

SENATE BILL NO. 200—SENATORS CARE AND AMODEI

MARCH 17, 2005

JOINT SPONSOR: ASSEMBLYWOMAN OHRENSCHALL

Referred to Committee on Judiciary

SUMMARY—Revises provisions of Articles 2 and 2A of Uniform Commercial Code. (BDR 8-541)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to the Uniform Commercial Code; revising the provisions of Articles 2 and 2A of the Uniform Commercial Code; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The Uniform Commercial Code is a set of uniform laws governing commercial transactions, which was originally adopted by the National Conference of Commissioners on Uniform State Laws in 1951. Contracts for the sales of goods are regulated by Article 2 of the Uniform Commercial Code. Article 2 provides default rules of contract for the sale of goods, which, with certain exceptions such as good faith and reasonableness, may be waived or modified by agreement of the parties. The rules address all the stages of the contractual relationship, from formation to performance. Article 2 of the Code was enacted in Nevada in 1965 (NRS 104.2101-104.2725) and has not been revised subsequently in any substantial manner.

This bill revises certain provisions of Article 2 to: (1) accommodate the conduct of electronic transactions; (2) clarify the interrelationship between a provision of Article 2 and another applicable law when those provisions conflict; (3) increase the threshold at which oral contracts for the sale of goods may be enforced from \$500 to \$5,000; (4) simplify the rules to determine whose terms become part of a contract, commonly known as the “battle of the forms”; (5) create a new category of sales contracts, known as consumer contracts, and provide certain protections for consumers that enter into such contracts; (6) provide new obligations relating to express warranties to certain remote purchasers; and (7) repeal archaic shipment terms, such as F.O.B., F.A.S. and C.I.F., which are already



covered in the Code as a matter of usage of trade. The bill also makes other technical changes to provisions of Article 2.

Article 2A of the Uniform Commercial Code governs leases of personal property. Article 2A is based primarily on Article 2 of the Code and essentially provides rules of contract for a specific type of transaction. Like Article 2, Article 2A provides default rules that, except for certain requirements such as good faith, may be waived or modified by the parties to the lease. This Article was adopted by the National Conference of Commissioners on Uniform State Laws recently in 1987 and enacted in Nevada in 1989. (NRS 104A.2101-104A.2532)

This bill revises certain provisions of Article 2A to: (1) accommodate the conduct of electronic transactions; (2) address a conflict of law issue relating to the applicability of statutes relating to certificates of title in certain circumstances; (3) articulate the warranties against interference in a lease more clearly; (4) allow restitution for the amount that the lessee's payments exceed the lessor's entitlement when the lessor's damages are liquidated; and (5) clarify the remedies of both the lessor and lessee for breach of contract. The bill also makes various other technical changes to Article 2A.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 104 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. 1. A transaction subject to this Article is also subject to:

(a) The provisions of NRS 482.423 to 482.431, inclusive, 488.1793 to 488.1827, inclusive, and 489.501 to 489.581, inclusive, except with respect to the rights of a buyer in ordinary course of business under subsection 2 of NRS 104.2403 which arise before a certificate of title covering the goods is effective in the name of any other buyer;

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

(c) Any statute of this State applicable to the transaction, such as a statute dealing with:

(1) The sale or lease of agricultural products;

(2) The transfer of human blood, blood products, tissues, or parts;

(3) The consignment or transfer by artists of works of art or fine prints;

(4) Distribution agreements, franchises, and other relationships through which goods are sold;

(5) The misbranding or adulteration of food products or drugs; and

(6) Dealers in particular products, such as automobiles, motorized wheelchairs, agricultural equipment, and hearing aids.



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

3. For purposes of this Article, failure to comply with a law referred to in subsection 1 has only the effect specified in that law.

4. This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., except that nothing in this Article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.

Sec. 3. 1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

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

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

4. A contract formed by the interaction of a natural person and an electronic agent under paragraph (b) of subsection 4 of NRS 104.2204 does not include terms provided by the natural person if the natural person had reason to know that the agent could not react to the terms as provided.

Sec. 4. An electronic record or electronic signature is attributable to a person if it was the act of the person or the person's electronic agent or the person is otherwise legally bound by the act.

Sec. 5. 1. If the receipt of an electronic communication has a legal effect, it has that effect even if no natural person is aware of its receipt.

2. Receipt of an electronic acknowledgment of an electronic communication establishes that the communication was received but, in itself, does not establish that the content sent corresponds to the content received.

Sec. 6. 1. In this section:

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

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

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



1 3. *If in a record packaged with or accompanying the goods*
2 *the seller makes an affirmation of fact or promise that relates to*
3 *the goods, provides a description that relates to the goods, or*
4 *makes a remedial promise, and the seller reasonably expects the*
5 *record to be, and the record is, furnished to the remote purchaser,*
6 *the seller has an obligation to the remote purchaser that:*

7 (a) *The goods will conform to the affirmation of fact, promise,*
8 *or description unless a reasonable person in the position of the*
9 *remote purchaser would not believe that the affirmation of fact,*
10 *promise, or description created an obligation; and*

11 (b) *The seller will perform the remedial promise.*

12 4. *It is not necessary to the creation of an obligation under*
13 *this section that the seller use formal words such as “warrant” or*
14 *“guarantee” or that the seller have a specific intention to*
15 *undertake an obligation, but an affirmation merely of the value of*
16 *the goods or a statement purporting to be merely the seller’s*
17 *opinion or commendation of the goods does not create an*
18 *obligation.*

19 5. *The following rules apply to the remedies for breach of an*
20 *obligation created under this section:*

21 (a) *The seller may modify or limit the remedies available to the*
22 *remote purchaser if the modification or limitation is furnished to*
23 *the remote purchaser no later than the time of purchase or if the*
24 *modification or limitation is contained in the record that contains*
25 *the affirmation of fact, promise, or description.*

26 (b) *Subject to a modification or limitation of remedy, a seller*
27 *in breach is liable for incidental or consequential damages under*
28 *NRS 104.2715, but not for lost profits.*

29 (c) *The remote purchaser may recover as damages for breach*
30 *of a seller’s obligation arising under subsection 3 the loss*
31 *resulting in the ordinary course of events as determined in any*
32 *reasonable manner.*

33 6. *An obligation that is not a remedial promise is breached if*
34 *the goods did not conform to the affirmation of fact, promise, or*
35 *description creating the obligation when the goods left the seller’s*
36 *control.*

37 **Sec. 7. 1. In this section:**

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

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

43 2. *This section applies only to new goods and goods sold or*
44 *leased as new goods in a transaction of purchase in the normal*
45 *chain of distribution.*



1 3. *If in an advertisement or a similar communication to the*
2 *public a seller makes an affirmation of fact or promise that relates*
3 *to the goods, provides a description that relates to the goods, or*
4 *makes a remedial promise, and the remote purchaser enters into a*
5 *transaction of purchase with knowledge of and with the*
6 *expectation that the goods will conform to the affirmation of fact,*
7 *promise, or description, or that the seller will perform the remedial*
8 *promise, the seller has an obligation to the remote purchaser that:*

9 (a) *The goods will conform to the affirmation of fact, promise,*
10 *or description unless a reasonable person in the position of the*
11 *remote purchaser would not believe that the affirmation of fact,*
12 *promise, or description created an obligation; and*

13 (b) *The seller will perform the remedial promise.*

14 4. *It is not necessary to the creation of an obligation under*
15 *this section that the seller use formal words such as “warrant” or*
16 *“guarantee” or that the seller have a specific intention to*
17 *undertake an obligation, but an affirmation merely of the value of*
18 *the goods or a statement purporting to be merely the seller’s*
19 *opinion or commendation of the goods does not create an*
20 *obligation.*

21 5. *The following rules apply to the remedies for breach of an*
22 *obligation created under this section:*

23 (a) *The seller may modify or limit the remedies available to the*
24 *remote purchaser if the modification or limitation is furnished to*
25 *the remote purchaser no later than the time of purchase. The*
26 *modification or limitation may be furnished as part of the*
27 *communication that contains the affirmation of fact, promise, or*
28 *description.*

29 (b) *Subject to a modification or limitation of remedy, a seller*
30 *in breach is liable for incidental or consequential damages under*
31 *NRS 104.2715, but not for lost profits.*

32 (c) *The remote purchaser may recover as damages for breach*
33 *of a seller’s obligation arising under subsection 3 the loss*
34 *resulting in the ordinary course of events as determined in any*
35 *reasonable manner.*

36 6. *An obligation that is not a remedial promise is breached if*
37 *the goods did not conform to the affirmation of fact, promise, or*
38 *description creating the obligation when the goods left the seller’s*
39 *control.*

40 **Sec. 8.** NRS 104.2103 is hereby amended to read as follows:

41 104.2103 1. In this Article unless the context otherwise
42 requires:

43 (a) “Buyer” means a person ~~[who]~~ *that* buys or contracts to buy
44 goods.



(b) “Conspicuous”, with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by a natural person. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(1) For a person:

(I) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(II) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language; and

(2) For a person or an electronic agent, a term that is so placed in a record or display that the person or electronic agent may not proceed without taking action with respect to the particular term.

(c) “Consumer” means a natural person who buys or contracts to buy goods that, at the time of contracting, are intended by the natural person to be used primarily for personal, family, or household purposes.

(d) “Consumer contract” means a contract between a merchant seller and a consumer.

(e) “Delivery” means the voluntary transfer of physical possession or control of goods.

(f) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(g) “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by a natural person.

(h) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(i) “Foreign exchange transaction” means a transaction in which one party agrees to deliver a quantity of a specified money or unit of account in consideration of the other party’s agreement to deliver another quantity of a different money or unit of account either currently or at a future date, and in which delivery is to be through funds transfer, book entry accounting, or other form of



1 *payment order, or other agreed means to transfer a credit balance.*
2 *The term includes a transaction of this type involving two or more*
3 *moneys and spot, forward, option, or other products derived from*
4 *underlying moneys and any combination of these transactions.*
5 *The term does not include a transaction involving two or more*
6 *moneys in which one or both of the parties is obligated to make*
7 *physical delivery, at the time of contracting or in the future, of*
8 *banknotes, coins, or other form of legal tender or specie.*

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

12 ~~[(e)]~~ (k) "Goods" means all things that are movable at the
13 time of identification to a contract for sale. The term includes
14 future goods, specially manufactured goods, the unborn young of
15 animals, growing crops, and other identified things attached to
16 realty as described in NRS 104.2107. The term does not include
17 information, the money in which the price is to be paid, investment
18 securities under Article 8, the subject matter of foreign exchange
19 transactions, or choses in action.

20 (l) "Receipt" of goods means taking physical possession of
21 them.

22 ~~[(d)]~~ (m) "Record" means information that is inscribed on a
23 tangible medium or that is stored in an electronic or other medium
24 and is retrievable in perceivable form.

25 (n) "Remedial promise" means a promise by the seller to
26 repair or replace goods or to refund all or part of the price of
27 goods upon the happening of a specified event.

28 (o) "Seller" means a person ~~[who]~~ that sells or contracts to sell
29 goods.

30 (p) "Sign" means, with present intent to authenticate or adopt
31 a record:

32 (1) To execute or adopt a tangible symbol; or

33 (2) To attach to or logically associate with the record an
34 electronic sound, symbol, or process.

35 2. Other definitions applying to this Article or to specified
36 parts thereof, and the sections in which they appear are:

37
38 "Acceptance." NRS 104.2606.

39 ~~["Banker's credit." NRS 104.2325.]~~

40 "Between merchants." NRS 104.2104.

41 "Cancellation." Subsection 4 of NRS 104.2106.

42 "Commercial unit." NRS 104.2105.

43 ~~["Confirmed credit." NRS 104.2325.]~~

44 "Conforming to contract." NRS 104.2106.

45 "Contract for sale." NRS 104.2106.



1 “Cover.” NRS 104.2712.
2 “Entrusting.” NRS 104.2403.
3 “Financing agency.” NRS 104.2104.
4 “Future goods.” NRS 104.2105.
5 “Goods.” NRS 104.2105.
6 “Identification.” NRS 104.2501.
7 “Installment contract.” NRS 104.2612.
8 ~~“Letter of credit.” NRS 104.2325.~~
9 “Lot.” NRS 104.2105.
10 “Merchant.” NRS 104.2104.
11 ~~“Overseas.” NRS 104.2323.~~
12 “Person in position of seller.” NRS 104.2707.
13 “Present sale.” NRS 104.2106.
14 “Sale.” NRS 104.2106.
15 “Sale on approval.” NRS 104.2326.
16 “Sale or return.” NRS 104.2326.
17 “Termination.” NRS 104.2106.

18
19 3. The following definitions in other Articles apply to this
20 Article:

21
22 “Check.” NRS 104.3104.
23 “Consignee.” NRS 104.7102.
24 “Consignor.” NRS 104.7102.
25 “Consumer goods.” NRS 104.9102.
26 “Draft.” NRS 104.3104.
27 *“Honor.” NRS 104.5102.*
28 *“Letter of credit.” NRS 104.5102.*
29

30 4. In addition Article 1 contains general definitions and
31 principles of construction and interpretation applicable throughout
32 this Article.

33 **Sec. 9.** NRS 104.2104 is hereby amended to read as follows:

34 104.2104 1. “Merchant” means a person ~~[who]~~ *that* deals in
35 goods of the kind or otherwise ~~[by his occupation holds himself]~~
36 *holds itself out by occupation* as having knowledge or skill peculiar
37 to the practices or goods involved in the transaction or to ~~[whom]~~
38 ~~such]~~ *which the* knowledge or skill may be attributed by ~~[his]~~ *the*
39 *person’s* employment of an agent or broker or other intermediary
40 ~~[who by his occupation holds himself]~~ *that holds itself out by*
41 *occupation* as having ~~[such]~~ *the* knowledge or skill.

42 2. “Financing agency” means a bank, finance company or other
43 person ~~[who]~~ *that* in the ordinary course of business makes
44 advances against goods or documents of title or ~~[who]~~ *that* by
45 arrangement with either the seller or the buyer intervenes in



1 ordinary course to make or collect payment due or claimed under
2 the contract for sale, as by purchasing or paying the seller's draft or
3 making advances against it or by merely taking it for collection
4 whether or not documents of title accompany *or are associated with*
5 the draft. ~~["Financing agency"]~~ *The term* includes also a bank or
6 other person ~~[who]~~ *that* similarly intervenes between persons ~~[who]~~
7 *that* are in the position of seller and buyer in respect to the goods
8 (NRS 104.2707).

9 3. "Between merchants" means in any transaction with respect
10 to which both parties are chargeable with the knowledge or skill of
11 merchants.

12 **Sec. 10.** NRS 104.2105 is hereby amended to read as follows:

13 104.2105 1. ~~["Goods" means all things (including specially~~
14 ~~manufactured goods) which are movable at the time of identification~~
15 ~~to the contract for sale other than the money in which the price is to~~
16 ~~be paid, investment securities (Article 8) and things in action.~~
17 ~~"Goods" also includes the unborn young of animals and growing~~
18 ~~crops and other identified things attached to realty as described in~~
19 ~~the section on goods to be severed from realty (NRS 104.2107).~~

20 ~~—2.]~~ Goods must be both existing and identified before any
21 interest in them ~~[can]~~ *may* pass. Goods ~~[which]~~ *that* are not both
22 existing and identified are "future" goods. A purported present sale
23 of future goods or of any interest therein operates as a contract to
24 sell.

25 ~~[3.]~~ 2. There may be a sale of a part interest in existing
26 identified goods.

27 ~~[4.]~~ 3. An undivided share in an identified bulk of fungible
28 goods is sufficiently identified to be sold ~~[although]~~ *even if* the
29 quantity of the bulk is not determined. Any agreed proportion of
30 such a bulk or any quantity thereof agreed upon by number, weight
31 or other measure may to the extent of the seller's interest in the bulk
32 be sold to the buyer ~~[who]~~ *that* then becomes an owner in common.

33 ~~[5.]~~ 4. "Lot" means a parcel or a single Article which is the
34 subject matter of a separate sale or delivery, whether or not it is
35 sufficient to perform the contract.

36 ~~[6.]~~ 5. "Commercial unit" means such a unit of goods as by
37 commercial usage is a single whole for purposes of sale and division
38 of which materially impairs its character or value on the market or
39 in use. A commercial unit may be a single Article (as a machine)
40 or a set of Articles (as a suite of furniture or an assortment of sizes)
41 or a quantity (as a bale, gross or carload) or any other unit treated in
42 use or in the relevant market as a single whole.

43 **Sec. 11.** NRS 104.2201 is hereby amended to read as follows:

44 104.2201 1. ~~[Except as otherwise provided in this section a]~~
45 *A* contract for the sale of goods for the price of ~~[\$500]~~ *\$5,000* or



1 more is not enforceable by way of action or defense unless there is
2 some ~~[writing]~~ *record* sufficient to indicate that a contract for sale
3 has been made between the parties and signed by the party against
4 ~~[whom]~~ *which* enforcement is sought or by ~~[his]~~ *the party's*
5 authorized agent or broker. A ~~[writing]~~ *record* is not insufficient
6 because it omits or incorrectly states a term agreed upon , but the
7 contract is not enforceable under this subsection beyond the quantity
8 of goods shown in ~~[such writing.]~~ *the record.*

9 2. Between merchants if within a reasonable time a ~~[writing]~~
10 *record* in confirmation of the contract and sufficient against the
11 sender is received and the party receiving it has reason to know its
12 contents, it satisfies the requirements of subsection 1 against ~~[such~~
13 ~~party unless written]~~ *the recipient unless* notice of objection to its
14 contents is given *in a record* within 10 days after it is received.

15 3. A contract ~~[which]~~ *that* does not satisfy the requirements of
16 subsection 1 but which is valid in other respects is enforceable:

17 (a) If the goods are to be specially manufactured for the buyer
18 and are not suitable for sale to others in the ordinary course of the
19 seller's business and the seller, before notice of repudiation is
20 received and under circumstances ~~[which]~~ *that* reasonably indicate
21 that the goods are for the buyer, has made either a substantial
22 beginning of their manufacture or commitments for their
23 procurement; or

24 (b) If the party against ~~[whom]~~ *which* enforcement is sought
25 admits in ~~[his]~~ *the party's* pleading, *in the party's* testimony or
26 otherwise ~~[in court]~~ *under oath* that a contract for sale was made,
27 but the contract is not enforceable under this ~~[provision]~~ *paragraph*
28 beyond the quantity of goods admitted; or

29 (c) With respect to goods for which payment has been made and
30 accepted or which have been received and accepted
31 (NRS 104.2606).

