this Article.
25 As context requires, the term means either the interest itself or the
26 means by which a person's claim to it is evidenced, including a
27 certificated or uncertificated security, a security certificate, or a
28 security entitlement.
29 (j) (~~("Good faith," for purposes of the obligation of good faith in~~
30 ~~the performance or enforcement of contracts or duties within this~~
31 ~~Article, means honesty in fact and the observance of reasonable~~
32 ~~commercial standards of fair dealing.)) [Reserved.]
33 (k) "Indorsement" means a signature that alone or accompanied by
34 other words is made on a security certificate in registered form or on
35 a separate document for the purpose of assigning, transferring, or
36 redeeming the security or granting a power to assign, transfer, or
37 redeem it.~~

1 (l) "Instruction" means a notification communicated to the issuer
2 of an uncertificated security which directs that the transfer of the
3 security be registered or that the security be redeemed.

4 (m) "Registered form," as applied to a certificated security, means
5 a form in which:

6 (i) The security certificate specifies a person entitled to the
7 security; and

8 (ii) A transfer of the security may be registered upon books
9 maintained for that purpose by or on behalf of the issuer, or the
10 security certificate so states.

11 (n) "Securities intermediary" means:

12 (i) A clearing corporation; or

13 (ii) A person, including a bank or broker, that in the ordinary
14 course of its business maintains securities accounts for others and is
15 acting in that capacity.

16 (o) "Security," except as otherwise provided in RCW 62A.8-103,
17 means an obligation of an issuer or a share, participation, or other
18 interest in an issuer or in property or an enterprise of an issuer:

19 (i) Which is represented by a security certificate in bearer or
20 registered form, or the transfer of which may be registered upon books
21 maintained for that purpose by or on behalf of the issuer;

22 (ii) Which is one of a class or series or by its terms is divisible
23 into a class or series of shares, participations, interests, or
24 obligations; and

25 (iii) Which:

26 (A) Is, or is of a type, dealt in or traded on securities exchanges
27 or securities markets; or

28 (B) Is a medium for investment and by its terms expressly provides
29 that it is a security governed by this Article.

30 (p) "Security certificate" means a certificate representing a
31 security.

32 (q) "Security entitlement" means the rights and property interest
33 of an entitlement holder with respect to a financial asset specified in
34 Part 5 of this Article.

35 (r) "Uncertificated security" means a security that is not
36 represented by a certificate.

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

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Appropriate person	RCW 62A.8-107
Control	RCW 62A.8-106
Delivery	RCW 62A.8-301
Investment company	RCW 62A.8-103
security	
Issuer	RCW 62A.8-201
Overissue	RCW 62A.8-210
Protected purchaser	RCW 62A.8-303
Securities account	RCW 62A.8-501

(3) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(4) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Sec. 39. RCW 62A.9A-102 and 2001 c 32 s 16 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. ~~((a))~~ (1) **Article 9A definitions.** In this Article:

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

~~((2)(A))~~ (b)(i) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, ~~((i))~~ (A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, ~~((ii))~~ (B) for services rendered or to be rendered, ~~((iii))~~ (C) for a policy of insurance issued or to be issued, ~~((iv))~~ (D) for a secondary obligation incurred or to be incurred, ~~((v))~~ (E) for energy provided or to be provided, ~~((vi))~~ (F) for the use or hire of a vessel under a charter or other contract, ~~((vii))~~ (G) arising out of the use of a credit or charge card or information contained on or for use with the card, or ~~((viii))~~ (H) as winnings in a lottery or other game of

1 chance operated or sponsored by a state, governmental unit of a state,
2 or person licensed or authorized to operate the game by a state or
3 governmental unit of a state. The term includes health-care-insurance
4 receivables.

5 ~~((B))~~ (ii) The term does not include ~~((i))~~ (A) rights to
6 payment evidenced by chattel paper or an instrument, ~~((ii))~~ (B)
7 commercial tort claims, ~~((iii))~~ (C) deposit accounts, ~~((iv))~~ (D)
8 investment property, ~~((v))~~ (E) letter-of-credit rights or letters of
9 credit, or ~~((vi))~~ (F) rights to payment for money or funds advanced
10 or sold, other than rights arising out of the use of a credit or charge
11 card or information contained on or for use with the card.