32 4. *A contract that is enforceable under this section is not*
33 *unenforceable merely because it is not capable of being performed*
34 *within 1 year or any other period after its making.*

35 **Sec. 12.** NRS 104.2202 is hereby amended to read as follows:

36 104.2202 1. Terms with respect to which the confirmatory
37 ~~[memoranda]~~ *records* of the parties agree or which are otherwise set
38 forth in ~~[writing]~~ *a record* intended by the parties as a final
39 expression of their agreement with respect to such terms as are
40 included therein may not be contradicted by evidence of any prior
41 agreement or of a contemporaneous oral agreement but may be
42 ~~[explained or supplemented:]~~

43 ~~—1.]~~ *supplemented:*

44 (a) By course of dealing or usage of trade (NRS 104.1205) or by
45 course of performance (NRS 104.2208); and



1 ~~[2-]~~ (b) By evidence of consistent additional terms unless the
2 court finds the ~~[writing]~~ *record* to have been intended also as a
3 complete and exclusive statement of the terms of the agreement.

4 *2. Terms in a record may be explained by evidence of course*
5 *of performance, course of dealing, or usage of trade without a*
6 *preliminary determination by the court that the language used is*
7 *ambiguous.*

8 **Sec. 13.** NRS 104.2203 is hereby amended to read as follows:

9 104.2203 The affixing of a seal to a ~~[writing]~~ *record*
10 evidencing a contract for sale or an offer to buy or sell goods does
11 not constitute the ~~[writing]~~ *record* a sealed instrument . ~~[and the]~~
12 *The* law with respect to sealed instruments does not apply to such a
13 contract or offer.

14 **Sec. 14.** NRS 104.2204 is hereby amended to read as follows:

15 104.2204 1. A contract for sale of goods may be made in any
16 manner sufficient to show agreement, including *offer and*
17 *acceptance*, conduct by both parties which recognizes the existence
18 of ~~[such]~~ a contract ~~[]~~ , *the interaction of electronic agents, and*
19 *the interaction of an electronic agent and a natural person.*

20 2. An agreement sufficient to constitute a contract for sale may
21 be found even ~~[though]~~ *if* the moment of its making is
22 undetermined.

23 3. Even ~~[though]~~ *if* one or more terms are left open a contract
24 for sale does not fail for indefiniteness if the parties have intended to
25 make a contract and there is a reasonably certain basis for giving an
26 appropriate remedy.

27 *4. Except as otherwise provided in sections 3, 4 and 5 of this*
28 *act, the following rules apply:*

29 (a) *A contract may be formed by the interaction of electronic*
30 *agents of the parties, even if no natural person was aware of or*
31 *reviewed the electronic agents' actions or the resulting terms and*
32 *agreements.*

33 (b) *A contract may be formed by the interaction of an*
34 *electronic agent and a natural person acting on the natural*
35 *person's own behalf or for another person. A contract is formed if*
36 *the natural person takes actions that the natural person is free to*
37 *refuse to take or makes a statement, and the natural person has*
38 *reason to know that the actions or statement will:*

39 (1) *Cause the electronic agent to complete the transaction*
40 *or performance; or*

41 (2) *Indicate acceptance of an offer, regardless of other*
42 *expressions or actions by the natural person to which the*
43 *electronic agent cannot react.*



1 **Sec. 15.** NRS 104.2205 is hereby amended to read as follows:

2 104.2205 An offer by a merchant to buy or sell goods in a
3 signed ~~[writing which]~~ *record that* by its terms gives assurance that
4 it will be held open is not revocable, for lack of consideration,
5 during the time stated or if no time is stated for a reasonable time,
6 but in no event may ~~[such]~~ *the* period of irrevocability exceed
7 3 months . ~~[-; but any]~~ *Any* such term of assurance ~~[on]~~ *in* a form
8 supplied by the offeree must be separately signed by the offeror.

9 **Sec. 16.** NRS 104.2206 is hereby amended to read as follows:

10 104.2206 1. Unless otherwise unambiguously indicated by
11 the language or circumstances:

12 (a) An offer to make a contract shall be construed as inviting
13 acceptance in any manner and by any medium reasonable in the
14 circumstances.

15 (b) An order or other offer to buy goods for prompt or current
16 shipment shall be construed as inviting acceptance either by a
17 prompt promise to ship or by the prompt or current shipment of
18 conforming or nonconforming goods, but ~~[such a]~~ *the* shipment of
19 nonconforming goods ~~[does not constitute]~~ *is not* an acceptance if
20 the seller seasonably notifies the buyer that the shipment is offered
21 only as an accommodation to the buyer.

22 2. ~~[Where]~~ *If* the beginning of a requested performance is a
23 reasonable mode of acceptance an offeror ~~[who]~~ *that* is not notified
24 of acceptance within a reasonable time may treat the offer as having
25 lapsed before acceptance.

26 3. *A definite and seasonable expression of acceptance in a*
27 *record operates as an acceptance even if it contains terms*
28 *additional to or different from the offer.*

29 **Sec. 17.** NRS 104.2207 is hereby amended to read as follows:

30 104.2207 ~~[1. A definite and seasonable expression of~~
31 ~~acceptance or a written confirmation which is sent within a~~
32 ~~reasonable time operates as an acceptance even though it states~~
33 ~~terms additional to or different from those offered or agreed upon;~~
34 ~~unless acceptance is expressly made conditional on assent to the~~
35 ~~additional or different terms.~~

36 ~~—2. The additional terms are to be construed as proposals for~~
37 ~~addition to the contract. Between merchants such terms become part~~
38 ~~of the contract unless:~~

39 ~~—(a) The offer expressly limits acceptance to the terms of the~~
40 ~~offer;~~

41 ~~—(b) They materially alter it; or~~

42 ~~—(c) Notification of objection to them has already been given or is~~
43 ~~given within a reasonable time after notice of them is received.~~

44 ~~—3. Conduct by both parties which recognizes the existence of a~~
45 ~~contract is sufficient to establish a contract for sale although the~~



~~writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this chapter.] Subject to NRS 104.2202, if conduct by both parties recognizes the existence of a contract even if their records do not otherwise establish a contract, if a contract is formed by an offer and acceptance, or if a contract formed in any manner is confirmed by a record that contains terms additional to or different from those in the contract being confirmed, the terms of the contract are the:~~

- ~~1. Terms that appear in the records of both parties;~~
- ~~2. Terms, whether in a record or not, to which both parties agree; and~~
- ~~3. Terms supplied or incorporated under any provision of this chapter.~~

Sec. 18. NRS 104.2209 is hereby amended to read as follows:

104.2209 1. An agreement modifying a contract within this Article needs no consideration to be binding.

2. ~~[A signed]~~ An agreement *in a signed record* which excludes modification or rescission except by a signed ~~[writing cannot]~~ *record may not* be otherwise modified or rescinded, but except as between merchants such a requirement ~~[on]~~ *in* a form supplied by the merchant must be separately signed by the other party.

3. The requirements of ~~[the statute of frauds section of this Article.]~~ NRS 104.2201 ~~[.]~~ must be satisfied if the contract as modified is within its provisions.

4. ~~[Although]~~ *Even if* an attempt at modification or rescission does not satisfy the requirements of subsection 2 or 3 it ~~[can]~~ *may* operate as a waiver.

5. A party ~~[who]~~ *that* has made a waiver affecting an executory portion of ~~[the]~~ *a* contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Sec. 19. NRS 104.2210 is hereby amended to read as follows:

104.2210 1. ~~[A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.]~~

~~2. Except as otherwise provided in NRS 104.9406, unless otherwise agreed, all rights of either seller or buyer can be assigned~~



~~except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.~~

~~—3.— Unless the circumstances indicate the contrary a prohibition of assignment of “the contract” is to be construed as barring only the delegation to the assignee of the assignor's performance.~~

~~—4.— An assignment of “the contract” or of “all my rights under the contract” or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.~~

~~—5.— The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (NRS 104.2609).] If the seller or buyer assigns rights under a contract, the following rules apply:~~

(a) Subject to paragraph (b) and except as otherwise provided in NRS 104.9406 or as otherwise agreed, all rights of the seller or the buyer may be assigned unless the assignment would materially change the duty of the other party, increase materially the burden or risk imposed on that party by the contract, or impair materially that party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of its entire obligation may be assigned despite an agreement otherwise.

(b) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not an assignment that materially changes the duty of or materially increases the burden or risk imposed on the buyer or materially impairs the buyer's chance of obtaining return performance under paragraph (a) unless, and only to the extent that, enforcement of the security interest results in a delegation of a material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective. However, the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and a court may grant other appropriate relief, including cancellation of the



1 *contract or an injunction against enforcement of the security*
2 *interest or consummation of the enforcement.*

3 2. *If the seller or buyer delegates performance of its duties*
4 *under a contract, the following rules apply:*

5 (a) *A party may perform its duties through a delegate unless*
6 *otherwise agreed or unless the other party has a substantial*
7 *interest in having the original promisor perform or control the*
8 *acts required by the contract. Delegation of performance does not*
9 *relieve the delegating party of any duty to perform or liability for*
10 *breach.*

11 (b) *Acceptance of a delegation of duties by the assignee*
12 *constitutes a promise to perform those duties. The promise is*
13 *enforceable by either the assignor or the other party to the original*
14 *contract.*

15 (c) *The other party may treat any delegation of duties as*
16 *creating reasonable grounds for insecurity and may without*
17 *prejudice to its rights against the assignor demand assurances*
18 *from the assignee under NRS 104.2609.*

19 (d) *A contractual term prohibiting the delegation of duties*
20 *otherwise delegable under paragraph (a) is enforceable, and an*
21 *attempted delegation is not effective.*

22 3. *An assignment of “the contract” or of “all my rights under*
23 *the contract” or an assignment in similar general terms is an*
24 *assignment of rights and unless the language or the*
25 *circumstances, as in an assignment for security, indicate*
26 *the contrary, it is also a delegation of performance of the duties of*
27 *the assignor.*

28 4. *Unless the circumstances indicate the contrary, a*
29 *prohibition of assignment of “the contract” is to be construed as*
30 *barring only the delegation to the assignee of the assignor’s*
31 *performance.*

32 **Sec. 20.** NRS 104.2302 is hereby amended to read as follows:

33 104.2302 1. If the court as a matter of law finds the contract
34 or any ~~[clause]~~ term of the contract to have been unconscionable at
35 the time it was made the court may refuse to enforce the contract, or
36 it may enforce the remainder of the contract without the
37 unconscionable ~~[clause]~~ term, or it may so limit the application of
38 any unconscionable ~~[clause]~~ term as to avoid any unconscionable
39 result.

40 2. ~~[When]~~ If it is claimed or appears to the court that the
41 contract or any ~~[clause]~~ term thereof may be unconscionable , the
42 parties shall be afforded a reasonable opportunity to present
43 evidence as to its commercial setting, purpose and effect to aid the
44 court in making the determination.



1 **Sec. 21.** NRS 104.2304 is hereby amended to read as follows:

2 104.2304 1. The price ~~{ean}~~ *may* be made payable in money
3 or otherwise. If it is payable in whole or in part in goods, each party
4 is a seller of the goods ~~{which he}~~ *that the party* is to transfer.

5 2. Even ~~{though}~~ *if* all or part of the price is payable in an
6 interest in ~~{realty}~~ *real property*, the transfer of the goods and the
7 seller's obligations with reference to them are subject to this Article,
8 but not the transfer of the interest in ~~{realty}~~ *real property* or the
9 transferor's obligations in connection therewith.

10 **Sec. 22.** NRS 104.2305 is hereby amended to read as follows:

11 104.2305 1. The parties if they so intend ~~{ean}~~ *may* conclude
12 a contract for sale even ~~{though}~~ *if* the price is not settled. In such a
13 case the price is a reasonable price at the time for delivery if:

14 (a) Nothing is said as to price; ~~{or}~~

15 (b) The price is left to be agreed by the parties and they fail to
16 agree; or

17 (c) The price is to be fixed in terms of some agreed market or
18 other standard as set or recorded by a third person or agency and it
19 is not so set or recorded.

20 2. A price to be fixed by the seller or by the buyer means a
21 price ~~{for him to fix}~~ *to be fixed* in good faith.

22 3. ~~{When}~~ *If* a price left to be fixed otherwise than by
23 agreement of the parties fails to be fixed through fault of one party,
24 the other may at ~~{his}~~ *the party's* option treat the contract as
25 cancelled or ~~{himself}~~ *the party may* fix a reasonable price.

26 4. ~~{Where}~~ *If*, however, the parties intend not to be bound
27 unless the price ~~{be}~~ *is* fixed or agreed and it is not fixed or agreed,
28 there is no contract. In such a case the buyer must return any goods
29 already received or if unable ~~{so}~~ *to do so* must pay their reasonable
30 value at the time of delivery and the seller must return any portion
31 of the price paid on account.

32 **Sec. 23.** NRS 104.2308 is hereby amended to read as follows:

33 104.2308 Unless otherwise agreed:

34 1. The place for delivery of goods is the seller's place of
35 business or if ~~{he has none his}~~ *none, the seller's* residence;

36 2. In a contract for sale of identified goods ~~{which}~~ *that* to the
37 knowledge of the parties at the time of contracting are in some other
38 place, that place is the place for their delivery; and

39 3. Documents of title may be delivered through customary
40 banking channels.

41 **Sec. 24.** NRS 104.2309 is hereby amended to read as follows:

42 104.2309 1. The time for shipment or delivery or any other
43 action under a contract if not provided in this Article or agreed upon
44 shall be a reasonable time.



2. ~~[Where]~~ *If* the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

3. Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. *A term specifying standards for the nature and timing of notice is enforceable if the standards are not manifestly unreasonable.*

Sec. 25. NRS 104.2310 is hereby amended to read as follows:

104.2310 Unless otherwise agreed:

1. Payment is due at the time and place at which the buyer is to receive the goods even ~~[though]~~ *if* the place of shipment is the place of delivery; ~~[and]~~

2. If the seller is *required or* authorized to send the goods ~~[he]~~, *the seller* may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless ~~[such]~~ *the* inspection is inconsistent with the terms of the contract (NRS 104.2513); ~~[and]~~

3. If delivery is ~~[authorized and]~~ *agreed to be* made by way of documents of title otherwise than by subsection 2 then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

4. ~~[Where]~~ *If* the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Sec. 26. NRS 104.2311 is hereby amended to read as follows:

104.2311 1. An agreement for sale which is otherwise sufficiently definite (subsection 3 of NRS 104.2204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

2. Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and ~~[except as otherwise provided in paragraph (c) of subsection 1 and subsection 3 of NRS 104.2319]~~ specifications or arrangements relating to shipment are at the seller's option.

3. ~~[Where such]~~ *If the* specification would materially affect the other party's performance but is not seasonably made or ~~[where]~~ *if* one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:



(a) Is excused for any resulting delay in ~~[his own]~~ *that party's* performance; and

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

Sec. 27. NRS 104.2312 is hereby amended to read as follows:

104.2312 1. Subject to subsection ~~[2]~~ *3*, there is in a contract for sale a warranty by the seller that:

(a) The title conveyed shall be good ~~[.]~~ and its transfer rightful ~~[.]~~ *and shall not unreasonably expose the buyer to litigation because of any colorable claim to or interest in the goods;* and

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

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

~~3. Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.]~~ *Unless otherwise agreed, a seller that is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer that furnishes specifications to the seller must hold the seller harmless against any such claim that arises out of compliance with the specifications.*

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

Sec. 28. NRS 104.2313 is hereby amended to read as follows:

104.2313 1. *In this section, "immediate buyer" means a buyer that enters into a contract with the seller.*

2. Express warranties by the seller *to the immediate buyer* are created as follows:

(a) Any affirmation of fact or promise made by the seller ~~[to the buyer]~~ which relates to the goods and becomes part of the basis of



1 the bargain creates an express warranty that the goods shall conform
2 to the affirmation or promise.

3 (b) Any description of the goods which is made part of the basis
4 of the bargain creates an express warranty that the goods shall
5 conform to the description.

6 (c) Any sample or model ~~[which]~~ *that* is made part of the basis
7 of the bargain creates an express warranty that the whole of the
8 goods shall conform to the sample or model.

9 ~~[2.]~~ 3. It is not necessary to the creation of an express warranty
10 that the seller use formal words such as "warrant" or "guarantee" or
11 that ~~[he]~~ *the seller* have a specific intention to make a warranty, but
12 an affirmation merely of the value of the goods or a statement
13 purporting to be merely the seller's opinion or commendation of the
14 goods does not create a warranty.

15 *4. Any remedial promise made by the seller to the immediate*
16 *buyer creates an obligation that the promise will be performed*
17 *upon the happening of the specified event.*

18 **Sec. 29.** NRS 104.2314 is hereby amended to read as follows:

19 104.2314 1. Unless excluded or modified (NRS 104.2316), a
20 warranty that the goods shall be merchantable is implied in a
21 contract for their sale if the seller is a merchant with respect to
22 goods of that kind. Under this section the serving for value of food
23 or drink to be consumed either on the premises or elsewhere is a
24 sale.

25 2. Goods to be merchantable must be at least such as:

26 (a) Pass without objection in the trade under the contract
27 description; ~~[and]~~

28 (b) In the case of fungible goods, are of fair average quality
29 within the description; ~~[and]~~

30 (c) Are fit for the ordinary purposes for which ~~[such]~~ goods *of*
31 *that description* are used; ~~[and]~~

32 (d) Run, within the variations permitted by the agreement, of
33 even kind, quality and quantity within each unit and among all units
34 involved; ~~[and]~~

35 (e) Are adequately contained, packaged and labeled as the
36 agreement may require; and

37 (f) Conform to the promises or affirmations of fact made on the
38 container or label if any.

39 3. Unless excluded or modified (NRS 104.2316) other implied
40 warranties may arise from course of dealing or usage of trade.

41 **Sec. 30.** NRS 104.2316 is hereby amended to read as follows:

42 104.2316 1. Words or conduct relevant to the creation of an
43 express warranty and words or conduct tending to negate or limit
44 warranty shall be construed wherever reasonable as consistent with
45 each other, ~~[]~~ but subject to ~~[the provisions of this Article on parol~~



~~or extrinsic evidence.~~ NRS 104.2202, ~~and~~ negation or limitation is inoperative to the extent that such construction is unreasonable.

2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it *in a consumer contract the language must be in a record, be conspicuous, and state "The seller undertakes no responsibility for the quality of the goods except as otherwise provided in this contract," and in any other contract* the language must mention merchantability and in case of a ~~writing~~ record must be conspicuous. ~~and~~ Subject to subsection 3, to exclude or modify any implied warranty of fitness the exclusion must be ~~by a writing~~ *in a record and be* conspicuous. Language to exclude all implied warranties of fitness *in a consumer contract must state "The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in the contract," and in any other contract the language* is sufficient if it states, for example, that "There are no warranties ~~which~~ *that* extend beyond the description on the face hereof." *Language that satisfies the requirements of this subsection for the exclusion or modification of a warranty in a consumer contract also satisfies the requirements for any other contract.*

3. Notwithstanding subsection 2:

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language ~~which~~ *that* in common understanding calls the buyer's attention to the exclusion of warranties, ~~and~~ makes plain that there is no implied warranty ~~and~~ ~~—(b) When~~, *and, in a consumer contract evidenced by a record, is set forth conspicuously in the record;*

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

(c) An implied warranty ~~can~~ *may* also be excluded or modified by course of dealing or course of performance or usage of trade.

4. Remedies for breach of warranty ~~can~~ *may* be limited in accordance with ~~the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy.~~ NRS 104.2718 and 104.2719. ~~and~~

Sec. 31. NRS 104.2318 is hereby amended to read as follows:

104.2318 ~~[A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect~~



~~that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty.]~~

1. In this section:

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

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

2. A seller's warranty to an immediate buyer, whether express or implied, a seller's remedial promise to an immediate buyer, or a seller's obligation to a remote purchaser under section 6 or 7 of this act extends to any natural person who is in the family or household of the immediate buyer or the remote purchaser or who is a guest in the home of either if it is reasonable to expect that the person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty, remedial promise, or obligation. A seller may not exclude or limit the operation of this section.

Sec. 32. NRS 104.2325 is hereby amended to read as follows:

~~104.2325 [1. Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.~~

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

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

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

2. Failure of a party seasonably to furnish a letter of credit as agreed is a breach of the contract for sale.

3. If the letter of credit is dishonored or repudiated, the seller, on seasonable notification, may require payment directly from the buyer.



1 **Sec. 33.** NRS 104.2326 is hereby amended to read as follows:

2 104.2326 1. Unless otherwise agreed, if delivered goods may
3 be returned by the buyer even ~~though~~ *if* they conform to the
4 contract, the transaction is:

5 (a) A “sale on approval” if the goods are delivered primarily for
6 use; and

7 (b) A “sale or return” if the goods are delivered primarily for
8 resale.

9 2. Goods held on approval are not subject to the claims of the
10 buyer’s creditors until acceptance; goods held on sale or return are
11 subject to such claims while in the buyer’s possession.

12 3. Any “or return” term of a contract for sale is to be treated as
13 a separate contract for sale ~~within the statute of frauds section of~~
14 ~~this Article (under~~ NRS 104.2201 ~~) and as contradicting the sale~~
15 ~~aspect of the contract within the provisions of this Article on parol~~
16 ~~or extrinsic evidence (under~~ NRS 104.2202 ~~). (under~~

17 **Sec. 34.** NRS 104.2328 is hereby amended to read as follows:

18 104.2328 1. In a sale by auction if goods are put up in lots
19 each lot is the subject of a separate sale.

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

27 ~~3. Such a sale is with reserve unless the goods are in explicit~~
28 ~~terms put up without reserve. In an auction with reserve the~~
29 ~~auctioneer may withdraw the goods at any time until he announces~~
30 ~~completion of the sale. In an auction without reserve, after the~~
31 ~~auctioneer calls for bids on an Article or lot, that Article or lot~~
32 ~~cannot be withdrawn unless no bid is made within a reasonable~~
33 ~~time. In either case a bidder may retract his bid until the auctioneer’s~~
34 ~~announcement of completion of the sale, but a bidder’s retraction~~
35 ~~does not revive any previous bid.]~~

36 3. *A sale by auction is subject to the seller’s right to withdraw*
37 *the goods unless at the time the goods are put up or during the*
38 *course of the auction it is announced in express terms that the*
39 *right to withdraw the goods is not reserved. In an auction in which*
40 *the right to withdraw the goods is reserved, the auctioneer may*
41 *withdraw the goods at any time until completion of the sale is*
42 *announced by the auctioneer. In an auction in which the right to*
43 *withdraw the goods is not reserved, after the auctioneer calls for*
44 *bids on an Article or lot, the Article or lot may not be withdrawn*
45 *unless no bid is made within a reasonable time. In either case a*



bidder may retract a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

4. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at ~~his~~ *the buyer's* option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at ~~[a forced sale.]~~ *an auction required by law.*

Sec. 35. NRS 104.2401 is hereby amended to read as follows:

104.2401 Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

1. Title to goods cannot pass under a contract for sale prior to their identification to the contract (NRS 104.2501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this chapter. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to ~~[the provisions of the Article on secured transactions (]~~ Article 9, ~~[, D.]~~ title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

2. Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes ~~his~~ performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even ~~though~~ *if* a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

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

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

3. Unless otherwise explicitly agreed ~~where~~ *, if* delivery is to be made without moving the goods:

(a) If the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or



(b) If the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

4. A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale."

Sec. 36. NRS 104.2402 is hereby amended to read as follows:

104.2402 1. Except as provided in subsections 2 and 3, rights of unsecured creditors of the seller with respect to goods ~~[which]~~ *that* have been identified to a contract for sale are subject to the buyer's rights to recover the goods under ~~[this Article -]~~ NRS 104.2502 and 104.2716. ~~[D-]~~

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

3. ~~[Nothing]~~ *Except as otherwise provided in subsection 2 of NRS 104.2403, nothing* in this Article shall be deemed to impair the rights of creditors of the seller:

(a) Under the provisions of ~~[the Article on secured transactions - Article 9 ; D-]~~ or

(b) ~~[Where]~~ *If* identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security , or the like and is made under circumstances ~~[which]~~ *that* under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference.

Sec. 37. NRS 104.2403 is hereby amended to read as follows:

104.2403 1. A purchaser of goods acquires all title ~~[which]~~ *his]* *that the purchaser's* transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. ~~[When]~~ *If* goods have been delivered under a transaction of purchase the purchaser has such power even ~~[though-]~~ *if:*

(a) The transferor was deceived as to the identity of the purchaser;

(b) The delivery was in exchange for a check ~~[which]~~ *that* is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale"; or



(d) The delivery was procured through *criminal* fraud .
~~[punishable as larcenous under the criminal law.]~~

2. Any entrusting of ~~[possession of]~~ goods to a merchant ~~[who]~~
that deals in goods of that kind gives ~~[him]~~ *the merchant* power to
transfer all *of the entruster's* rights *to the goods and to transfer the*
goods free of any interest of the entruster to a buyer in ordinary
course of business.

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

4. The rights of other purchasers of goods and of lien creditors
are governed by ~~[the Articles on secured transactions (Article 9) and~~
~~documents of title (Article 7).]~~ *Articles 7 and 9.*

Sec. 38. NRS 104.2501 is hereby amended to read as follows:

104.2501 1. The buyer obtains a special property and an
insurable interest in goods by identification of existing goods as
goods to which the contract refers even ~~[though]~~ *if* the goods so
identified are nonconforming and ~~[he]~~ *the buyer* has an option to
return or reject them. Such identification ~~[can]~~ *may* be made at any
time and in any manner explicitly agreed to by the parties. In the
absence of explicit agreement identification occurs:

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

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

(c) When the crops are planted or otherwise become growing
crops or the young are conceived if the contract is for the sale of
unborn young to be born within 12 months after contracting or for
the sale of crops to be harvested within 12 months or the next
normal harvest season after contracting, whichever is longer.

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

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



1 **Sec. 39.** NRS 104.2502 is hereby amended to read as follows:

2 104.2502 1. Subject to subsections 2 and 3, and even
3 ~~{though}~~ if the goods have not been shipped, a buyer ~~{who}~~ *that*
4 paid a part or all of the price of goods in which ~~{he}~~ *the buyer* has a
5 special property under ~~{the provisions of the immediately preceding~~
6 ~~section}~~ *NRS 104.2501* may on making and keeping good a tender
7 of any unpaid portion of their price recover them from the seller if:

8 (a) In the case of goods bought ~~{for personal, family or~~
9 ~~household purposes,}~~ *by a consumer*, the seller repudiates or fails to
10 deliver as required by the contract; or

11 (b) In all cases, the seller becomes insolvent within 10 days after
12 receipt of the first installment on their price.

13 2. The right of the buyer to recover the goods under subsection
14 1 vests upon acquisition of a special property even if the seller has
15 not then repudiated or failed to deliver.

16 3. If the identification creating ~~{his}~~ *a* special property has been
17 made by the buyer ~~{he}~~, *the buyer* acquires the right to recover the
18 goods only if they conform to the contract for sale.

19 **Sec. 40.** NRS 104.2503 is hereby amended to read as follows:

20 104.2503 1. Tender of delivery requires that the seller put
21 and hold conforming goods at the buyer's disposition and give the
22 buyer any notification reasonably necessary to enable ~~{him}~~ *the*
23 *buyer* to take delivery. The manner, time, and place for tender are
24 determined by the agreement and this Article, and in particular:

25 (a) Tender must be at a reasonable hour, and if it is of goods
26 they must be kept available for the period reasonably necessary to
27 enable the buyer to take possession; but

28 (b) Unless otherwise agreed the buyer must furnish facilities
29 reasonably suited to the receipt of the goods.

30 2. ~~{Where}~~ *If* the case is within ~~{the next section respecting~~
31 ~~shipment}~~ *NRS 104.2504*, tender requires that the seller comply
32 with its provisions.

33 3. ~~{Where}~~ *If* the seller is required to deliver at a particular
34 destination, tender requires that ~~{he}~~ *the seller* comply with
35 subsection 1 and also in any appropriate case tender documents as
36 described in subsections 4 and 5. ~~{of this section.}~~

37 ~~—4.—Where}~~

38 4. *If* goods are in the possession of a bailee and are to be
39 delivered without being moved:

40 (a) Tender requires that the seller either tender a negotiable
41 document of title covering such goods or procure acknowledgment
42 by the bailee of the buyer's right to possession of the goods; but

43 (b) Tender to the buyer of a nonnegotiable document of title or
44 of a ~~{written direction to}~~ *record directing* the bailee to deliver is
45 sufficient tender unless the buyer seasonably objects, and *except as*



1 *otherwise provided in Article 9* receipt by the bailee of notification
2 of the buyer's rights fixes those rights as against the bailee and all
3 third persons; but risk of loss of the goods and of any failure by the
4 bailee to honor the nonnegotiable document of title or to obey the
5 direction remains on the seller until the buyer has had a reasonable
6 time to present the document or direction . ~~[, and a refusal]~~ *Refusal*
7 by the bailee to honor the document or to obey the direction defeats
8 the tender.

9 5. ~~[Where]~~ *If* the contract requires the seller to deliver
10 documents:

11 (a) ~~[He]~~ *The seller* must tender all such documents in correct
12 form ; ~~[, except as provided in this Article with respect to bills of~~
13 ~~lading in a set (subsection 2 of NRS 104.2323);]~~ and

14 (b) Tender through customary banking channels is sufficient and
15 dishonor of a draft accompanying *or associated with* the documents
16 constitutes nonacceptance or rejection.

17 **Sec. 41.** NRS 104.2504 is hereby amended to read as follows:

18 104.2504 ~~[Where]~~ *If* the seller is required or authorized to send
19 the goods to the buyer and the contract does not require ~~[him]~~ *the*
20 *seller* to deliver them at a particular destination, then unless
21 otherwise agreed ~~[he]~~ *the seller* must:

22 1. Put ~~[the]~~ *conforming* goods in the possession of ~~[such]~~ a
23 carrier and make ~~[such]~~ a contract for their transportation , ~~[as may~~
24 ~~be reasonable]~~ having regard to the nature of the goods and other
25 circumstances of the case; and

26 2. Obtain and promptly deliver or tender in due form any
27 document necessary to enable the buyer to obtain possession of the
28 goods or otherwise required by the agreement or by usage of trade;
29 and

30 3. Promptly notify the buyer of the shipment.

31 ➤ Failure to notify the buyer under subsection 3 or to make a proper
32 contract under subsection 1 is a ground for rejection only if material
33 delay or loss ensues.

34 **Sec. 42.** NRS 104.2505 is hereby amended to read as follows:

35 104.2505 1. ~~[Where]~~ *If* the seller has identified goods to the
36 contract by or before shipment:

37 (a) ~~[His]~~ *The seller's* procurement of a negotiable bill of lading
38 to ~~[his]~~ *the seller's* own order or otherwise reserves in ~~[him]~~ *the*
39 *seller* a security interest in the goods. ~~[His]~~ *The seller's*
40 procurement of the bill to the order of a financing agency or of the
41 buyer indicates in addition only the seller's expectation of
42 transferring that interest to the person named.

43 (b) A nonnegotiable bill of lading to ~~[himself or his]~~ *the seller*
44 *or the seller's* nominee reserves possession of the goods as security
45 . ~~[but except in a case of conditional delivery (-)]~~ *However, unless a*



1 *seller has a right to reclaim the goods under* subsection 2 of NRS
2 104.2507 , ~~It~~ a nonnegotiable bill of lading naming the buyer as
3 consignee reserves no security interest even ~~though~~ *if* the seller
4 retains possession of the bill of lading.

5 2. ~~When~~ *If* shipment by the seller with reservation of a
6 security interest is in violation of the contract for sale , it constitutes
7 an improper contract for transportation ~~within the preceding~~
8 ~~section~~ *under NRS 104.2504* but impairs neither the rights given to
9 the buyer by shipment and identification of the goods to the contract
10 nor the seller's powers as a holder of a negotiable document ~~of~~ *of*
11 *title.*

12 **Sec. 43.** NRS 104.2506 is hereby amended to read as follows:

13 104.2506 1. ~~A~~ *Except as otherwise provided in Article 5, a*
14 financing agency by paying or purchasing for value a draft ~~which~~
15 *that* relates to a shipment of goods acquires to the extent of the
16 payment or purchase and in addition to its own rights under the draft
17 and any document of title securing it any rights of the shipper in the
18 goods including the right to stop delivery and the shipper's right to
19 have the draft honored by the buyer.

20 2. The right to reimbursement of a financing agency ~~which~~
21 *that* has in good faith honored or purchased the draft under
22 commitment to or authority from the buyer is not impaired by
23 subsequent discovery of defects with reference to any relevant
24 document ~~which~~ *that* was apparently regular . ~~on its face.~~

25 **Sec. 44.** NRS 104.2507 is hereby amended to read as follows:

26 104.2507 1. Tender of delivery is a condition to the buyer's
27 duty to accept the goods and, unless otherwise agreed, to ~~his~~ *the*
28 *buyer's* duty to pay for them. Tender entitles the seller to acceptance
29 of the goods and to payment according to the contract.

30 2. ~~Where~~ *If* payment is due and demanded on the delivery to
31 the buyer of goods or documents of title, ~~this right as against the~~
32 ~~seller to retain or dispose of them is conditional upon his making the~~
33 ~~payment due.~~ *the seller may reclaim the goods delivered upon a*
34 *demand made within a reasonable time after the seller discovers or*
35 *should have discovered that payment was not made.*

36 3. *The seller's right to reclaim under subsection 2 is subject*
37 *to the rights of a buyer in ordinary course of business or other*
38 *good faith purchaser for value under NRS 104.2403.*

39 **Sec. 45.** NRS 104.2508 is hereby amended to read as follows:

40 104.2508 1. ~~Where any tender or delivery by the seller is~~
41 ~~rejected because nonconforming and the time for performance has~~
42 ~~not yet expired, the seller may seasonably notify the buyer of his~~
43 ~~intention to cure and may then within the contract time make a~~
44 ~~conforming delivery.~~



~~2. Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.] If the buyer rejects goods or a tender of delivery under NRS 104.2601 or 104.2612 or, except in a consumer contract, justifiably revokes acceptance under paragraph (b) of subsection 1 of NRS 104.2608 and the agreed time for performance has not expired, a seller that has performed in good faith, upon seasonable notice to the buyer and at the seller's own expense, may cure the breach of contract by making a conforming tender of delivery within the agreed time. The seller shall compensate the buyer for all of the buyer's reasonable expenses caused by the seller's breach of contract and subsequent cure.~~

2. If the buyer rejects goods or a tender of delivery under NRS 104.2601 or 104.2612 or, except in a consumer contract, justifiably revokes acceptance under paragraph (b) of subsection 1 of NRS 104.2608 and the agreed time for performance has expired, a seller that has performed in good faith, upon seasonable notice to the buyer and at the seller's own expense, may cure the breach of contract, if the cure is appropriate and timely under the circumstances, by making a tender of conforming goods. The seller shall compensate the buyer for all of the buyer's reasonable expenses caused by the seller's breach of contract and subsequent cure.

Sec. 46. NRS 104.2509 is hereby amended to read as follows:

104.2509 1. ~~[Where]~~ *If* the contract requires or authorizes the seller to ship the goods by carrier:

(a) If it does not require ~~[him]~~ *the seller* to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even ~~[though]~~ *if* the shipment is under reservation (NRS 104.2505); but

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

2. ~~[Where]~~ *If* the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) On ~~[his]~~ *the buyer's* receipt of a negotiable document of title covering the goods; ~~[or]~~

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



(c) After ~~[his]~~ *the buyer's* receipt of a nonnegotiable document of title or other ~~[written]~~ direction to deliver ~~[] in a record,~~ as provided in paragraph (b) of subsection 4 of NRS 104.2503.

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

4. The provisions of this section are subject to contrary agreement of the parties and to ~~[the provisions of this Article on sale on approval () NRS 104.2327 () and on effect of breach on risk of loss () and NRS 104.2510 . ()]~~

Sec. 47. NRS 104.2510 is hereby amended to read as follows:

104.2510 1. ~~[Where]~~ *If* a tender or delivery of goods so fails to conform to the contract as to give a right of rejection , the risk of their loss remains on the seller until cure or acceptance.

2. ~~[Where]~~ *If* the buyer rightfully revokes acceptance ~~[he]~~ , *the buyer* may to the extent of any deficiency in ~~[his]~~ *the buyer's* effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

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

Sec. 48. NRS 104.2512 is hereby amended to read as follows:

104.2512 1. ~~[Where]~~ *If* the contract requires payment before inspection , nonconformity of the goods does not excuse the buyer from so making payment unless:

(a) The nonconformity appears without inspection; or

(b) Despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this chapter.

2. Payment pursuant to subsection 1 does not constitute an acceptance of goods or impair the buyer's right to inspect or any of ~~[his]~~ *the buyer's* remedies.

Sec. 49. NRS 104.2513 is hereby amended to read as follows:

104.2513 1. Unless otherwise agreed and subject to subsection 3, ~~[where]~~ *if* goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. ~~[When]~~ *If* the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.



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

3. Unless otherwise agreed , ~~[and subject to the provisions of this Article on C.I.F. contracts (subsection 3 of NRS 104.2321),]~~ the buyer is not entitled to inspect the goods before payment of the price ~~[when]~~ if the contract provides:

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

(b) For payment against documents of title, except where ~~[such]~~ the payment is due only after the goods are to become available for inspection.

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

Sec. 50. NRS 104.2514 is hereby amended to read as follows:

104.2514 Unless otherwise agreed *and except as otherwise provided in Article 5,* documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment.