12 ~~((3))~~ (c) "Account debtor" means a person obligated on an
13 account, chattel paper, or general intangible. The term does not
14 include persons obligated to pay a negotiable instrument, even if the
15 instrument constitutes part of chattel paper.

16 ~~((4))~~ (d) "Accounting," except as used in "accounting for," means
17 a record:

18 ~~((A))~~ (i) Authenticated by a secured party;
19 ~~((B))~~ (ii) Indicating the aggregate unpaid secured obligations as
20 of a date not more than thirty-five days earlier or thirty-five days
21 later than the date of the record; and

22 ~~((C))~~ (iii) Identifying the components of the obligations in
23 reasonable detail.

24 ~~((5))~~ (e) "Agricultural lien" means an interest, other than a
25 security interest, in farm products:

26 ~~((A))~~ (i) Which secures payment or performance of an obligation
27 for:

28 ~~((i))~~ (A) Goods or services furnished in connection with a
29 debtor's farming operation; or

30 ~~((ii))~~ (B) Rent on real property leased by a debtor in connection
31 with its farming operation;

32 ~~((B))~~ (ii) Which is created by statute in favor of a person that:

33 ~~((i))~~ (A) In the ordinary course of its business, furnished goods
34 or services to a debtor in connection with a debtor's farming
35 operation; or

36 ~~((ii))~~ (B) Leased real property to a debtor in connection with
37 the debtor's farming operation; and

1 ~~((C))~~ (iii) Whose effectiveness does not depend on the person's
2 possession of the personal property.

3 ~~((6))~~ (f) "As-extracted collateral" means:

4 ~~((A))~~ (i) Oil, gas, or other minerals that are subject to a
5 security interest that:

6 ~~((i))~~ (A) Is created by a debtor having an interest in the
7 minerals before extraction; and

8 ~~((ii))~~ (B) Attaches to the minerals as extracted; or

9 ~~((B))~~ (ii) Accounts arising out of the sale at the wellhead or
10 minehead of oil, gas, or other minerals in which the debtor had an
11 interest before extraction.

12 ~~((7))~~ (g) "Authenticate" means:

13 ~~((A))~~ (i) To sign; or

14 ~~((B))~~ (ii) To execute or otherwise adopt a symbol, or encrypt or
15 similarly process a record in whole or in part, with the present intent
16 of the authenticating person to identify the person and adopt or accept
17 a record.

18 ~~((8))~~ (h) "Bank" means an organization that is engaged in the
19 business of banking. The term includes savings banks, savings and loan
20 associations, credit unions, and trust companies.

21 ~~((9))~~ (i) "Cash proceeds" means proceeds that are money, checks,
22 deposit accounts, or the like.

23 ~~((10))~~ (j) "Certificate of title" means a certificate of title
24 with respect to which a statute provides for the security interest in
25 question to be indicated on the certificate as a condition or result of
26 the security interest's obtaining priority over the rights of a lien
27 creditor with respect to the collateral.

28 ~~((11))~~ (k) "Chattel paper" means a record or records that
29 evidence both a monetary obligation and a security interest in specific
30 goods, a security interest in specific goods and software used in the
31 goods, a security interest in specific goods and license of software
32 used in the goods, a lease of specific goods, or a lease of specific
33 goods and license of software used in the goods. In this subsection,
34 "monetary obligation" means a monetary obligation secured by the goods
35 or owed under a lease of the goods and includes a monetary obligation
36 with respect to software used in the goods. The term "chattel paper"
37 does not include ~~((A))~~ (i) charters or other contracts involving the
38 use or hire of a vessel or ~~((B))~~ (ii) records that evidence a right

1 to payment arising out of the use of a credit or charge card or
2 information contained on or for use with the card. If a transaction is
3 evidenced by records that include an instrument or series of
4 instruments, the group of records taken together constitutes chattel
5 paper.

6 ~~((12))~~ (1) "Collateral" means the property subject to a security
7 interest or agricultural lien. The term includes:

8 ~~((A))~~ (i) Proceeds to which a security interest attaches;

9 ~~((B))~~ (ii) Accounts, chattel paper, payment intangibles, and
10 promissory notes that have been sold; and

11 ~~((C))~~ (iii) Goods that are the subject of a consignment.

12 ~~((13))~~ (m) "Commercial tort claim" means a claim arising in tort
13 with respect to which:

14 ~~((A))~~ (i) The claimant is an organization; or

15 ~~((B))~~ (ii) The claimant is an individual, and the claim:

16 ~~((i))~~ (A) Arose in the course of the claimant's business or
17 profession; and

18 ~~((ii))~~ (B) Does not include damages arising out of personal
19 injury to, or the death of, an individual.

20 ~~((14))~~ (n) "Commodity account" means an account maintained by a
21 commodity intermediary in which a commodity contract is carried for a
22 commodity customer.

23 ~~((15))~~ (o) "Commodity contract" means a commodity futures
24 contract, an option on a commodity futures contract, a commodity
25 option, or another contract if the contract or option is:

26 ~~((A))~~ (i) Traded on or subject to the rules of a board of trade
27 that has been designated as a contract market for such a contract
28 pursuant to federal commodities laws; or

29 ~~((B))~~ (ii) Traded on a foreign commodity board of trade,
30 exchange, or market, and is carried on the books of a commodity
31 intermediary for a commodity customer.

32 ~~((16))~~ (p) "Commodity customer" means a person for which a
33 commodity intermediary carries a commodity contract on its books.

34 ~~((17))~~ (q) "Commodity intermediary" means a person that:

35 ~~((A))~~ (i) Is registered as a futures commission merchant under
36 federal commodities law; or

37 ~~((B))~~ (ii) In the ordinary course of its business, provides

1 clearance or settlement services for a board of trade that has been
2 designated as a contract market pursuant to federal commodities law.

3 ~~((18))~~ (r) "Communicate" means:

4 ~~((A))~~ (i) To send a written or other tangible record;

5 ~~((B))~~ (ii) To transmit a record by any means agreed upon by the
6 persons sending and receiving the record; or

7 ~~((C))~~ (iii) In the case of transmission of a record to or by a
8 filing office, to transmit a record by any means prescribed by filing-
9 office rule.

10 ~~((19))~~ (s) "Consignee" means a merchant to which goods are
11 delivered in a consignment.

12 ~~((20))~~ (t) "Consignment" means a transaction, regardless of its
13 form, in which a person delivers goods to a merchant for the purpose of
14 sale and:

15 ~~((A))~~ (i) The merchant:

16 ~~((i))~~ (A) Deals in goods of that kind under a name other than the
17 name of the person making delivery;

18 ~~((ii))~~ (B) Is not an auctioneer; and

19 ~~((iii))~~ (C) Is not generally known by its creditors to be
20 substantially engaged in selling the goods of others;

21 ~~((B))~~ (ii) With respect to each delivery, the aggregate value of
22 the goods is one thousand dollars or more at the time of delivery;

23 ~~((C))~~ (iii) The goods are not consumer goods immediately before
24 delivery; and

25 ~~((D))~~ (iv) The transaction does not create a security interest
26 that secures an obligation.

27 ~~((21))~~ (u) "Consignor" means a person that delivers goods to a
28 consignee in a consignment.

29 ~~((22))~~ (v) "Consumer debtor" means a debtor in a consumer
30 transaction.

31 ~~((23))~~ (w) "Consumer goods" means goods that are used or bought
32 for use primarily for personal, family, or household purposes.

33 ~~((24))~~ (x) "Consumer-goods transaction" means a consumer
34 transaction in which:

35 ~~((A))~~ (i) An individual incurs a consumer obligation; and

36 ~~((B))~~ (ii) A security interest in consumer goods secures the
37 obligation.