Sec. 51. NRS 104.2601 is hereby amended to read as follows:

104.2601 Subject to ~~[the provisions of this Article on breach in installment contracts (]~~ NRS *104.2504 and* 104.2612 , ~~)]~~ and unless otherwise agreed under ~~[the sections on contractual limitations of remedy (]~~ NRS 104.2718 and 104.2719 , ~~)]~~ if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

1. Reject the whole; ~~[or]~~

2. Accept the whole; or

3. Accept any commercial unit or units and reject the rest.

Sec. 52. NRS 104.2602 is hereby amended to read as follows:

104.2602 1. Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

2. Subject to ~~[the provisions of the two following sections on rejected goods (]~~ NRS 104.2603 and 104.2604 ~~)]~~ , *and subsection 4 of NRS 104.2608:*



(a) After rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) If the buyer has before rejection taken physical possession of goods in which ~~he~~ *the buyer* does not have a security interest under ~~[the provisions of this Article -]~~ subsection 3 of NRS 104.2711 ~~[, he]~~ , *the buyer* is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) The buyer has no further obligations with regard to goods rightfully rejected.

3. The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (NRS 104.2703).

Sec. 53. NRS 104.2603 is hereby amended to read as follows:

104.2603 1. Subject to any security interest in the buyer ~~that~~ *under* subsection 3 of NRS 104.2711 ~~[, when]~~ , *if* the seller has no agent or place of business at the market of rejection , a merchant buyer is under a duty after rejection of goods in ~~his~~ *the buyer's* possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. ~~[Instructions]~~ *In the case of a rightful rejection, instructions* are not reasonable if on demand indemnity for expenses is not forthcoming.

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

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

Sec. 54. NRS 104.2604 is hereby amended to read as follows:

104.2604 Subject to the provisions of ~~[the immediately preceding section]~~ *NRS 104.2603* on perishables , if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to ~~him~~ *the seller* or resell them for the seller's account with reimbursement as provided in ~~[the preceding section.]~~ *NRS 104.2603*. Such action is not acceptance or conversion.



1 **Sec. 55.** NRS 104.2605 is hereby amended to read as follows:

2 104.2605 1. ~~{The}~~ A buyer's failure to state in connection
3 with rejection a particular defect ~~{which is ascertainable by~~
4 ~~reasonable inspection precludes him}~~ *or in connection with*
5 *revocation of acceptance a defect that justifies revocation*
6 *precludes the buyer* from relying on the unstated defect to justify
7 rejection or ~~{to establish breach:~~

8 ~~—(a) Where}~~ *revocation of acceptance if the defect is*
9 *ascertainable by reasonable inspection:*

10 (a) *If* the seller *had a right to cure the defect and* could have
11 cured it if stated seasonably; or

12 (b) Between merchants ~~{when}~~, *if* the seller has after rejection
13 *or revocation of acceptance* made a request in ~~{writing}~~ *a record* for
14 a full and final ~~{written}~~ statement *in a record* of all defects on
15 which the buyer proposes to rely.

16 2. ~~{Payment}~~ *A buyer's payment* against documents *tendered*
17 *to the buyer* made without reservation of rights precludes recovery
18 of the payment for defects apparent ~~{on the face of}~~ *in* the
19 documents.

20 **Sec. 56.** NRS 104.2606 is hereby amended to read as follows:

21 104.2606 1. Acceptance of goods occurs when the buyer:

22 (a) After a reasonable opportunity to inspect the goods signifies
23 to the seller that the goods are conforming or that ~~{he}~~ *the buyer* will
24 take or retain them in spite of their nonconformity; ~~{or}~~

25 (b) Fails to make an effective rejection ~~{}~~ *under* subsection 1 of
26 NRS 104.2602, ~~{}~~ but such acceptance does not occur until the
27 buyer has had a reasonable opportunity to inspect them; or

28 (c) ~~{Does}~~ *Subject to subsection 4 of NRS 104.2608, does* any
29 act inconsistent with the seller's ownership . ~~{; but if such act is~~
30 ~~wrongful as against the seller it is an acceptance only if ratified by~~
31 ~~him.}~~

32 2. Acceptance of a part of any commercial unit is acceptance of
33 that entire unit.

34 **Sec. 57.** NRS 104.2607 is hereby amended to read as follows:

35 104.2607 1. The buyer must pay at the contract rate for any
36 goods accepted.

37 2. Acceptance of goods by the buyer precludes rejection of the
38 goods accepted and if made with knowledge of a nonconformity
39 ~~{cannot}~~ *may not* be revoked because of it unless the acceptance was
40 on the reasonable assumption that the nonconformity would be
41 seasonably cured, but acceptance does not of itself impair any other
42 remedy provided by this Article for nonconformity.

43 3. ~~{Where}~~ *If* a tender has been accepted:

44 (a) The buyer must within a reasonable time after ~~{he}~~ *the buyer*
45 discovers or should have discovered any breach notify the seller ~~{of}~~



~~breach or be barred from any remedy;]~~, but failure to give timely notice bars the buyer from a remedy only to the extent that the seller is prejudiced by the failure; and

(b) If the claim is one for infringement or the like ~~[(subsection 3)]~~ under subsection 2 of NRS 104.2312 ~~[]~~ and the buyer is sued as a result of such a breach ~~[he]~~, the buyer must so notify the seller within a reasonable time after ~~[he]~~ the buyer receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

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

5. ~~[Where]~~ If the buyer is sued for indemnity, breach of a warranty or other obligation for which ~~[his-seller]~~ another party is answerable over:

(a) ~~[He]~~ The buyer may give ~~[his-seller-written]~~ the other party notice of the litigation ~~[-If]~~ in a record, and if the notice states that the ~~[seller]~~ other party may come in and defend and that if the ~~[seller]~~ other party does not do so ~~[he]~~ the other party will be bound in any action against ~~[him-by-his]~~ the other party by the buyer by any determination of fact common to the two litigations, then unless the ~~[seller]~~ other party after seasonable receipt of the notice does come in and defend ~~[he]~~ the other party is so bound.

(b) If the claim is one for infringement or the like ~~[(subsection 3)]~~ under subsection 2 of NRS 104.2312, ~~[]~~ the original seller may demand in ~~[writing-that-his]~~ a record that its buyer turn over to ~~[him]~~ it control of the litigation including settlement or else be barred from any remedy over and if ~~[he]~~ it also agrees to bear all expense and to satisfy any adverse judgment, ~~[then]~~ the buyer is so barred unless the buyer after seasonable receipt of the demand does turn over control. ~~[the buyer is so barred]~~

~~—6.— The provisions of subsections]~~

6. Subsections 3, 4, and 5 apply to any obligation of a buyer to hold the seller harmless against infringement or the like ~~[(subsection 3)]~~ under subsection 2 of NRS 104.2312. ~~[]~~

Sec. 58. NRS 104.2608 is hereby amended to read as follows:

104.2608 1. ~~[The]~~ A buyer may revoke ~~[his]~~ acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to ~~[him-if-he]~~ the buyer if the buyer has accepted it:

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

(b) Without discovery of ~~[such]~~ the nonconformity if ~~[his]~~ the buyer's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

2. Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground



1 for it and before any substantial change in condition of the goods
2 which is not caused by their own defects. ~~He~~ *The revocation* is not
3 effective until the buyer notifies the seller of it.

4 3. A buyer ~~who~~ *that* so revokes has the same rights and
5 duties with regard to the goods involved as if ~~he~~ *the buyer* had
6 rejected them.

7 *4. If a buyer uses the goods after a rightful rejection or*
8 *justifiable revocation of acceptance, the following rules apply:*

9 *(a) Any use by the buyer that is unreasonable under the*
10 *circumstances is wrongful as against the seller and is an*
11 *acceptance only if ratified by the seller.*

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

16 **Sec. 59.** NRS 104.2609 is hereby amended to read as follows:

17 104.2609 1. A contract for sale imposes an obligation on
18 each party that the other's expectation of receiving due performance
19 will not be impaired. ~~When~~ *If* reasonable grounds for insecurity
20 arise with respect to the performance of either party the other may
21 ~~in writing~~ demand *in a record* adequate assurance of due
22 performance and until ~~he~~ *the party* receives such assurance may if
23 commercially reasonable suspend any performance for which ~~he~~ *it*
24 has not already received the agreed return.

25 2. Between merchants , the reasonableness of grounds for
26 insecurity and the adequacy of any assurance offered shall be
27 determined according to commercial standards.

28 3. Acceptance of any improper delivery or payment does not
29 prejudice the aggrieved party's right to demand adequate assurance
30 of future performance.

31 4. After receipt of a justified demand failure to provide within
32 a reasonable time not exceeding 30 days such assurance of due
33 performance as is adequate under the circumstances of the particular
34 case is a repudiation of the contract.

35 **Sec. 60.** NRS 104.2610 is hereby amended to read as follows:

36 104.2610 ~~When~~

37 *1. If* either party repudiates the contract with respect to a
38 performance not yet due the loss of which will substantially impair
39 the value of the contract to the other, the aggrieved party may:

40 ~~1-1~~ *(a)* For a commercially reasonable time await performance
41 by the repudiating party; or

42 ~~1-2~~ *(b)* Resort to any remedy for breach (NRS 104.2703 or
43 104.2711), even ~~though he~~ *if the aggrieved party* has notified the
44 repudiating party that ~~he~~ *it* would await the latter's performance
45 and has urged retraction; and



~~[3-]~~ (c) In either case suspend ~~[his-own]~~ performance or proceeding in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (NRS 104.2704).

2. Repudiation includes language that a reasonable person would interpret to mean that the other party will not or cannot make a performance still due under the contract or voluntary, affirmative conduct that would appear to a reasonable person to make a future performance by the other party impossible.

Sec. 61. NRS 104.2611 is hereby amended to read as follows:

104.2611 1. Until the repudiating party's next performance is due ~~[he can retract his]~~ , *that party may retract the* repudiation unless the aggrieved party has since the repudiation cancelled or materially changed ~~[his]~~ position or otherwise indicated that ~~[he considers]~~ the repudiation *is* final.

2. Retraction may be by any method ~~[which]~~ *that* clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under ~~[the provisions of this Article (-) NRS 104.2609. (-)]~~

3. Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Sec. 62. NRS 104.2612 is hereby amended to read as follows:

104.2612 1. An "installment contract" is one ~~[which]~~ *that* requires or authorizes the delivery of goods in separate lots to be separately accepted, even ~~[though]~~ *if* the contract contains a clause "each delivery is a separate contract" or its equivalent.

2. The buyer may reject any installment ~~[which]~~ *that* is nonconforming if the nonconformity substantially impairs the value of that installment ~~[and cannot be cured]~~ *to the buyer* or if the nonconformity is a defect in the required documents . ~~[;-but]~~ *However,* if the nonconformity does not fall within subsection 3 and the seller gives adequate assurance of its cure the buyer must accept that installment.

3. ~~[Whenever]~~ *If* nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract , there is a breach of the whole. But the aggrieved party reinstates the contract if ~~[he]~~ *the party* accepts a nonconforming installment without seasonably notifying of cancellation or if ~~[he]~~ *the party* brings an action with respect only to past installments or demands performance as to future installments.

Sec. 63. NRS 104.2613 is hereby amended to read as follows:

104.2613 ~~[Where]~~ *If* the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to



1 the buyer, ~~for in a proper case under a "no arrival, no sale" term~~
2 ~~(NRS 104.2324))~~ then:

3 1. If the loss is total the contract is ~~avoided;~~ *terminated*; and

4 2. If the loss is partial or the goods have so deteriorated ~~as~~
5 *that they* no longer ~~to~~ conform to the contract, the buyer may
6 nevertheless demand inspection and at ~~his~~ *the buyer's* option
7 either treat the contract as ~~avoided~~ *terminated* or accept the goods
8 with due allowance from the contract price for the deterioration or
9 the deficiency in quantity but without further right against the seller.

10 **Sec. 64.** NRS 104.2614 is hereby amended to read as follows:

11 104.2614 1. ~~Where~~ *If* without fault of either party the
12 agreed berthing, loading or unloading facilities fail or an agreed type
13 of carrier becomes unavailable or the agreed manner of ~~delivery~~
14 *performance* otherwise becomes commercially impracticable but a
15 commercially reasonable substitute is available, ~~such~~ *the* substitute
16 performance must be tendered and accepted.

17 2. If the agreed means or manner of payment fails because of
18 domestic or foreign governmental regulation, the seller may
19 withhold or stop delivery unless the buyer provides a means or
20 manner of payment which is commercially a substantial equivalent.
21 If delivery has already been taken, payment by the means or in the
22 manner provided by the regulation discharges the buyer's obligation
23 unless the regulation is discriminatory, oppressive or predatory.

24 **Sec. 65.** NRS 104.2615 is hereby amended to read as follows:

25 104.2615 Except ~~so far as~~ *to the extent that* a seller may have
26 assumed a greater obligation and subject to ~~the preceding section~~
27 ~~on substituted performance;~~ *NRS 104.2614:*

28 1. Delay in ~~delivery or nondelivery~~ *performance or*
29 *nonperformance* in whole or in part by a seller ~~who~~ *that* complies
30 with subsections 2 and 3 is not a breach of ~~his~~ *the seller's* duty
31 under a contract for sale if performance as agreed has been made
32 impracticable by the occurrence of a contingency the nonoccurrence
33 of which was a basic assumption on which the contract was made or
34 by compliance in good faith with any applicable foreign or domestic
35 governmental regulation or order whether or not it later proves to be
36 invalid.

37 2. ~~Where~~ *If* the causes mentioned in subsection 1 affect only
38 a part of the seller's capacity to perform, ~~he~~ *the seller* must
39 allocate production and deliveries among ~~his~~ *its* customers but
40 may at ~~his~~ *its* option include regular customers not then under
41 contract as well as ~~his~~ *its* own requirements for further
42 manufacture. ~~He~~ *The seller* may so allocate in any manner which
43 is fair and reasonable.

44 3. The seller must notify the buyer seasonably that there will be
45 delay or ~~nondelivery and, when~~ *nonperformance and, if*



1 allocation is required under subsection 2, of the estimated quota thus
2 made available for the buyer.

3 **Sec. 66.** NRS 104.2616 is hereby amended to read as follows:

4 104.2616 1. ~~[Where]~~ *If* the buyer receives notification of a
5 material or indefinite delay or an allocation justified under ~~{the~~
6 ~~preceding section he}~~ *NRS 104.2615, the buyer* may by ~~[written]~~
7 notification *in a record* to the seller as to any ~~[delivery]~~
8 *performance* concerned, and ~~[where]~~ *if* the prospective deficiency
9 substantially impairs the value of the whole contract under ~~{the~~
10 ~~provisions of this Article relating to breach of installment contracts~~
11 ~~}~~ NRS 104.2612, ~~{}~~ then also as to the whole:

12 (a) Terminate and thereby discharge any unexecuted portion of
13 the contract; or

14 (b) Modify the contract by agreeing to take ~~[his]~~ *the buyer's*
15 available quota in substitution.

16 2. If after receipt of such notification from the seller the buyer
17 fails so to modify the contract within a reasonable time not
18 exceeding 30 days the contract ~~[happens]~~ *is terminated* with respect to
19 any ~~[deliveries]~~ *performance* affected.

20 3. The provisions of this section may not be negated by
21 agreement except insofar as the seller has assumed a greater
22 obligation under ~~{the preceding section.}~~ *NRS 104.2615.*

23 **Sec. 67.** NRS 104.2702 is hereby amended to read as follows:

24 104.2702 1. ~~[Where]~~ *If* the seller discovers *that* the buyer ~~{to~~
25 ~~be insolvent he}~~ *is insolvent, the seller* may refuse delivery except
26 for cash including payment for all goods theretofore delivered
27 under the contract, and stop delivery under ~~{this Article }~~
28 NRS 104.2705 . ~~{}~~

29 ~~—2.—Where}~~

30 2. *If* the seller discovers that the buyer has received goods on
31 credit while insolvent ~~[he]~~ , *the seller* may reclaim the goods upon
32 demand made within ~~[10 days]~~ *a reasonable time* after the *buyer's*
33 receipt ~~{, but if misrepresentation of solvency has been made to the~~
34 ~~particular seller in writing within 3 months before delivery the 10-~~
35 ~~day limitation does not apply.}~~ *of the goods.* Except as provided in
36 this subsection , the seller may not base a right to reclaim goods on
37 the buyer's fraudulent or innocent misrepresentation of solvency or
38 of intent to pay.

39 3. The seller's right to reclaim under subsection 2 is subject to
40 the rights of a buyer in ordinary course *of business* or other good
41 faith purchaser ~~{for lien creditor under this Article }~~ *for value under*
42 NRS 104.2403 . ~~{}~~ Successful reclamation of goods excludes all
43 other remedies with respect to them.



1 **Sec. 68.** NRS 104.2703 is hereby amended to read as follows:

2 104.2703 ~~[Where the buyer wrongfully rejects or revokes~~
3 ~~acceptance of goods or fails to make a payment due on or before~~
4 ~~delivery or repudiates with respect to a part or the whole, then with~~
5 ~~respect to any goods directly affected and, if the breach is of the~~
6 ~~whole contract (NRS 104.2612), then also with respect to the whole~~
7 ~~undelivered balance, the aggrieved seller may:~~

8 ~~— 1. Withhold delivery of such goods.~~

9 ~~— 2. Stop delivery by any bailee as hereafter provided~~
10 ~~(NRS 104.2705).~~

11 ~~— 3. Proceed under the next section respecting goods still~~
12 ~~unidentified to the contract.~~

13 ~~— 4. Resell and recover damages as hereafter provided~~
14 ~~(NRS 104.2706).~~

15 ~~— 5. Recover damages for nonacceptance (NRS 104.2708) or in a~~
16 ~~proper case the price (NRS 104.2709).~~

17 ~~— 6. Cancel.]~~

18 1. *A breach of contract by the buyer includes the buyer's*
19 *wrongful rejection or wrongful attempt to revoke acceptance of*
20 *goods, wrongful failure to perform a contractual obligation,*
21 *failure to make a payment when due, and repudiation.*

22 2. *If the buyer is in breach of contract the seller, to the extent*
23 *provided for by this chapter or other law, may:*

24 (i) *Withhold delivery of the goods;*

25 (j) *Stop delivery of the goods under NRS 104.2705;*

26 (k) *Proceed under NRS 104.2704 with respect to goods*
27 *unidentified to the contract or unfinished;*

28 (l) *Reclaim the goods under subsection 2 of NRS 104.2507 or*
29 *subsection 2 of NRS 104.2702;*

30 (m) *Require payment directly from the buyer under subsection*
31 *3 of NRS 104.2325;*

32 (n) *Cancel;*

33 (o) *Resell and recover damages under NRS 104.2706;*

34 (p) *Recover damages for nonacceptance or repudiation under*
35 *subsection 1 of NRS 104.2708;*

36 (q) *Recover lost profits under subsection 2 of NRS 104.2708;*

37 (r) *Recover the price under NRS 104.2709;*

38 (s) *Obtain specific performance under NRS 104.2716;*

39 (t) *Recover liquidated damages under NRS 104.2718; or*

40 (u) *In other cases, recover damages in any manner that is*
41 *reasonable under the circumstances.*

42 3. *If the buyer becomes insolvent, the seller may:*

43 (a) *Withhold delivery under subsection 1 of NRS 104.2702;*

44 (b) *Stop delivery of the goods under NRS 104.2705; or*

45 (c) *Reclaim the goods under subsection 2 of NRS 104.2702.*



1 **Sec. 69.** NRS 104.2704 is hereby amended to read as follows:

2 104.2704 1. An aggrieved seller ~~[under the preceding section~~
3 ~~may:]~~ *may in an appropriate case involving breach by the buyer:*

4 (a) Identify to the contract conforming goods not already
5 identified if at the time ~~[he]~~ *the seller* learned of the breach ~~[they]~~
6 *the goods* are in ~~[his]~~ *the seller's* possession or control.