38 ~~((25))~~ (y) "Consumer obligation" means an obligation which:

1 ~~((A))~~ (i) Is incurred as part of a transaction entered into
2 primarily for personal, family, or household purposes; and
3 ~~((B))~~ (ii) Arises from an extension of credit, or commitment to
4 extend credit, in an aggregate amount not exceeding forty thousand
5 dollars, or is secured by personal property used or expected to be used
6 as a principal dwelling.
7 "Consumer obligor" means an obligor who is an individual and who
8 incurred a consumer obligation.
9 ~~((26))~~ (z) "Consumer transaction" means a transaction in which
10 ~~((A))~~ (i) an individual incurs a consumer obligation, ~~((B))~~ (ii) a
11 security interest secures the obligation, and ~~((C))~~ (iii) the
12 collateral is held or acquired primarily for personal, family, or
13 household purposes. The term includes consumer-goods transactions.
14 ~~((27))~~ (aa) "Continuation statement" means an amendment of a
15 financing statement which:
16 ~~((A))~~ (i) Identifies, by its file number, the initial financing
17 statement to which it relates; and
18 ~~((B))~~ (ii) Indicates that it is a continuation statement for, or
19 that it is filed to continue the effectiveness of, the identified
20 financing statement.
21 ~~((28))~~ (bb) "Debtor" means:
22 ~~((A))~~ (i) A person having an interest, other than a security
23 interest or other lien, in the collateral, whether or not the person is
24 an obligor;
25 ~~((B))~~ (ii) A seller of accounts, chattel paper, payment
26 intangibles, or promissory notes; or
27 ~~((C))~~ (iii) A consignee.
28 ~~((29))~~ (cc) "Deposit account" means a demand, time, savings,
29 passbook, or similar account maintained with a bank. The term does not
30 include investment property or accounts evidenced by an instrument.
31 ~~((30))~~ (dd) "Document" means a document of title or a receipt of
32 the type described in RCW 62A.7-201(2).
33 ~~((31))~~ (ee) "Electronic chattel paper" means chattel paper
34 evidenced by a record or records consisting of information stored in an
35 electronic medium.
36 ~~((32))~~ (ff) "Encumbrance" means a right, other than an ownership
37 interest, in real property. The term includes mortgages and other
38 liens on real property.

1 ~~((+33+))~~ (gg) "Equipment" means goods other than inventory, farm
2 products, or consumer goods.

3 ~~((+34+))~~ (hh) "Farm products" means goods, other than standing
4 timber, with respect to which the debtor is engaged in a farming
5 operation and which are:

6 ~~((+A+))~~ (i) Crops grown, growing, or to be grown, including:
7 ~~((+i+))~~ (A) Crops produced on trees, vines, and bushes; and
8 ~~((+ii+))~~ (B) Aquatic goods produced in aquacultural operations;
9 ~~((+B+))~~ (ii) Livestock, born or unborn, including aquatic goods
10 produced in aquacultural operations;

11 ~~((+C+))~~ (iii) Supplies used or produced in a farming operation; or
12 ~~((+D+))~~ (iv) Products of crops or livestock in their unmanufactured
13 states.

14 ~~((+35+))~~ (ii) "Farming operation" means raising, cultivating,
15 propagating, fattening, grazing, or any other farming, livestock, or
16 aquacultural operation.

17 ~~((+36+))~~ (jj) "File number" means the number assigned to an initial
18 financing statement pursuant to RCW 62A.9A-519(a).

19 ~~((+37+))~~ (kk) "Filing office" means an office designated in RCW
20 62A.9A-501 as the place to file a financing statement.

21 ~~((+38+))~~ (ll) "Filing-office rule" means a rule adopted pursuant to
22 RCW 62A.9A-526.

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

26 ~~((+40+))~~ (nn) "Fixture filing" means the filing of a financing
27 statement covering goods that are or are to become fixtures and
28 satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of
29 a financing statement covering goods of a transmitting utility which
30 are or are to become fixtures.

31 ~~((+41+))~~ (oo) "Fixtures" means goods that have become so related to
32 particular real property that an interest in them arises under real
33 property law.

34 ~~((+42+))~~ (pp) "General intangible" means any personal property,
35 including things in action, other than accounts, chattel paper,
36 commercial tort claims, deposit accounts, documents, goods,
37 instruments, investment property, letter-of-credit rights, letters of

1 credit, money, and oil, gas, or other minerals before extraction. The
2 term includes payment intangibles and software.

3 ~~((43)) "Good faith" means honesty in fact and the observance of~~
4 ~~reasonable commercial standards of fair dealing.~~

5 ~~(44))~~ (qq) [Reserved.]

6 (rr) "Goods" means all things that are movable when a security
7 interest attaches. The term includes ~~((A))~~ (i) fixtures, ~~((B))~~
8 (ii) standing timber that is to be cut and removed under a conveyance
9 or contract for sale, ~~((C))~~ (iii) the unborn young of animals,
10 ~~((D))~~ (iv) crops grown, growing, or to be grown, even if the crops
11 are produced on trees, vines, or bushes, and ~~((E))~~ (v) manufactured
12 homes. The term also includes a computer program embedded in goods and
13 any supporting information provided in connection with a transaction
14 relating to the program if ~~((i))~~ (A) the program is associated with
15 the goods in such a manner that it customarily is considered part of
16 the goods, or ~~((ii))~~ (B) by becoming the owner of the goods, a person
17 acquires a right to use the program in connection with the goods. The
18 term does not include a computer program embedded in goods that consist
19 solely of the medium in which the program is embedded. The term also
20 does not include accounts, chattel paper, commercial tort claims,
21 deposit accounts, documents, general intangibles, instruments,
22 investment property, letter-of-credit rights, letters of credit, money,
23 or oil, gas, or other minerals before extraction or a manufactured home
24 converted to real property under chapter 65.20 RCW.

25 ~~((45))~~ (ss) "Governmental unit" means a subdivision, agency,
26 department, county, parish, municipality, or other unit of the
27 government of the United States, a state, or a foreign country. The
28 term includes an organization having a separate corporate existence if
29 the organization is eligible to issue debt on which interest is exempt
30 from income taxation under the laws of the United States.

31 ~~((46))~~ (tt) "Health-care-insurance receivable" means an interest
32 in or claim under a policy of insurance which is a right to payment of
33 a monetary obligation for health-care goods or services provided.

34 ~~((47))~~ (uu) "Instrument" means a negotiable instrument or any
35 other writing that evidences a right to the payment of a monetary
36 obligation, is not itself a security agreement or lease, and is of a
37 type that in ordinary course of business is transferred by delivery
38 with any necessary indorsement or assignment. The term does not

1 include ~~((A))~~ (i) investment property, ~~((B))~~ (ii) letters of
2 credit, ~~((C))~~ (iii) writings that evidence a right to payment arising
3 out of the use of a credit or charge card or information contained on
4 or for use with the card, ~~((D))~~ (iv) writings that do not contain a
5 promise or order to pay, or ~~((E))~~ (v) writings that are expressly
6 nontransferable or nonassignable.

7 ~~((48))~~ (vv) "Inventory" means goods, other than farm products,
8 which:

9 ~~((A))~~ (i) Are leased by a person as lessor;

10 ~~((B))~~ (ii) Are held by a person for sale or lease or to be
11 furnished under a contract of service;

12 ~~((C))~~ (iii) Are furnished by a person under a contract of
13 service; or

14 ~~((D))~~ (iv) Consist of raw materials, work in process, or
15 materials used or consumed in a business.

16 ~~((49))~~ (ww) "Investment property" means a security, whether
17 certificated or uncertificated, security entitlement, securities
18 account, commodity contract, or commodity account.

19 ~~((50))~~ (xx) "Jurisdiction of organization," with respect to a
20 registered organization, means the jurisdiction under whose law the
21 organization is organized.

22 ~~((51))~~ (yy) "Letter-of-credit right" means a right to payment or
23 performance under a letter of credit, whether or not the beneficiary
24 has demanded or is at the time entitled to demand payment or
25 performance. The term does not include the right of a beneficiary to
26 demand payment or performance under a letter of credit.

27 ~~((52))~~ (zz) "Lien creditor" means:

28 ~~((A))~~ (i) A creditor that has acquired a lien on the property
29 involved by attachment, levy, or the like;

30 ~~((B))~~ (ii) An assignee for benefit of creditors from the time of
31 assignment;

32 ~~((C))~~ (iii) A trustee in bankruptcy from the date of the filing
33 of the petition; or

34 ~~((D))~~ (iv) A receiver in equity from the time of appointment.

35 ~~((53))~~ (aaa) "Manufactured home" means a manufactured home or
36 mobile home as defined in RCW 46.04.302.

37 ~~((54))~~ (bbb) [Reserved.]