7 (b) Treat as the subject of resale goods ~~[which]~~ *that* have
8 demonstrably been intended for the particular contract even
9 ~~[though]~~ *if* those goods are unfinished.

10 2. ~~[Where]~~ *If* the goods are unfinished , an aggrieved seller
11 may in the exercise of reasonable commercial judgment for the
12 purposes of avoiding loss and of effective realization either
13 complete the manufacture and wholly identify the goods to the
14 contract or cease manufacture and resell for scrap or salvage value
15 or proceed in any other reasonable manner.

16 **Sec. 70.** NRS 104.2705 is hereby amended to read as follows:

17 104.2705 1. ~~[The]~~ *A* seller may stop delivery of goods in the
18 possession of a carrier or other bailee ~~[when he]~~ *if the seller*
19 discovers the buyer to be insolvent (NRS 104.2702) ~~[and may stop~~
20 ~~delivery of carload, truckload, planeload or larger shipments of~~
21 ~~express or freight when]~~ *or if* the buyer repudiates or fails to make a
22 payment due before delivery or if for any other reason the seller has
23 a right to withhold or reclaim the goods.

24 2. As against such buyer the seller may stop delivery until:

25 (a) Receipt of the goods by the buyer; ~~[or]~~

26 (b) Acknowledgment to the buyer by any bailee of the goods ,
27 except a carrier , that the bailee holds the goods for the buyer; ~~[or]~~

28 (c) Such acknowledgment to the buyer by a carrier by
29 reshipment or as ~~[warehouseman;]~~ *a warehouse;* or

30 (d) Negotiation to the buyer of any negotiable document of title
31 covering the goods.

32 3. (a) To stop delivery the seller must so notify as to enable
33 the bailee by reasonable diligence to prevent delivery of the goods.

34 (b) After such notification the bailee must hold and deliver the
35 goods according to the directions of the seller but the seller is liable
36 to the bailee for any ensuing charges or damages.

37 (c) If a negotiable document of title has been issued for goods ,
38 the bailee is not obligated to obey a notification to stop until
39 surrender of the document.

40 (d) A carrier ~~[who]~~ *that* has issued a nonnegotiable bill of lading
41 is not obliged to obey a notification to stop received from a person
42 other than the consignor.

43 **Sec. 71.** NRS 104.2706 is hereby amended to read as follows:

44 104.2706 1. ~~[Under the conditions stated in NRS 104.2703~~
45 ~~on seller's remedies;]~~ *In an appropriate case involving breach by*



1 *the buyer*, the seller may resell the goods concerned or the
2 undelivered balance thereof. ~~[Where]~~ *If* the resale is made in good
3 faith and in a commercially reasonable manner, the seller may
4 recover the difference between the *contract price and the* resale
5 price ~~[and the contract price]~~ together with any incidental *or*
6 *consequential* damages allowed under ~~[the provisions of this Article~~
7 ~~(NRS 104.2710, D)]~~ but less expenses saved in consequence of the
8 buyer's breach.

9 2. Except as otherwise provided in subsection 3 or unless
10 otherwise agreed resale may be at public or private sale including
11 sale by way of one or more contracts to sell or of identification to an
12 existing contract of the seller. Sale may be as a unit or in parcels and
13 at any time and place, and on any terms, but every aspect of the
14 sale including the method, manner, time, place and terms must be
15 commercially reasonable. The resale must be reasonably identified
16 as referring to the broken contract, but it is not necessary that the
17 goods be in existence or that any or all of them have been identified
18 to the contract before the breach.

19 3. ~~[Where]~~ *If* the resale is at private sale, the seller must give
20 the buyer reasonable notification of ~~[his]~~ *an* intention to resell.

21 4. ~~[Where]~~ *If* the resale is at public sale:

22 (a) Only identified goods ~~[can]~~ *may* be sold ~~[except where]~~
23 *unless* there is a recognized market for a public sale of futures in
24 goods of the kind; ~~[and]~~

25 (b) It must be made at a usual place or market for public sale if
26 one is reasonably available and except in the case of goods which
27 are perishable or threaten to decline in value speedily the seller must
28 give the buyer reasonable notice of the time and place of the resale;
29 ~~[and]~~

30 (c) If the goods are not to be within the view of those attending
31 the sale, the notification of sale must state the place where the
32 goods are located and provide for their reasonable inspection by
33 prospective bidders; and

34 (d) The seller may buy.

35 5. A purchaser ~~[who]~~ *that* buys in good faith at a resale takes
36 the goods free of any rights of the original buyer even ~~[though]~~ *if*
37 the seller fails to comply with one or more of the requirements of
38 this section.

39 6. The seller is not accountable to the buyer for any profit made
40 on any resale. A person in the position of a seller (NRS 104.2707) or
41 a buyer ~~[who]~~ *that* has rightfully rejected or justifiably revoked
42 acceptance must account for any excess over the amount of ~~[his]~~ *the*
43 *buyer's* security interest ~~[as hereinafter defined (I)]~~ *under* subsection
44 3 of NRS 104.2711. ~~[D]~~



1 ***7. Failure of a seller to resell under this section does not bar***
2 ***the seller from any other remedy.***

3 **Sec. 72.** NRS 104.2707 is hereby amended to read as follows:

4 104.2707 1. A "person in the position of a seller" includes as
5 against a principal an agent ~~[who]~~ ***that*** has paid or become
6 responsible for the price of goods on behalf of ~~[his]~~ ***the*** principal or
7 ~~[anyone who]~~ ***a person that*** otherwise holds a security interest or
8 other right in goods similar to that of a seller.

9 2. A person in the position of a seller ~~[may as provided in this~~
10 ~~Article withhold or stop delivery (NRS 104.2705) and resell (NRS~~
11 ~~104.2706) and recover incidental damages (NRS 104.2710).]~~ ***has***
12 ***the same remedies as a seller under this Article.***

13 **Sec. 73.** NRS 104.2708 is hereby amended to read as follows:

14 104.2708 1. Subject to subsection 2 and ~~[to the provisions of~~
15 ~~this Article with respect to proof of market price (]~~ NRS 104.2723
16 ~~[), the]~~ :

17 (a) ***The*** measure of damages for nonacceptance ~~[or repudiation]~~
18 by the buyer is the difference between the ***contract price and the***
19 market price at the time and place for tender ~~[and the unpaid~~
20 ~~contract price]~~ together with any incidental ***or consequential***
21 damages provided in ~~[this Article (]~~ NRS 104.2710 , ~~[),]~~ but less
22 expenses saved in consequence of the buyer's breach ~~[; and~~

23 (b) ***The measure of damages for repudiation by the buyer is***
24 ***the difference between the contract price and the market price at***
25 ***the place for tender at the expiration of a commercially reasonable***
26 ***time after the seller learned of the repudiation, but no later than***
27 ***the time stated in paragraph (a), together with any incidental or***
28 ***consequential damages provided in NRS 104.2710, less expenses***
29 ***saved in consequence of the buyer's breach.***

30 2. If the measure of damages provided in subsection 1 ***or in***
31 ***NRS 104.2706*** is inadequate to put the seller in as good a position as
32 performance would have done , ~~[then]~~ the measure of damages is
33 the profit (including reasonable overhead) ~~[which]~~ ***that*** the seller
34 would have made from full performance by the buyer, together with
35 any incidental ***or consequential*** damages provided in this Article ~~[;]~~
36 NRS 104.2710 . ~~[), due allowance for costs reasonably incurred and~~
37 ~~due credit for payments or proceeds of resale.]~~

38 **Sec. 74.** NRS 104.2709 is hereby amended to read as follows:

39 104.2709 1. ~~[When]~~ ***If*** the buyer fails to pay the price as it
40 becomes due , the seller may recover, together with any incidental
41 damages under ~~[the next section,]~~ ***NRS 104.2710***, the price:

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



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

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

3. After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (NRS 104.2610), a seller ~~[who]~~ *that* is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under ~~[the preceding section.]~~ *NRS 104.2708.*

Sec. 75. NRS 104.2710 is hereby amended to read as follows:

104.2710 1. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care, and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

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

3. *In a consumer contract, a seller may not recover consequential damages from a consumer.*

Sec. 76. NRS 104.2711 is hereby amended to read as follows:

104.2711 1. ~~[Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (NRS 104.2612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:~~

~~—(a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or~~

~~—(b) Recover damages for nondelivery as provided in this Article (NRS 104.2713).~~



~~2. Where the seller fails to deliver or repudiates the buyer may also:~~

~~(a) If the goods have been identified recover them as provided in this Article (NRS 104.2502); or~~

~~(b) In a proper case obtain specific performance or replevy the goods as provided in this Article (NRS 104.2716).]~~ *A breach of contract by the seller includes the seller's wrongful failure to deliver or to perform a contractual obligation, making of a nonconforming tender of delivery or performance, and repudiation.*

2. If the seller is in breach of contract under subsection 1, the buyer, to the extent provided for by this chapter or other law, may:

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

(b) Deduct damages from any part of the price still due under NRS 104.2717;

(c) Cancel;

(d) Cover and have damages under NRS 104.2712 as to all goods affected whether or not they have been identified to the contract;

(e) Recover damages for nondelivery or repudiation under NRS 104.2713;

(f) Recover damages for breach with regard to accepted goods or breach with regard to a remedial promise under NRS 104.2714;

(g) Recover identified goods under NRS 104.2502;

(h) Obtain specific performance or obtain the goods by replevin or similar remedy under NRS 104.2716;

(i) Recover liquidated damages under NRS 104.2718; or

(j) In other cases, recover damages in any manner that is reasonable under the circumstances.

3. On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in ~~his~~ the buyer's possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care, and custody and may hold such goods and resell them in like manner as an aggrieved seller (NRS 104.2706).

Sec. 77. NRS 104.2712 is hereby amended to read as follows:

~~104.2712 1. [After a breach within the preceding section]~~ *If the seller wrongfully fails to deliver or remedies or the buyer rightfully rejects or justifiably revokes acceptance, the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.*



2. ~~[The]~~ A buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages ~~[as hereinafter defined]~~ ~~[under]~~ NRS 104.2715 , ~~[D.]~~ but less expenses saved in consequence of the seller's breach.

3. Failure of the buyer to effect cover within this section does not bar ~~[him]~~ *the buyer* from any other remedy.

Sec. 78. NRS 104.2713 is hereby amended to read as follows:

104.2713 1. Subject to ~~[the provisions of this Article with respect to proof of market price (under NRS 104.2723 D), the]~~ :

(a) *The measure of damages for nondelivery or repudiation in the case of wrongful failure to deliver by the seller or rightful rejection or justifiable revocation of acceptance by the buyer is the difference between the market price at the time when the buyer learned of the breach for tender under the contract and the contract price together with any incidental [and] or consequential damages [provided in this Article (under NRS 104.2715 , D.) but less expenses saved in consequence of the seller's breach [; and*

(b) The measure of damages for repudiation by the seller is the difference between the market price at the expiration of a commercially reasonable time after the buyer learned of the repudiation, but no later than the time stated in paragraph (a), and the contract price together with any incidental or consequential damages under NRS 104.2715, less expenses saved in consequence of the seller's breach.

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

Sec. 79. NRS 104.2714 is hereby amended to read as follows:

104.2714 1. ~~[Where]~~ *If* the buyer has accepted goods and given notification ~~[pursuant to]~~ subsection 3 of NRS 104.2607 ~~[he]~~ , *the buyer* may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any *reasonable* manner . ~~[which is reasonable.]~~

2. The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

3. In a proper case any incidental and consequential damages under ~~[the next section]~~ *NRS 104.2715* may also be recovered.

Sec. 80. NRS 104.2716 is hereby amended to read as follows:

104.2716 1. Specific performance may be decreed ~~[where]~~ *if* the goods are unique or in other proper circumstances. *In a contract*



1 *other than a consumer contract, specific performance may be*
2 *decreed if the parties have agreed to that remedy. However, even if*
3 *the parties agree to specific performance, specific performance*
4 *may not be decreed if the breaching party's sole remaining*
5 *contractual obligation is the payment of money.*

6 2. The decree for specific performance may include such terms
7 and conditions as to payment of the price, damages or other relief as
8 the court may deem just.

9 3. The buyer has a right of replevin *or similar remedy* for
10 goods identified to the contract if after reasonable effort ~~[he]~~ *the*
11 *buyer* is unable to effect cover for such goods or the circumstances
12 reasonably indicate that such effort will be unavailing or if the
13 goods have been shipped under reservation and satisfaction of the
14 security interest in them has been made or tendered. ~~[In the case of~~
15 ~~goods bought for personal, family or household purposes, the]~~

16 4. *The* buyer's right ~~[of replevin]~~ *under subsection 3* vests
17 upon acquisition of a special property, even if the seller had not then
18 repudiated or failed to deliver.

19 **Sec. 81.** NRS 104.2717 is hereby amended to read as follows:

20 104.2717 The buyer on notifying the seller of ~~[his]~~ *the*
21 intention to do so may deduct all or any part of the damages
22 resulting from any breach of the contract from any part of the price
23 still due under the same contract.

24 **Sec. 82.** NRS 104.2718 is hereby amended to read as follows:

25 104.2718 1. Damages for breach by either party may be
26 liquidated in the agreement but only at an amount ~~[which]~~ *that* is
27 reasonable in the light of the anticipated or actual harm caused by
28 the breach ~~[]~~ *and, in a consumer contract*, the difficulties of proof
29 of loss, and the inconvenience or nonfeasibility of otherwise
30 obtaining an adequate remedy. ~~[A term fixing unreasonably large~~
31 ~~liquidated damages is void as a penalty.~~

32 ~~—2.—Where]~~ *NRS 104.2719 determines the enforceability of a*
33 *term that limits but does not liquidate damages.*

34 2. *If* the seller justifiably withholds delivery of goods *or stops*
35 *performance* because of the buyer's breach ~~[]~~ *or insolvency*, the
36 buyer is entitled to restitution of any amount by which the sum of
37 ~~[his]~~ *the buyer's* payments exceeds ~~[]~~

38 ~~—(a) The]~~ *the* amount to which the seller is entitled by virtue
39 of terms liquidating the seller's damages in accordance with
40 subsection 1. ~~[]~~ *or*

41 ~~—(b) In the absence of such terms, 20 percent of the value of the~~
42 ~~total performance for which the buyer is obligated under the~~
43 ~~contract or \$500, whichever is smaller.]~~

44 3. The buyer's right to restitution under subsection 2 is subject
45 to offset to the extent that the seller establishes:



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

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

4. ~~[Where]~~ *If* a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection 2. ~~[-;but]~~ *However*, if the seller has notice of the buyer's breach before reselling goods received in part performance, ~~[his]~~ *the* resale is subject to the conditions ~~[laid down in]~~ *of* this Article on resale by an aggrieved seller (NRS 104.2706).

Sec. 83. NRS 104.2722 is hereby amended to read as follows:

104.2722 ~~[Where]~~ *If* a third party so deals with goods ~~[which]~~ *that* have been identified to a contract for sale as to cause actionable injury to a party to that contract:

1. A right of action against the third party is in either party to the contract for sale ~~[who]~~ *that* has title to or a security interest or a special property or an insurable interest in the goods, ~~[-]~~ and if the goods have been destroyed or converted, a right of action is also in the party ~~[who]~~ *that* either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other ~~[-]~~ *;*

2. If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, ~~[his]~~ *the party plaintiff's* suit or settlement is, subject to ~~[his]~~ *its* own interest, as a fiduciary for the other party to the contract ~~[-]~~ *;* *and*

3. Either party may with the consent of the other sue for the benefit of ~~[whom]~~ *which* it may concern.

Sec. 84. NRS 104.2723 is hereby amended to read as follows:

104.2723 1. ~~[If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (NRS 104.2708 or 104.2713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.]~~

~~—2.]~~ If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place ~~[which]~~ *that* in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from ~~[such]~~ *the* other place.



~~[3-]~~ 2. Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until ~~[he]~~ *the party* has given the other party such notice as the court finds sufficient to prevent unfair surprise.

Sec. 85. NRS 104.2724 is hereby amended to read as follows:

104.2724 ~~[Whenever]~~ *If* the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers ~~[or periodicals or]~~, *periodicals or other means of communication in* general circulation published as the reports of ~~[such market shall be]~~ *the market are* admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

Sec. 86. NRS 104.2725 is hereby amended to read as follows:

104.2725 1. ~~[An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it.~~

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

~~— 3. — Where]~~ *Except as otherwise provided in this section, an action for breach of any contract for sale must be commenced within the later of 4 years after the right of action has accrued under subsection 2 or 3 or 1 year after the breach was or should have been discovered, but no longer than 5 years after the right of action accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it. However, in a consumer contract, the period of limitation may not be reduced.*

2. Except as otherwise provided in subsection 3, the following rules apply:

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

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



1 (c) *For breach of a remedial promise, a right of action accrues*
2 *when the remedial promise is not performed when performance is*
3 *due.*

4 (d) *In an action by a buyer against a person that is answerable*
5 *over to the buyer for a claim asserted against the buyer, the*
6 *buyer's right of action against the person answerable over accrues*
7 *at the time the claim was originally asserted against the buyer.*

8 3. *If a breach of a warranty arising under NRS 104.2312,*
9 *subsection 2 of NRS 104.2313, NRS 104.2314, or 104.2315, or a*
10 *breach of an obligation, other than a remedial promise, arising*
11 *under section 6 or 7 of this act, is claimed, the following rules*
12 *apply:*

13 (a) *Except as otherwise provided in paragraph (c), a right of*
14 *action for breach of a warranty arising under subsection 2 of NRS*
15 *104.2313, NRS 104.2314, or 104.2315 accrues when the seller has*
16 *tendered delivery to the immediate buyer, as defined in NRS*
17 *104.2313, and has completed performance of any agreed*
18 *installation or assembly of the goods.*

19 (b) *Except as otherwise provided in paragraph (c), a right of*
20 *action for breach of an obligation, other than a remedial promise,*
21 *arising under section 6 or 7 of this act accrues when the remote*
22 *purchaser, as defined in section 6 or 7 of this act, receives the*
23 *goods.*

24 (c) *If a warranty arising under subsection 2 of NRS 104.2313*
25 *or an obligation, other than a remedial promise, arising under*
26 *section 6 or 7 of this act explicitly extends to future performance*
27 *of the goods and discovery of the breach must await the time for*
28 *performance, the right of action accrues when the immediate*
29 *buyer as defined in NRS 104.2313 or the remote purchaser as*
30 *defined in section 6 or 7 of this act discovers or should have*
31 *discovered the breach.*

32 (d) *A right of action for breach of warranty arising under NRS*
33 *104.2312 accrues when the aggrieved party discovers or should*
34 *have discovered the breach. However, an action for breach of the*
35 *warranty of noninfringement may not be commenced more than*
36 *6 years after tender of delivery of the goods to the aggrieved party.*

37 4. *If an action commenced within the time limited by*
38 *subsection 1 is so terminated as to leave available a remedy by*
39 *another action for the same breach [such], the other action may be*
40 *commenced after the expiration of the time limited and within*
41 *6 months after the termination of the first action unless the*
42 *termination resulted from voluntary discontinuance or from*
43 *dismissal for failure or neglect to prosecute.*



~~[4-]~~ 5. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action ~~[which]~~ *that* have accrued before this chapter becomes effective.

Sec. 87. NRS 104.9102 is hereby amended to read as follows:

104.9102 1. In this Article:

(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.

(b) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; for services rendered or to be rendered; for a policy of insurance issued or to be issued; for a secondary obligation incurred or to be incurred; for energy provided or to be provided; for the use or hire of a vessel under a charter or other contract; arising out of the use of a credit or charge card or information contained on or for use with the card; or as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include rights to payment evidenced by chattel paper or an instrument; commercial tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

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

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

(1) Authenticated by a secured party;

(2) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(3) Identifying the components of the obligations in reasonable detail.

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

(1) Which secures payment or performance of an obligation for:

(I) Goods or services furnished in connection with a debtor's farming operation; or



(II) Rent on real property leased by a debtor in connection with its farming operation;

(2) Which is created by statute in favor of a person that:

(I) In the ordinary course of its business furnished goods or services to a debtor in connection with his farming operation; or

(II) Leased real property to a debtor in connection with his farming operation; and

(3) Whose effectiveness does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

(1) Oil, gas or other minerals that are subject to a security interest that:

(I) Is created by a debtor having an interest in the minerals before extraction; and

(II) Attaches to the minerals as extracted; or

(2) Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.

(g) "Authenticate" means:

(1) To sign; or

(2) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify himself and adopt or accept a record.

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

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

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

(k) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in or a lease of specific goods or of specific goods and software used in the goods, or a security interest in or a lease of specific goods and a license of software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel, or records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper. As used in this paragraph, "monetary obligation"



1 means a monetary obligation secured by the goods or owed under a
2 lease of the goods and includes a monetary obligation with respect
3 to software used in the goods.

4 (l) “Collateral” means the property subject to a security interest
5 or agricultural lien. The term includes:

6 (1) Proceeds to which a security interest attaches;

7 (2) Accounts, chattel paper, payment intangibles and
8 promissory notes that have been sold; and

9 (3) Goods that are the subject of a consignment.

10 (m) “Commercial tort claim” means a claim arising in tort with
11 respect to which:

12 (1) The claimant is an organization; or

13 (2) The claimant is a natural person and the claim:

14 (I) Arose in the course of his business or profession; and

15 (II) Does not include damages arising out of personal
16 injury to or the death of a natural person.

17 (n) “Commodity account” means an account maintained by a
18 commodity intermediary in which a commodity contract is carried
19 for a commodity customer.

20 (o) “Commodity contract” means a commodity futures contract,
21 an option on a commodity futures contract, a commodity option or
22 another contract if the contract or option is:

23 (1) Traded on or subject to the rules of a board of trade that
24 has been designated as a contract market for such a contract
25 pursuant to federal commodities laws; or

26 (2) Traded on a foreign commodity board of trade, exchange
27 or market, and is carried on the books of a commodity intermediary
28 for a commodity customer.

29 (p) “Commodity customer” means a person for which a
30 commodity intermediary carries a commodity contract on its books.

31 (q) “Commodity intermediary” means a person that:

32 (1) Is registered as a futures commission merchant under
33 federal commodities law; or

34 (2) In the ordinary course of its business provides clearance
35 or settlement services for a board of trade that has been designated
36 as a contract market pursuant to federal commodities law.

37 (r) “Communicate” means:

38 (1) To send a written or other tangible record;

39 (2) To transmit a record by any means agreed upon by the
40 persons sending and receiving the record; or

41 (3) In the case of transmission of a record to or by a filing
42 office, to transmit a record by any means prescribed by filing-office
43 rule.

44 (s) “Consignee” means a merchant to which goods are delivered
45 in a consignment.



1 (t) “Consignment” means a transaction, regardless of its form, in
2 which a person delivers goods to a merchant for the purpose of sale
3 and:

4 (1) The merchant:

5 (I) Deals in goods of that kind under a name other than
6 the name of the person making delivery;

7 (II) Is not an auctioneer; and

8 (III) Is not generally known by its creditors to be
9 substantially engaged in selling the goods of others;

10 (2) With respect to each delivery, the aggregate value of the
11 goods is \$1,000 or more at the time of delivery;

12 (3) The goods are not consumer goods immediately before
13 delivery; and

14 (4) The transaction does not create a security interest that
15 secures an obligation.

16 (u) “Consignor” means a person that delivers goods to a
17 consignee in a consignment.

18 (v) “Consumer debtor” means a debtor in a consumer
19 transaction.

20 (w) “Consumer goods” means goods that are used or bought for
21 use primarily for personal, family or household purposes.

22 (x) “Consumer-goods transaction” means a consumer
23 transaction to the extent that:

24 (1) A natural person incurs an obligation primarily for
25 personal, family or household purposes; and

26 (2) A security interest in consumer goods or in consumer
27 goods and software that is held or acquired primarily for personal,
28 family or household purposes secures the obligation.

29 (y) “Consumer obligor” means an obligor who is a natural
30 person and who incurred the obligation as part of a transaction
31 entered into primarily for personal, family or household purposes.

32 (z) “Consumer transaction” means a transaction to the extent
33 that a natural person incurs an obligation primarily for personal,
34 family or household purposes; a security interest secures the
35 obligation; and the collateral is held or acquired primarily for
36 personal, family or household purposes. The term includes
37 consumer-goods transactions.

38 (aa) “Continuation statement” means a change of a financing
39 statement which:

40 (1) Identifies, by its file number, the initial financing
41 statement to which it relates; and

42 (2) Indicates that it is a continuation statement for, or that it
43 is filed to continue the effectiveness of, the identified financing
44 statement.



(bb) "Debtor" means:

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

(2) A seller of accounts, chattel paper, payment intangibles or promissory notes; or

(3) A consignee.

(cc) "Deposit account" means a demand, time, savings, passbook or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in subsection 2 of NRS 104.7201.

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

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

(gg) "Equipment" means goods other than inventory, farm products or consumer goods.

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

(1) Crops grown, growing or to be grown, including:

(I) Crops produced on trees, vines and bushes; and

(II) Aquatic goods produced in aquacultural operations;

(2) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(3) Supplies used or produced in a farming operation; or

(4) Products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to subsection 1 of NRS 104.9519.

(kk) "Filing office" means an office designated in NRS 104.9501 as the place to file a financing statement.

(ll) "Filing-office rule" means a rule adopted pursuant to NRS 104.9526.

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

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying



subsections 1 and 2 of NRS 104.9502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

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

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

(qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(rr) "Goods" means all things that are movable when a security interest attaches. The term includes fixtures; standing timber that is to be cut and removed under a conveyance or contract for sale; the unborn young of animals; crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if the program is associated with the goods in such a manner that it customarily is considered part of the goods, or by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas or other minerals before extraction.

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

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

(uu) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with



1 any necessary endorsement or assignment. The term does not
2 include investment property, letters of credit or writings that
3 evidence a right to payment arising out of the use of a credit or
4 charge card or information contained on or for use with the card.

5 (vv) "Inventory" means goods, other than farm products, which:

6 (1) Are leased by a person as lessor;

7 (2) Are held by a person for sale or lease or to be furnished
8 under a contract of service;

9 (3) Are furnished by a person under a contract of service; or

10 (4) Consist of raw materials, work in process, or materials
11 used or consumed in a business.

12 (ww) "Investment property" means a security, whether
13 certificated or uncertificated, security entitlement, securities
14 account, commodity contract, or commodity account.

15 (xx) "Jurisdiction of organization," with respect to a registered
16 organization, means the jurisdiction under whose law the
17 organization is organized.

18 (yy) "Letter-of-credit right" means a right to payment or
19 performance under a letter of credit, whether or not the beneficiary
20 has demanded or is at the time entitled to demand payment or
21 performance. The term does not include the right of a beneficiary to
22 demand payment or performance under a letter of credit.

23 (zz) "Lien creditor" means:

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

26 (2) An assignee for benefit of creditors from the time of
27 assignment;

28 (3) A trustee in bankruptcy from the date of the filing of the
29 petition; or

30 (4) A receiver in equity from the time of appointment.

31 (aaa) "Manufactured home" means a structure, transportable in
32 one or more sections, which in the traveling mode, is 8 feet or more
33 in body width or 40 feet or more in body length, or, when erected on
34 site, is 320 or more square feet, and which is built on a permanent
35 chassis and designed to be used as a dwelling with or without a
36 permanent foundation when connected to the required utilities, and
37 includes the plumbing, heating, air-conditioning and electrical
38 systems contained therein. The term includes any structure that
39 meets all of the requirements of this paragraph except the size
40 requirements and with respect to which the manufacturer voluntarily
41 files a certification required by the United States Secretary of
42 Housing and Urban Development and complies with the standards
43 established under Title 42 of the United States Code.

44 (bbb) "Manufactured-home transaction" means a secured
45 transaction:



1 (1) That creates a purchase-money security interest in a
2 manufactured home, other than a manufactured home held as
3 inventory; or

4 (2) In which a manufactured home, other than a
5 manufactured home held as inventory, is the primary collateral.

6 (ccc) "Mortgage" means a consensual interest in real property,
7 including fixtures, which is created by a mortgage, deed of trust, or
8 similar transaction.

9 (ddd) "New debtor" means a person that becomes bound as
10 debtor under subsection 4 of NRS 104.9203 by a security agreement
11 previously entered into by another person.

12 (eee) "New value" means money; money's worth in property,
13 services or new credit; or release by a transferee of an interest in
14 property previously transferred to the transferee. The term does not
15 include an obligation substituted for another obligation.

16 (fff) "Noncash proceeds" means proceeds other than cash
17 proceeds.

18 (ggg) "Obligor" means a person that, with respect to an
19 obligation secured by a security interest in or an agricultural lien on
20 the collateral, owes payment or other performance of the obligation,
21 has provided property other than the collateral to secure payment or
22 other performance of the obligation, or is otherwise accountable in
23 whole or in part for payment or other performance of the obligation.
24 The term does not include an issuer or a nominated person under a
25 letter of credit.

26 (hhh) "Original debtor" means, except as used in subsection 3 of
27 NRS 104.9310, a person that, as debtor, entered into a security
28 agreement to which a new debtor has become bound under
29 subsection 4 of NRS 104.9203.

30 (iii) "Payment intangible" means a general intangible under
31 which the account debtor's principal obligation is a monetary
32 obligation.

33 (jjj) "Person related to," with respect to a natural person, means:

- 34 (1) His spouse;
35 (2) His brother, brother-in-law, sister or sister-in-law;
36 (3) His or his spouse's ancestor or lineal descendant; or
37 (4) Any other relative, by blood or marriage, of the person or
38 his spouse who shares the same home with him.

39 (kkk) "Person related to," with respect to an organization,
40 means:

41 (1) A person directly or indirectly controlling, controlled by
42 or under common control with the organization;

43 (2) An officer or director of, or a person performing similar
44 functions with respect to, the organization;



(3) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (1);

(4) The spouse of a natural person described in subparagraph (1), (2) or (3); or

(5) A person who is related by blood or marriage to a person described in subparagraph (1), (2), (3) or (4) and shares the same home with that person.

(lll) "Proceeds" means, except as used in subsection 2 of NRS 104.9609, the following property:

(1) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(2) Whatever is collected on, or distributed on account of, collateral;

(3) Rights arising out of collateral;

(4) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; and

(5) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

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

(nnn) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to NRS 104.9620, 104.9621 and 104.9622.

(ooo) "Public-finance transaction" means a secured transaction in connection with which:

(1) Debt securities are issued;

(2) All or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(3) The debtor, the obligor, the secured party, the account debtor or other person obligated on collateral, the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is a state or a governmental unit of a state.

(ppp) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(qqq) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that



1 is inscribed on a tangible medium or which is stored in an electronic
2 or other medium and is retrievable in perceivable form.

3 (rrr) “Registered organization” means an organization organized
4 solely under the law of a single state or the United States and as to
5 which the state or the United States must maintain a public record
6 showing the organization to have been organized.

7 (sss) “Secondary obligor” means an obligor to the extent that:

8 (1) The obligor’s obligation is secondary; or

9 (2) The obligor has a right of recourse with respect to an
10 obligation secured by collateral against the debtor, another obligor
11 or property of either.

12 (ttt) “Secured party” means:

13 (1) A person in whose favor a security interest is created or
14 provided for under a security agreement, whether or not any
15 obligation to be secured is outstanding;

16 (2) A person that holds an agricultural lien;

17 (3) A consignor;

18 (4) A person to which accounts, chattel paper, payment
19 intangibles or promissory notes have been sold;

20 (5) A trustee, indenture trustee, agent, collateral agent or
21 other representative in whose favor a security interest or agricultural
22 lien is created or provided for; or

23 (6) A person that holds a security interest arising under NRS
24 104.2401, 104.2505, subsection 3 of NRS 104.2711, NRS 104.4210,
25 104.5118 or subsection ~~5~~ 4 of NRS 104A.2508.

26 (uuu) “Security agreement” means an agreement that creates or
27 provides for a security interest.

28 (vvv) “Send,” in connection with a record or notification,
29 means:

30 (1) To deposit in the mail, deliver for transmission or
31 transmit by any other usual means of communication, with postage
32 or cost of transmission provided for, addressed to any address
33 reasonable under the circumstances; or

34 (2) To cause the record or notification to be received within
35 the time that it would have been received if properly sent under
36 subparagraph (1).

37 (www) “Software” means a computer program and any
38 supporting information provided in connection with a transaction
39 relating to the program. The term does not include a computer
40 program that is contained in goods unless the goods are a computer
41 or computer peripheral.

42 (xxx) “State” means a state of the United States, the District of
43 Columbia, Puerto Rico, the United States Virgin Islands, or any
44 territory or insular possession subject to the jurisdiction of the
45 United States.



(yyy) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument or investment property.

(zzz) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(aaaa) “Termination statement” means a subsequent filing which:

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

(2) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(bbbb) “Transmitting utility” means a person primarily engaged in the business of:

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

(2) Transmitting communications electrically, electromagnetically or by light;

(3) Transmitting goods by pipeline;

(4) Providing sewerage; or

(5) Transmitting or producing and transmitting electricity, steam, gas or water.

2. The following definitions in other Articles apply to this Article:

“Applicant.” NRS 104.5102.

“Beneficiary.” NRS 104.5102.

“Broker.” NRS 104.8102.

“Certificated security.” NRS 104.8102.

“Check.” NRS 104.3104.

“Clearing corporation.” NRS 104.8102.

“Contract for sale.” NRS 104.2106.

“Customer.” NRS 104.4104.

“Entitlement holder.” NRS 104.8102.

“Financial asset.” NRS 104.8102.

“Holder in due course.” NRS 104.3302.

“Issuer.” NRS 104.5102.

“Lease.” NRS 104A.2103.

“Lease agreement.” NRS 104A.2103.

“Lease contract.” NRS 104A.2103.

“Leasehold interest.” NRS 104A.2103.

“Lessee.” NRS 104A.2103.

“Lessee in ordinary course of business.” NRS 104A.2103.

“Lessor.” NRS 104A.2103.



1 “Lessor’s residual interest.” NRS 104A.2103.

2 “Letter of credit.” NRS 104.5102.

3 “Merchant.” NRS 104.2104.

4 “Negotiable instrument.” NRS 104.3104.

5 “Nominated person.” NRS 104.5102.

6 “Note.” NRS 104.3104.

7 “Proceeds of a letter of credit.” NRS 104.5114.

8 “Prove.” NRS 104.3103.

9 “Sale.” NRS 104.2106.

10 “Securities account.” NRS 104.8501.

11 “Securities intermediary.” NRS 104.8102.

12 “Security.” NRS 104.8102.

13 “Security certificate.” NRS 104.8102.

14 “Security entitlement.” NRS 104.8102.

15 “Uncertificated security.” NRS 104.8102.

16
17 3. Article 1 contains general definitions and principles of
18 construction and interpretation applicable throughout this Article.

19 **Sec. 88.** NRS 104.9109 is hereby amended to read as follows:

20 104.9109 1. Except as otherwise provided in subsections

21 3 and 4, this Article applies to:

22 (a) A transaction, regardless of its form, that creates a security
23 interest in personal property or fixtures by contract;

24 (b) An agricultural lien;

25 (c) A sale of accounts, chattel paper, payment intangibles or
26 promissory notes;

27 (d) A consignment;

28 (e) A security interest arising under NRS 104.2401, 104.2505,
29 subsection 3 of NRS 104.2711 or subsection ~~5~~ 4 of NRS
30 104A.2508, as provided in NRS 104.9110; and

31 (f) A security interest arising under NRS 104.4210 or 104.5118.

32 2. The application of this Article to a security interest in a
33 secured obligation is not affected by the fact that the obligation is
34 itself secured by a transaction or interest to which this Article does
35 not apply.

36 3. This Article does not apply to the extent that:

37 (a) A statute, regulation or treaty of the United States preempts
38 this Article; or

39 (b) The rights of a transferee beneficiary or nominated person
40 under a letter of credit are independent and superior under
41 NRS 104.5114.

42 4. This Article does not apply to:

43 (a) A landlord’s lien, other than an agricultural lien;



(b) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but NRS 104.9333 applies with respect to priority of the lien;

(c) An assignment of a claim for wages, salary or other compensation of an employee;

(d) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;

(e) An assignment of accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only;

(f) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(g) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but NRS 104.9315 and 104.9322 apply with respect to proceeds and priorities in proceeds;

(i) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) A right of recoupment or setoff, but:

(1) NRS 104.9340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(2) NRS 104.9404 applies with respect to defenses or claims of an account debtor;

(k) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(1) Liens on real property in NRS 104.9203 and 104.9308;

(2) Fixtures in NRS 104.9334;

(3) Fixture filings in NRS 104.9501, 104.9502, 104.9512, 104.9516 and 104.9519; and

(4) Security agreements covering personal and real property in NRS 104.9604;

(l) An assignment of a claim arising in tort, other than a commercial tort claim, but NRS 104.9315 and 104.9322 apply with respect to proceeds and priorities in proceeds;

(m) An assignment of a deposit account in a consumer transaction, but NRS 104.9315 and 104.9322 apply with respect to proceeds and priorities in proceeds; or

(n) A transfer by a government or governmental unit.