1 ~~((+55+))~~ (ccc) "Mortgage" means a consensual interest in real
2 property, including fixtures, which secures payment or performance of
3 an obligation.

4 ~~((+56+))~~ (ddd) "New debtor" means a person that becomes bound as
5 debtor under RCW 62A.9A-203(d) by a security agreement previously
6 entered into by another person.

7 ~~((+57+))~~ (eee) "New value" means ~~((+A+))~~ (i) money, ~~((+B+))~~ (ii)
8 money's worth in property, services, or new credit, or ~~((+C+))~~ (iii)
9 release by a transferee of an interest in property previously
10 transferred to the transferee. The term does not include an obligation
11 substituted for another obligation.

12 ~~((+58+))~~ (fff) "Noncash proceeds" means proceeds other than cash
13 proceeds.

14 ~~((+59+))~~ (ggg) "Obligor" means a person that, with respect to an
15 obligation secured by a security interest in or an agricultural lien on
16 the collateral, ~~((+A+))~~ (i) owes payment or other performance of the
17 obligation, ~~((+B+))~~ (ii) has provided property other than the
18 collateral to secure payment or other performance of the obligation, or
19 ~~((+C+))~~ (iii) is otherwise accountable in whole or in part for payment
20 or other performance of the obligation. The term does not include
21 issuers or nominated persons under a letter of credit.

22 ~~((+60+))~~ (hhh) "Original debtor" ~~((+τ))~~ except as used in RCW
23 62A.9A-310~~((+ε))~~, means a person that, as debtor, entered into a
24 security agreement to which a new debtor has become bound under RCW
25 62A.9A-203(d).

26 ~~((+61+))~~ (iii) "Payment intangible" means a general intangible
27 under which the account debtor's principal obligation is a monetary
28 obligation.

29 ~~((+62+))~~ (jjj) "Person related to," with respect to an individual,
30 means:

31 ~~((+A+))~~ (i) The spouse of the individual;

32 ~~((+B+))~~ (ii) A brother, brother-in-law, sister, or sister-in-law of
33 the individual;

34 ~~((+C+))~~ (iii) An ancestor or lineal descendant of the individual or
35 the individual's spouse; or

36 ~~((+D+))~~ (iv) Any other relative, by blood or marriage, of the
37 individual or the individual's spouse who shares the same home with the
38 individual.

1 ((+63+)) (kkk) "Person related to," with respect to an
2 organization, means:

3 ((+A+)) (i) A person directly or indirectly controlling, controlled
4 by, or under common control with the organization;

5 ((+B+)) (ii) An officer or director of, or a person performing
6 similar functions with respect to, the organization;

7 ((+C+)) (iii) An officer or director of, or a person performing
8 similar functions with respect to, a person described in ((+63+)(A+))
9 (kkk)(i) of this subsection;

10 ((+D+)) (iv) The spouse of an individual described in ((+63+)(A+))
11 (kkk)(i), ((+B+)) (ii), or ((+C+)) (iii) of this subsection; or

12 ((+E+)) (v) An individual who is related by blood or marriage to an
13 individual described in((+63+)(A+)) (kkk)(i), ((+B+)) (ii), ((+C+))
14 (iii), or ((+D+)) (iv) of this subsection and shares the same home with
15 the individual.

16 ((+64+)) (lll) "Proceeds([±])," except as used in RCW
17 62A.9A-609((+b+)), means the following property:

18 ((+A+)) (i) Whatever is acquired upon the sale, lease, license,
19 exchange, or other disposition of collateral;

20 ((+B+)) (ii) Whatever is collected on, or distributed on account
21 of, collateral;

22 ((+C+)) (iii) Rights arising out of collateral;

23 ((+D+)) (iv) To the extent of the value of collateral, claims
24 arising out of the loss, nonconformity, or interference with the use
25 of, defects or infringement of rights in, or damage to, the collateral;
26 or

27 ((+E+)) (v) To the extent of the value of collateral and to the
28 extent payable to the debtor or the secured party, insurance payable by
29 reason of the loss or nonconformity of, defects or infringement of
30 rights in, or damage to, the collateral.

31 ((+65+)) (mmm) "Promissory note" means an instrument that evidences
32 a promise to pay a monetary obligation, does not evidence an order to
33 pay, and does not contain an acknowledgment by a bank that the bank has
34 received for deposit a sum of money or funds.