Sec. 89. NRS 104.9110 is hereby amended to read as follows:

104.9110 A security interest arising under NRS 104.2401, 104.2505, subsection 3 of 104.2711, or subsection ~~15~~ 4 of NRS 104A.2508 is subject to this Article. However, until the debtor obtains possession of the goods:

1. The security interest is enforceable, even if paragraph (c) of subsection 2 of NRS 104.9203 has not been satisfied;

2. Filing is not required to perfect the security interest;

3. The rights of the secured party after default by the debtor are governed by Article 2 or 2A; and

4. The security interest has priority over a conflicting security interest created by the debtor.

Sec. 90. NRS 104.9309 is hereby amended to read as follows:

104.9309 The following security interests are perfected when they attach:

1. A purchase-money security interest in consumer goods, except as otherwise provided in subsection 2 of NRS 104.9311 with respect to consumer goods that are subject to a statute or treaty described in subsection 1 of that section;

2. An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

3. A sale of a payment intangible;

4. A sale of a promissory note;

5. A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

6. A security interest arising under NRS 104.2401, 104.2505, subsection 3 of NRS 104.2711, or subsection ~~15~~ 4 of NRS 104A.2508, until the debtor obtains possession of the collateral;

7. A security interest of a collecting bank arising under NRS 104.4210;

8. A security interest of an issuer or nominated person arising under NRS 104.5118;

9. A security interest arising in the purchase or delivery of a financial asset under NRS 104.9206;

10. A security interest in investment property created by a broker or securities intermediary;

11. A security interest in a commodity contract or a commodity account created by a commodity intermediary;

12. An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

13. A security interest created by an assignment of a beneficial interest in a decedent's estate.



Sec. 91. NRS 104.9325 is hereby amended to read as follows:

104.9325 1. Except as otherwise provided in subsection 2, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(a) The debtor acquired the collateral subject to the security interest created by the other person;

(b) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(c) There is no period thereafter when the security interest is unperfected.

2. Subsection 1 subordinates a security interest only if the security interest:

(a) Otherwise would have priority solely under subsection 1 of NRS 104.9322 or NRS 104.9324; or

(b) Arose solely under subsection 3 of NRS 104.2711 or subsection ~~5~~ 4 of NRS 104A.2508.

Sec. 92. Chapter 104A of NRS is hereby amended by adding thereto the provisions set forth as sections 93 to 96, inclusive, of this act.

Sec. 93. 1. *A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.*

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

3. *This Article does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed by electronic means or in electronic form.*

4. *A contract formed by the interaction of a natural person and an electronic agent under paragraph (b) of subsection 4 of NRS 104A.2204 does not include terms provided by the natural person if the natural person had reason to know that the agent could not react to the terms as provided.*

Sec. 94. *An electronic record or electronic signature is attributed to a person if it was the act of the person or the person's electronic agent or the person is otherwise legally bound by the act.*

Sec. 95. 1. *If the receipt of an electronic communication has a legal effect, it has that effect even if no natural person is aware of its receipt.*

2. *Receipt of an electronic acknowledgment of an electronic communication establishes that the communication was received but, in itself, does not establish that the content sent corresponds to the content received.*

Sec. 96. 1. *Specific performance may be decreed if the goods are unique or in other proper circumstances. In a contract other than a consumer lease, specific performance may be decreed*



1 *if the parties have agreed to that remedy. However, even if the*
2 *parties agree to specific performance, specific performance may*
3 *not be decreed if the breaching party's sole remaining contractual*
4 *obligation is the payment of money.*

5 2. A decree for specific performance may include any terms
6 and conditions as to payment of the rent, damages, or other relief
7 that the court deems just.

8 3. A lessee has a right of replevin or similar remedy for goods
9 identified to the lease contract if after reasonable effort the lessee
10 is unable to effect cover for those goods or the circumstances
11 reasonably indicate that the effort will be unavailing or if the
12 goods have been shipped under reservation and satisfaction of the
13 security interest in them has been made or tendered.

14 **Sec. 97.** NRS 104A.2103 is hereby amended to read as
15 follows:

16 104A.2103 1. In this Article unless the context otherwise
17 requires:

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

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

30 ~~[(e)]~~ (b) "Commercial unit" means such a unit of goods as by
31 commercial usage is a single whole for purposes of lease and
32 division of which materially impairs its character or value on the
33 market or in use. A commercial unit may be a single Article, as a
34 machine, or a set of Articles, as a suite of furniture or a line of
35 machinery, or a quantity, as a gross or carload, or any other unit
36 treated in use or in the relevant market as a single whole.

37 ~~[(d)]~~ (c) "Conforming" goods or performance under a lease
38 contract means goods or performance that are in accordance with
39 the obligations under the lease contract.

40 (d) "Conspicuous", with reference to a term, means so written,
41 displayed, or presented that a reasonable person against which it
42 is to operate ought to have noticed it. A term in an electronic
43 record intended to evoke a response by an electronic agent is
44 conspicuous if it is presented in a form that would enable a
45 reasonably configured electronic agent to take it into account or



1 *react to it without review of the record by a natural person.*
2 *Whether a term is “conspicuous” or not is a decision for the court.*
3 *Conspicuous terms include the following:*

4 *(1) For a person:*

5 *(I) A heading in capitals equal to or greater in size than*
6 *the surrounding text, or in contrasting type, font, or color to the*
7 *surrounding text of the same or lesser size; and*

8 *(II) Language in the body of a record or display in*
9 *larger type than the surrounding text, or in contrasting type, font,*
10 *or color to the surrounding text of the same size, or set off from*
11 *surrounding text of the same size by symbols or other marks that*
12 *call attention to the language; and*

13 *(2) For a person or an electronic agent, a term that is so*
14 *placed in a record or display that the person or electronic agent*
15 *may not proceed without taking action with respect to the*
16 *particular term.*

17 *(e) “Consumer” means a natural person who leases or*
18 *contracts to lease goods that, at the time of contracting, are*
19 *intended by the natural person to be used primarily for personal,*
20 *family, or household purposes.*

21 *(f) “Consumer lease” means a lease that a lessor regularly*
22 *engaged in the business of leasing or selling makes to a lessee who*
23 *is a natural person and who takes under the lease primarily for a*
24 *personal, family or household purpose.*

25 ~~—(f)— consumer.~~

26 *(g) “Delivery” means the voluntary transfer of physical*
27 *possession or control of goods.*

28 *(h) “Electronic” means relating to technology having*
29 *electrical, digital, magnetic, wireless, optical, electromagnetic, or*
30 *similar capabilities.*

31 *(i) “Electronic agent” means a computer program or an*
32 *electronic or other automated means used independently to initiate*
33 *an action or respond to electronic records or performances in*
34 *whole or in part, without review or action by a natural person.*

35 *(j) “Electronic record” means a record created, generated,*
36 *sent, communicated, received, or stored by electronic means.*

37 *(k) “Fault” means wrongful act, omission, breach or default.*

38 ~~[(g)]~~ *(l) “Finance lease” means a lease with respect to which:*

39 ~~[(1) The lessor does not select, manufacture or supply the~~
40 ~~goods;~~

41 ~~—(2) The lessor acquires the goods or the right to possession~~
42 ~~and use of the goods in connection with the lease; and~~



1 ~~—— (3) One of the following occurs:~~

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

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

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

16 ~~—— (IV) If the lease is not a consumer lease, the lessor, before~~
17 ~~the lessee signs the lease contract, informs the lessee in writing of~~
18 ~~the identity of the person supplying the goods to the lessor,~~
19 ~~unless the lessee has selected that person and directed the lessor to~~
20 ~~acquire the goods or the right to possession and use of the goods~~
21 ~~from that person, that the lessee is entitled under this Article to the~~
22 ~~promises and warranties, including those of any third party,~~
23 ~~provided to the lessor by the person supplying the goods in~~
24 ~~connection with or as part of the contract by which the lessor~~
25 ~~acquired the goods or the right to possession and use of the goods,~~
26 ~~and that the lessee may communicate with the person supplying the~~
27 ~~goods to the lessor and receive an accurate and complete statement~~
28 ~~of those promises and warranties, including any disclaimers and~~
29 ~~limitations of them or of remedies.~~

30 ~~—— (h)} (1) The lessor does not select, manufacture, or supply the~~
31 ~~goods;~~

32 *(2) The lessor acquires the goods or the right to possession*
33 *and use of the goods in connection with the lease or, in the case of*
34 *goods that have been leased previously by the lessor and are not*
35 *being leased to a consumer, in connection with another lease; and*

36 *(3) One of the following occurs:*

37 *(I) The lessee receives a copy of the agreement by which*
38 *the lessor acquired, or proposes to acquire, the goods or the right*
39 *to possession and use of the goods before signing the lease*
40 *agreement;*

41 *(II) The lessee's approval of the agreement or of the*
42 *general contractual terms under which the lessor acquired or*
43 *proposes to acquire the goods or the right to possession and use of*
44 *the goods is a condition to the effectiveness of the lease contract;*



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

10 (IV) *If the lease is not a consumer lease, before the*
11 *lessee signs the lease agreement, the lessor informs the lessee in a*
12 *record:*

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

17 (ii) *That the lessee is entitled under this Article to the*
18 *promises and warranties, including those of any third party,*
19 *provided to the lessor by the person supplying the goods in*
20 *connection with or as part of the contract by which the lessor*
21 *acquired the goods or the right to possession and use of the goods;*
22 *and*

23 (iii) *That the lessee may communicate with the*
24 *person supplying the goods to the lessor and receive an accurate*
25 *and complete statement of those promises and warranties,*
26 *including any disclaimers and limitations of them, or a statement*
27 *of remedies.*

28 (m) *“Good faith” means honesty in fact and the observance of*
29 *reasonable commercial standards of fair dealing.*

30 (n) *“Goods” means all things that are movable at the time of*
31 *identification to the lease contract, or are fixtures (NRS 104A.2309)*
32 *. ~~[, but the term does not include money, documents, instruments,~~*
33 *~~accounts, chattel paper, general intangibles, or minerals or the like,~~*
34 *~~including oil and gas, before extraction. The term also includes the~~*
35 *~~unborn young of animals.~~*

36 *—(i)] The term includes future goods, specially manufactured*
37 *goods, and the unborn young of animals. The term does not*
38 *include information, the money in which the price is to be paid,*
39 *investment securities under Article 8, or choses in action.*

40 (o) *“Installment lease contract” means a lease contract that*
41 *authorizes or requires the delivery of goods in separate lots to be*
42 *separately accepted, even [though] if the lease contract contains a*
43 *clause “each delivery is a separate lease” or its equivalent.*

44 ~~(j)~~ (p) *“Lease” means a transfer of the right to possession and*
45 *use of goods for a ~~term~~ period in return for consideration, but a*



1 sale, including a sale on approval or a sale or return, ~~for~~ retention or
2 creation of a security interest, *or license of information* is not a
3 lease. Unless the context clearly indicates otherwise, the term
4 includes a sublease.

5 ~~[(k)]~~ (q) “Lease agreement” , *as distinguished from “lease*
6 *contract”*, means the bargain, with respect to the lease, of the lessor
7 and the lessee in fact as found in their language or ~~[by implication]~~
8 *inferred* from other circumstances including course of dealing or
9 usage of trade or course of performance as provided in this Article.
10 Unless the context clearly indicates otherwise, the term includes a
11 sublease agreement.

12 ~~[(h)]~~ (r) “Lease contract” , *as distinguished from “lease*
13 *agreement”*, means the total legal obligation that results from the
14 lease agreement as ~~[affected by this Article and]~~ *determined by the*
15 *Uniform Commercial Code as supplemented by* any other
16 applicable rules of law. Unless the context clearly indicates
17 otherwise, the term includes a sublease contract.

18 ~~[(m)]~~ (s) “Leasehold interest” means the interest of the lessor or
19 the lessee under a lease contract.

20 ~~[(n)]~~ (t) “Lessee” means a person ~~[who]~~ *that* acquires the right
21 to possession and use of goods under a lease. Unless the context
22 clearly indicates otherwise, the term includes a sublessee.

23 ~~[(o)]~~ (u) “Lessee in ordinary course of business” means a person
24 ~~[who in good faith and without knowledge that the lease to him is in~~
25 ~~violation of the ownership rights or security interest or leasehold~~
26 ~~interest of a third party in the goods leases in ordinary course from a~~
27 ~~person in the business of selling or leasing goods of that kind but~~
28 ~~does not include a pawnbroker. “Leasing” may be for cash or by~~
29 ~~exchange of other property or on secured or unsecured credit and~~
30 ~~includes receiving goods or documents of title under a preexisting~~
31 ~~lease contract but does not include a transfer in bulk or as security~~
32 ~~for or in total or partial satisfaction of a money debt.~~

33 ~~—(p)]~~ *that leases goods in good faith, without knowledge that the*
34 *lease violates the rights of another person, and in the ordinary*
35 *course from a person, other than a pawnbroker, in the business of*
36 *selling or leasing goods of that kind. A person leases in ordinary*
37 *course if the lease to the person comports with the usual or*
38 *customary practices in the kind of business in which the lessor is*
39 *engaged or with the lessor’s own usual or customary practices. A*
40 *lessee in ordinary course of business may lease for cash, by*
41 *exchange of other property, or on secured or unsecured credit,*
42 *and may acquire goods or documents of title under a preexisting*
43 *lease contract. Only a lessee that takes possession of the goods or*
44 *has a right to recover the goods from the lessor under this Article*
45 *may be a lessee in ordinary course of business. A person that*



1 *acquires goods in a transfer in bulk or as security for or in total or*
2 *partial satisfaction of a money debt is not a lessee in ordinary*
3 *course of business.*

4 (v) “Lessor” means a person ~~[who]~~ *that* transfers the right to
5 possession and use of goods under a lease. Unless the context
6 clearly indicates otherwise, the term includes a sublessor.

7 ~~[(q)]~~ (w) “Lessor’s residual interest” means the lessor’s interest
8 in the goods after expiration, termination , or cancellation of the
9 lease contract.

10 ~~[(+)]~~ (x) “Lien” means a charge against or interest in goods to
11 secure payment of a debt or performance of an obligation . ~~[, but~~
12 ~~the]~~ *The* term does not include a security interest.

13 ~~[(+)]~~ (y) “Lot” means a parcel or a single Article that is the
14 subject matter of a separate lease or delivery, whether or not it is
15 sufficient to perform the lease contract.

16 ~~[(+)]~~ (z) “Merchant lessee” means a lessee that is a merchant
17 with respect to goods of the kind subject to the lease.

18 ~~[(+)]~~ (aa) “Present value” means the amount as of a date certain
19 of one or more sums payable in the future, discounted to the date
20 certain ~~[. The discount is determined by the interest rate specified by~~
21 ~~the parties if the rate was not manifestly unreasonable at the time the~~
22 ~~transaction was entered into; otherwise, the discount is determined~~
23 ~~by a commercially reasonable rate that takes into account the facts~~
24 ~~and circumstances of each case at the time the transaction was~~
25 ~~entered into.~~

26 ~~—(v)]~~ *by use of either an interest rate specified by the parties if*
27 *that rate is not manifestly unreasonable at the time the transaction*
28 *is entered into or, if an interest rate is not so specified, a*
29 *commercially reasonable rate that takes into account the facts and*
30 *circumstances at the time the transaction is entered into.*

31 (bb) “Purchase” includes taking by sale, lease, mortgage,
32 security interest, pledge, gift or any other voluntary transaction
33 creating an interest in goods.

34 ~~[(w)]~~ (cc) “Record” means *information that is inscribed on a*
35 *tangible medium or that is stored in an electronic or other medium*
36 *and is retrievable in perceivable form.*

37 (dd) “Sign” means, *with present intent to authenticate or adopt*
38 *a record:*

39 (1) *To execute or adopt a tangible symbol; or*

40 (2) *To attach to or logically associate with the record an*
41 *electronic sound, symbol, or process.*

42 (ee) “Sublease” means a lease of goods the right to possession
43 and use of which was acquired by the lessor as a lessee under an
44 existing lease.



~~[(*)]~~ *(ff)* “Supplier” means a person from ~~[whom]~~ *which* a lessor buys or leases goods to be leased under a finance lease.

~~[(y)]~~ *(gg)* “Supply contract” means a contract under which a lessor buys or leases goods to be leased.

~~[(z)]~~ *(hh)* “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

2. Other definitions applying to this Article and the sections in which they appear are:

“Accessions.” NRS 104A.2310.

“Construction mortgage.” NRS 104A.2309.

“Encumbrance.” NRS 104A.2309.

“Fixtures.” NRS 104A.2309.

“Fixture filing.” NRS 104A.2309.

“Purchase money lease.” NRS 104A.2309.

3. The following definitions in other Articles apply to this Article:

~~["Account." NRS 104.9102.]~~

“Between merchants.” NRS 104.2104.

“Buyer.” NRS 104.2103.

~~["Chattel paper." NRS 104.9102.]~~

“Consumer goods.” NRS 104.9102.

~~["Document." NRS 104.9102.]~~

“Entrusting.” NRS 104.2403.

~~["General intangible." NRS 104.9102.]~~

~~["Good faith." NRS 104.2103.]~~

~~["Instrument." NRS 104.9102.]~~

“Letter of credit.” NRS 104.5102.

“Merchant.” NRS 104.2104.

~~["Mortgage." NRS 104.9102.]~~

~~["Pursuant to commitment." NRS 104.9102.]~~

~~["Receipt."]~~

“Receipt of goods.” NRS 104.2103.

“Sale.” NRS 104.2106.

“Sale on approval.” NRS 104.2326.

“Sale or return.” NRS 104.2326.

“Seller.” NRS 104.2103.

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.