35 ((+66+)) (nnn) "Proposal" means a record authenticated by a secured
36 party, which includes the terms on which the secured party is willing
37 to accept collateral in full or partial satisfaction of the obligation
38 it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

1 ~~((67))~~ (ooo) "Public-finance transaction" means a secured
2 transaction in connection with which:
3 ~~((A))~~ (i) Debt securities are issued;
4 ~~((B))~~ (ii) All or a portion of the securities issued have an
5 initial stated maturity of at least twenty years; and
6 ~~((C))~~ (iii) The debtor, obligor, secured party, account debtor or
7 other person obligated on collateral, assignor or assignee of a secured
8 obligation, or assignor or assignee of a security interest is a state
9 or a governmental unit of a state.
10 ~~((68))~~ (ppp) "Pursuant to commitment," with respect to an advance
11 made or other value given by a secured party, means pursuant to the
12 secured party's obligation, whether or not a subsequent event of
13 default or other event not within the secured party's control has
14 relieved or may relieve the secured party from its obligation.
15 ~~((69))~~ (qqq) "Record," except as used in "for record," "of
16 record," "record or legal title," and "record owner," means information
17 that is inscribed on a tangible medium or which is stored in an
18 electronic or other medium and is retrievable in perceivable form.
19 ~~((70))~~ (rrr) "Registered organization" means an organization
20 organized solely under the law of a single state or the United States
21 and as to which the state or the United States must maintain a public
22 record showing the organization to have been organized.
23 ~~((71))~~ (sss) "Secondary obligor" means an obligor to the extent
24 that:
25 ~~((A))~~ (i) The obligor's obligation is secondary; or
26 ~~((B))~~ (ii) The obligor has a right of recourse with respect to an
27 obligation secured by collateral against the debtor, another obligor,
28 or property of either.
29 ~~((72))~~ (ttt) "Secured party" means:
30 ~~((A))~~ (i) A person in whose favor a security interest is created
31 or provided for under a security agreement, whether or not any
32 obligation to be secured is outstanding;
33 ~~((B))~~ (ii) A person that holds an agricultural lien;
34 ~~((C))~~ (iii) A consignor;
35 ~~((D))~~ ~~((iv))~~ A person to which accounts, chattel paper, payment
36 intangibles, or promissory notes have been sold;
37 ~~((E))~~ (v) A trustee, indenture trustee, agent, collateral agent,

1 or other representative in whose favor a security interest or
2 agricultural lien is created or provided for; or
3 ~~((F))~~ (vi) A person that holds a security interest arising under
4 RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or
5 62A.5-118.
6 ~~((73))~~ (uuu) "Security agreement" means an agreement that creates
7 or provides for a security interest.
8 ~~((74))~~ (vvv) "Send," in connection with a record or notification,
9 means:
10 ~~((A))~~ (i) To deposit in the mail, deliver for transmission, or
11 transmit by any other usual means of communication, with postage or
12 cost of transmission provided for, addressed to any address reasonable
13 under the circumstances; or
14 ~~((B))~~ (ii) To cause the record or notification to be received
15 within the time that it would have been received if properly sent under
16 ~~((A))~~ (vvv)(i) of this subsection.
17 ~~((75))~~ (www) "Software" means a computer program and any
18 supporting information provided in connection with a transaction
19 relating to the program. The term does not include a computer program
20 that is included in the definition of goods.
21 ~~((76))~~ (xxx) "State" means a state of the United States, the
22 District of Columbia, Puerto Rico, the United States Virgin Islands, or
23 any territory or insular possession subject to the jurisdiction of the
24 United States.
25 ~~((77))~~ (yyy) "Supporting obligation" means a letter-of-credit
26 right or secondary obligation that supports the payment or performance
27 of an account, chattel paper, a document, a general intangible, an
28 instrument, or investment property.
29 ~~((78))~~ (zzz) "Tangible chattel paper" means chattel paper
30 evidenced by a record or records consisting of information that is
31 inscribed on a tangible medium.
32 ~~((79))~~ (aaaa) "Termination statement" means an amendment of a
33 financing statement which:
34 ~~((A))~~ (i) Identifies, by its file number, the initial financing
35 statement to which it relates; and
36 ~~((B))~~ (ii) Indicates either that it is a termination statement or
37 that the identified financing statement is no longer effective.

1 ~~((+80+))~~ (bbbb) "Transmitting utility" means a person primarily
2 engaged in the business of:

3 ~~((+A+))~~ (i) Operating a railroad, subway, street railway, or
4 trolley bus;

5 ~~((+B+))~~ (ii) Transmitting communications electrically,
6 electromagnetically, or by light;

7 ~~((+C+))~~ (iii) Transmitting goods by pipeline or sewer; or

8 ~~((+D+))~~ (iv) Transmitting or producing and transmitting
9 electricity, steam, gas, or water.

10 ~~((+b+))~~ (2) **Definitions in other Articles.** The following
11 definitions in other Articles apply to this Article:

12	"Applicant."	RCW 62A.5-102.
13	"Beneficiary."	RCW 62A.5-102.
14	"Broker."	RCW 62A.8-102.
15	"Certificated security."	RCW 62A.8-102.
16	"Check."	RCW 62A.3-104.
17	"Clearing corporation."	RCW 62A.8-102.
18	"Contract for sale."	RCW 62A.2-106.
19	"Customer."	RCW 62A.4-104.
20	"Entitlement holder."	RCW 62A.8-102.
21	"Financial asset."	RCW 62A.8-102.
22	"Holder in due course."	RCW 62A.3-302.
23	"Issuer" with respect to a	
24	letter of credit or letter-	
25	of-credit right.	RCW 62A.5-102.
26	"Issuer" with respect to a	
27	security.	RCW 62A.8-201.
28	"Lease."	RCW 62A.2A-103.
29	"Lease agreement."	RCW 62A.2A-103.
30	"Lease contract."	RCW 62A.2A-103.
31	"Leasehold interest."	RCW 62A.2A-103.
32	"Lessee."	RCW 62A.2A-103.
33	"Lessee in ordinary course	
34	of business."	RCW 62A.2A-103.
35	"Lessor."	RCW 62A.2A-103.
36	"Lessor's residual interest."	RCW 62A.2A-103.

1	"Letter of credit."	RCW 62A.5-102.
2	"Merchant."	RCW 62A.2-104.
3	"Negotiable instrument."	RCW 62A.3-104.
4	"Nominated person."	RCW 62A.5-102.
5	"Note."	RCW 62A.3-104.
6	"Proceeds of a letter of	
7	credit."	RCW 62A.5-114.
8	"Prove."	RCW 62A.3-103.
9	"Sale."	RCW 62A.2-106.
10	"Securities account."	RCW 62A.8-501.
11	"Securities intermediary."	RCW 62A.8-102.
12	"Security."	RCW 62A.8-102.
13	"Security certificate."	RCW 62A.8-102.
14	"Security entitlement."	RCW 62A.8-102.
15	"Uncertificated security."	RCW 62A.8-102.

16 ((+e)) (3) **Article 1 definitions and principles.** Article 1
17 contains general definitions and principles of construction and
18 interpretation applicable throughout this Article.

19 NEW SECTION. **Sec. 40.** The following acts or parts of acts are
20 each repealed:

21 (1) RCW 62A.1-107 (Waiver or renunciation of claim or right after
22 breach) and 1965 ex.s. c 157 s 1-107;

23 (2) RCW 62A.1-109 (Section captions) and 1965 ex.s. c 157 s 1-109;

24 (3) RCW 62A.1-207 (Performance or acceptance under reservation of
25 rights) and 1993 c 229 s 2 & 1965 ex.s. c 157 s 1-207;

26 (4) RCW 62A.1-208 (Option to accelerate at will) and 1965 ex.s. c
27 157 s 1-208;

28 (5) RCW 62A.2-208 (Course of performance or practical construction)
29 and 1965 ex.s. c 157 s 2-208; and

30 (6) RCW 62A.2A-207 (Course of performance or practical
31 construction) and 1993 c 230 s 2A-207.

32 NEW SECTION. **Sec. 41.** Sections 14 through 23 of this act shall be
33 placed in chapter 62A.1 RCW under the heading:

34 PART 3

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