1 **Sec. 98.** NRS 104A.2104 is hereby amended to read as
2 follows:

3 104A.2104 1. A lease ~~[, although]~~ subject to this Article ~~[,]~~ is
4 also subject to any applicable:

5 (a) ~~[Certificate of title statute of this State, including any~~
6 ~~applicable provision of chapters 482, 488 and 489 of NRS;]~~
7 *Provisions of NRS 482.423 to 482.431, inclusive, 488.1793 to*
8 *488.1827, inclusive, and 489.501 to 489.581, inclusive;*

9 (b) Certificate of title statute of another jurisdiction (NRS
10 104A.2105); or

11 (c) ~~[Consumer protection statute of this State, including any~~
12 ~~applicable provision of NRS 97.297, 97.299, 97.301 and 100.095 to~~
13 ~~100.175, inclusive, and a final decision of a court of this State~~
14 ~~concerning the protection of consumers rendered before January 1,~~
15 ~~1990.~~

16 ~~—2.— In case of]~~ *Rule of law that establishes a different rule for*
17 *consumers.*

18 2. *To the extent there is a* conflict between this Article, other
19 than NRS 104A.2105, subsection 3 of NRS 104A.2304 and
20 subsection 3 of NRS 104A.2305, and a ~~[statute or decision]~~ *law*
21 referred to in subsection 1, ~~[the statute or decision controls.~~

22 ~~—3.— Failure to comply with an applicable law has only the effect~~
23 ~~specified therein.] that law governs.~~

24 3. *For purposes of this Article, failure to comply with a law*
25 *referred to in subsection 1 has only the effect specified in that law.*

26 4. *This Article modifies, limits, and supersedes the federal*
27 *Electronic Signatures in Global and National Commerce Act, 15*
28 *U.S.C. §§ 7001 et seq., except that nothing in this Article modifies,*
29 *limits, or supersedes Section 7001(c) of that Act or authorizes*
30 *electronic delivery of any of the notices described in Section*
31 *7003(b) of that Act.*

32 **Sec. 99.** NRS 104A.2105 is hereby amended to read as
33 follows:

34 104A.2105 ~~[Subject to the provisions of subsection 3 of NRS~~
35 ~~104A.2304 and subsection 3 of NRS 104A.2305, with respect to~~
36 ~~goods covered by a certificate of title issued under a statute of this~~
37 ~~State or of another jurisdiction, compliance and the effect of~~
38 ~~compliance or noncompliance with a certificate of title statute are~~
39 ~~governed by the law (including the conflict of laws rules) of the~~
40 ~~jurisdiction issuing the certificate until the earlier of:~~

41 ~~—1.— Surrender of the certificate; or~~

42 ~~—2.— Four months after the goods are removed from that~~
43 ~~jurisdiction;~~

44 ~~— and thereafter until a new certificate of title is issued by another~~
45 ~~jurisdiction.]~~



1 1. *This section applies to goods covered by a certificate of*
2 *title, even if there is no other relationship between the jurisdiction*
3 *under whose certificate of title the goods are covered and the*
4 *goods or the lessee or lessor.*

5 2. *Goods become covered by a certificate of title when a valid*
6 *application for the certificate of title and the application fee are*
7 *delivered to the appropriate authority. Goods cease to be covered*
8 *by a certificate of title at the earlier of the time the certificate of*
9 *title ceases to be effective under the law of the issuing jurisdiction*
10 *or the time the goods become covered subsequently by a certificate*
11 *of title issued by another jurisdiction.*

12 3. *Subject to subsection 3 of NRS 104A.2304 and subsection*
13 *3 of NRS 104A.2305, with respect to goods covered by a certificate*
14 *of title under a statute of this State or of another jurisdiction,*
15 *compliance and the effect of compliance or noncompliance with*
16 *the certificate of title statute are governed by the local law of the*
17 *jurisdiction whose certificate of title covers the goods from the*
18 *time the goods become covered by the certificate until the goods*
19 *cease to be covered by the certificate of title.*

20 **Sec. 100.** NRS 104A.2107 is hereby amended to read as
21 follows:

22 104A.2107 ~~[Any]~~ A claim or right arising out of an alleged
23 default or breach of warranty may be discharged in whole or in part
24 without consideration by ~~[a written waiver or renunciation signed~~
25 ~~and delivered by]~~ the aggrieved party ~~[.]~~ *in a signed record.*

26 **Sec. 101.** NRS 104A.2108 is hereby amended to read as
27 follows:

28 104A.2108 1. If the court as a matter of law finds a lease
29 contract or any clause of a lease contract to have been
30 unconscionable at the time it was made the court may refuse to
31 enforce the lease contract, or it may enforce the remainder of the
32 lease contract without the unconscionable clause, or it may so limit
33 the application of any unconscionable clause as to avoid any
34 unconscionable result.

35 2. With respect to a consumer lease, if the court as a matter of
36 law finds that a lease contract or any clause of a lease contract has
37 been induced by unconscionable conduct or that unconscionable
38 conduct has occurred in the collection of a claim arising from a
39 lease contract, the court may grant appropriate relief.

40 3. Before making a finding of unconscionability under
41 subsection 1 or 2, the court, on its own motion or that of a party,
42 shall afford the parties a reasonable opportunity to present evidence
43 as to the setting, purpose and effect of the lease contract or a clause
44 thereof, or of the conduct.



4. In an action in which the lessee claims unconscionability with respect to a consumer lease:

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

(b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action ~~the~~ *the lessee* knew to be groundless, the court shall award reasonable attorney's fees to the party against ~~whom~~ *which* the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections 1 and 2 is not controlling.

Sec. 102. NRS 104A.2109 is hereby amended to read as follows:

104A.2109 1. A term providing that one party or ~~his~~ *that party's* successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when ~~he deems himself~~ *the party deems itself* insecure" or ~~in~~ words of similar import ~~[must be construed to mean that he]~~ *means that the party* has power to do so only if ~~he~~ *that party* in good faith believes that the prospect of payment or performance is impaired.

2. With respect to a consumer lease, the burden of establishing good faith under subsection 1 is on the party ~~who~~ *that has* exercised the power . ~~[-otherwise]~~ *Otherwise*, the burden of establishing lack of good faith is on the party against ~~whom~~ *which* the power has been exercised.

Sec. 103. NRS 104A.2201 is hereby amended to read as follows:

104A.2201 1. A lease contract is not enforceable by way of action or defense unless:

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

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

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

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

4. A lease contract that does not satisfy the requirements of subsection 1, but which is valid in other respects, is enforceable:



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

(b) If the party against ~~[whom]~~ *which* enforcement is sought admits in ~~[that]~~ *the* party's pleading, *in the party's* testimony or otherwise ~~[in-court]~~ *under oath* that a lease contract was made, but the lease contract is not enforceable under this ~~[provision]~~ *paragraph* beyond the quantity of goods admitted; or

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

5. The lease term under a lease contract referred to in subsection 4 is:

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

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

(c) A reasonable lease term.

6. A lease contract that is enforceable under this section is not unenforceable merely because it is not capable of being performed within 1 year or any other period after its making.

Sec. 104. NRS 104A.2202 is hereby amended to read as follows:

104A.2202 *1.* Terms with respect to which the confirmatory ~~[memoranda]~~ *records* of the parties agree or which are otherwise set forth in a ~~[writing]~~ *record* intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be ~~[explained or supplemented:~~
~~—1.]~~ *supplemented:*

(a) By course of dealing or usage of trade or by course of performance; and

~~[2.]~~ (b) By evidence of consistent additional terms ~~[;~~
~~→]~~ unless the court finds the ~~[writing]~~ *record* to have been intended also as a complete and exclusive statement of the terms of the agreement.

2. Terms in a record may be explained by evidence of course of performance, course of dealing, or usage of trade without a



preliminary determination by the court that the language used is ambiguous.

Sec. 105. NRS 104A.2203 is hereby amended to read as follows:

104A.2203 The affixing of a seal to a ~~{writing}~~ *record* evidencing a lease contract or an offer to enter into a lease contract does not render the ~~{writing}~~ *record* a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

Sec. 106. NRS 104A.2204 is hereby amended to read as follows:

104A.2204 1. A lease contract may be made in any manner sufficient to show agreement, including *offer and acceptance*, conduct by both parties which recognizes the existence of a lease contract ~~{ }~~, *the interaction of electronic agents, and the interaction of an electronic agent and a natural person.*

2. An agreement sufficient to constitute a lease contract may be found ~~{although}~~ *even if* the moment of its making is undetermined.

3. ~~{Although}~~ *Even if* one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

4. Except as otherwise provided in sections 93, 94 and 95 of this act, the following rules apply:

(a) *A lease contract may be formed by the interaction of electronic agents of the parties, even if no natural person was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.*

(b) *A lease contract may be formed by the interaction of an electronic agent and a natural person acting on the natural person's own behalf or for another person. A lease contract is formed if the natural person takes actions that the natural person is free to refuse to take or makes a statement, and the natural person has reason to know that the actions or statement will:*

(1) Cause the electronic agent to complete the transaction or performance; or

(2) Indicate acceptance of an offer, regardless of other expressions or actions by the natural person to which the electronic agent cannot react.

Sec. 107. NRS 104A.2205 is hereby amended to read as follows:

104A.2205 An offer by a merchant to lease goods to or from another person in a signed ~~{writing}~~ *record* that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a



1 reasonable time, but in no event may the period of irrevocability
2 exceed 3 months. Any such term of assurance ~~{on}~~ *in* a form
3 supplied by the offeree must be separately signed by the offeror.

4 **Sec. 108.** NRS 104A.2208 is hereby amended to read as
5 follows:

6 104A.2208 1. An agreement modifying a lease contract
7 needs no consideration to be binding.

8 2. A signed lease agreement that excludes modification or
9 rescission except by a signed ~~{writing}~~ *record* may not be otherwise
10 modified or rescinded, but, except as between merchants, such a
11 requirement ~~{on}~~ *in* a form supplied by a merchant must be
12 separately signed by the other party.

13 3. ~~{Although}~~ *Even if* an attempt at modification or rescission
14 does not satisfy the requirements of subsection 2, it may operate as a
15 waiver.

16 4. A party ~~{who}~~ *that* has made a waiver affecting an executory
17 portion of a lease contract may retract the waiver by reasonable
18 notification received by the other party that strict performance will
19 be required of any term waived, unless the retraction would be
20 unjust in view of a material change of position in reliance on the
21 waiver.

22 **Sec. 109.** NRS 104A.2211 is hereby amended to read as
23 follows:

24 104A.2211 1. ~~{There is in a lease contract a warranty that for
25 the lease term no person holds a claim to or interest in the goods that
26 arose from an act or omission of the lessor, other than a claim by
27 way of infringement or the like, which will interfere with the
28 lessee's enjoyment of its leasehold interest.~~

29 ~~—2. Except in a finance lease there is in a lease contract by a
30 lessor who is a merchant regularly dealing in goods of the kind a
31 warranty that the goods are delivered free of the rightful claim of
32 any person by way of infringement or the like.~~

33 ~~—3. A lessee who furnishes specifications to a lessor or a
34 supplier shall hold the lessor and the supplier harmless against any
35 claim by way of infringement or the like that arises out of
36 compliance with the specifications.] Except in a finance lease, a
37 lessor in a lease contract warrants that, except for claims by any
38 person by way of infringement or the like, for the duration of the
39 lease no person holds:~~

40 *(a) A claim to or interest in the goods not attributable to the
41 lessee's own act or omission which will interfere with the lessee's
42 enjoyment of its leasehold interest; or*

43 *(b) A colorable claim to or interest in the goods which will
44 unreasonably expose the lessee to litigation.*



1 2. A finance lessor warrants that, except for claims by way of
2 infringement or the like, for the duration of the lease no person
3 holds:

4 (a) A claim or interest in the goods that arose from an act or
5 omission of the lessor which will interfere with the lessee's
6 enjoyment of its leasehold interest; or

7 (b) A colorable claim to or interest in the goods that arose
8 from an act or omission of the lessor which will unreasonably
9 expose the lessee to litigation.

10 3. Except in a finance lease, a lessor that is a merchant
11 regularly dealing in goods of the kind warrants that the goods will
12 be delivered free of the rightful claim of a third party by way of
13 infringement or the like. However, a lessee that furnishes
14 specifications to a lessor or a supplier holds the lessor and the
15 supplier harmless against any claim of infringement or the like
16 that arises out of compliance with the specifications.

17 **Sec. 110.** NRS 104A.2212 is hereby amended to read as
18 follows:

19 104A.2212 1. Except in a finance lease, a warranty that the
20 goods will be merchantable is implied in a lease contract if the
21 lessor is a merchant with respect to goods of that kind.

22 2. Goods to be merchantable must be at least such as:

23 (a) Pass without objection in the trade under the description in
24 the lease agreement;

25 (b) In the case of fungible goods, are of fair average quality
26 within the description;

27 (c) Are fit for the ordinary purposes for which goods of that
28 type description are used;

29 (d) Run, within the variation permitted by the lease agreement,
30 of even kind, quality and quantity within each unit and among all
31 units involved;

32 (e) Are adequately contained, packaged and labeled as the lease
33 agreement may require; and

34 (f) Conform to any promises or affirmations of fact made on the
35 container or label.

36 3. Other implied warranties may arise from course of dealing
37 or usage of trade.

38 **Sec. 111.** NRS 104A.2214 is hereby amended to read as
39 follows:

40 104A.2214 1. ~~{Words or conduct relevant to the creation of~~
41 ~~an express warranty and words or conduct tending to negate or limit~~
42 ~~a warranty must be construed wherever reasonable as consistent~~
43 ~~with each other; but, subject to the provisions of NRS 104A.2202 on~~
44 ~~parol or extrinsic evidence, negation or limitation is inoperative to~~
45 ~~the extent that the construction is unreasonable.~~



~~2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing and be conspicuous. Subject to subsection 3, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."~~

~~3. Notwithstanding subsection 2, but subject to subsection 4:~~

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

~~(b) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and~~

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

~~4. To exclude or modify a warranty against interference or against infringement (NRS 104A.2211) or any part of it, the language must be specific, be by a writing and be conspicuous, unless the circumstances, including course of performance, course of dealing or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.]~~

Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other, but, subject to NRS 104A.2202, negation or limitation is inoperative to the extent that the construction is unreasonable.

2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it the language must be in a record and be conspicuous. In a consumer lease the language must state "The lessor undertakes no responsibility for the quality of the goods except as otherwise provided in this contract," and in any other contract the language must mention "merchantability." Subject to subsection 3, to exclude or modify the implied warranty of fitness the exclusion must be in a record and be conspicuous. Language to exclude all implied warranties of fitness in a consumer lease must state "The lessor assumes no responsibility that the goods will be fit for any particular purpose for which you may be leasing these goods, except as otherwise provided in the contract," and in any other contract the language is sufficient if it



1 *states, for example, that “There are no warranties that extend*
2 *beyond the description on the face hereof.” Language that*
3 *satisfies the requirements of this subsection for a consumer lease*
4 *also satisfies its requirements for any other lease contract.*

5 **3. Notwithstanding subsection 2:**

6 (a) *Unless the circumstances indicate otherwise, all implied*
7 *warranties are excluded by expressions like “as is,” “with all*
8 *faults,” or other language that in common understanding calls the*
9 *lessee’s attention to the exclusion of warranties and makes plain*
10 *that there is no implied warranty, if in a record and conspicuous;*

11 (b) *If the lessee before entering into the lease contract has*
12 *examined the goods or the sample or model as fully as desired or*
13 *has refused to examine the goods, after a demand by the lessor*
14 *there is no implied warranty with regard to defects that an*
15 *examination in the circumstances should have revealed to the*
16 *lessee; and*

17 (c) *An implied warranty may also be excluded or modified by*
18 *course of dealing, or course of performance, or usage of trade.*

19 **4. Remedies for breach of warranty can be limited in**
20 **accordance with NRS 104A.2503 or 104A.2504.**

21 **Sec. 112.** NRS 104A.2219 is hereby amended to read as
22 follows:

23 104A.2219 1. Except in the case of a finance lease, risk of
24 loss is retained by the lessor and does not pass to the lessee. In the
25 case of a finance lease, risk of loss passes to the lessee.

26 2. Subject to ~~[the provisions of this Article on the effect of~~
27 ~~default on risk of loss (]~~ NRS 104A.2220 , ~~[,)]~~ if risk of loss is to
28 pass to the lessee and the time of passage is not stated, the following
29 rules apply:

30 (a) If the lease contract requires or authorizes the goods to be
31 shipped by carrier and it does not require delivery at a particular
32 destination, the risk of loss passes to the lessee when the goods are
33 ~~[duly]~~ delivered to the carrier, but if it does require delivery at a
34 particular destination and the goods are there ~~[duly]~~ tendered while
35 in the possession of the carrier, the risk of loss passes to the lessee
36 when the goods are there ~~[duly]~~ so tendered as to enable the lessee
37 to take delivery.

38 (b) If the goods are held by a bailee to be delivered without
39 being moved, the risk of loss passes to the lessee on
40 acknowledgment by the bailee *to the lessee* of the lessee’s right to
41 possession of the goods.

42 (c) In any case not within paragraph (a) or (b), the risk of loss
43 passes to the lessee on the lessee’s receipt of the goods . ~~[if the~~
44 ~~lessor, or, in the case of a finance lease, the supplier, is a merchant;~~
45 ~~otherwise the risk passes to the lessee on tender of delivery.]~~



1 **Sec. 113.** NRS 104A.2220 is hereby amended to read as
2 follows:

3 104A.2220 1. Where risk of loss is to pass to the lessee and
4 the time of passage is not stated:

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

9 (b) If the lessee rightfully revokes acceptance, ~~the,~~ *the lessee,*
10 to the extent of any deficiency in ~~his~~ *its* effective insurance
11 coverage, may treat the risk of loss as having remained with the
12 lessor from the beginning.

13 2. Whether or not risk of loss is to pass to the lessee, if the
14 lessee as to conforming goods already identified to a lease contract
15 repudiates or is otherwise in default under the lease contract, the
16 lessor, or, in the case of a finance lease, the supplier, to the extent of
17 any deficiency in ~~his~~ *its* effective insurance coverage may treat the
18 risk of loss as resting on the lessee for a commercially reasonable
19 time.

20 **Sec. 114.** NRS 104A.2221 is hereby amended to read as
21 follows:

22 104A.2221 If a lease contract requires goods identified when
23 the lease contract is made, and the goods suffer casualty without
24 fault of the lessee, the lessor or the supplier before delivery, or the
25 goods suffer casualty before risk of loss passes to the lessee
26 pursuant to the lease agreement or NRS 104A.2219 : ~~[-then:]~~

27 1. If the loss is total, the lease contract is ~~avoided;~~
28 *terminated;* and

29 2. If the loss is partial or the goods have so deteriorated as to
30 no longer conform to the lease contract, the lessee may nevertheless
31 demand inspection and at ~~his~~ *the lessee's* option either treat the
32 lease contract as ~~avoided~~ *terminated* or, except in a finance lease
33 that is not a consumer lease, accept the goods with due allowance
34 from the rent payable for the balance of the lease term for the
35 deterioration or the deficiency in quantity but without further right
36 against the lessor.

37 **Sec. 115.** NRS 104A.2303 is hereby amended to read as
38 follows:

39 104A.2303 1. As used in this section, "creation of a security
40 interest" includes the sale of a lease contract that is subject to
41 Article 9, Secured Transactions, by reason of paragraph (c) of
42 subsection 1 of NRS 104.9109.

43 2. ~~{Except as otherwise provided in subsection 3 and NRS~~
44 ~~104.9407, a provision in a lease agreement which:~~



~~1 —(a) Prohibits the voluntary or involuntary transfer, including a~~
~~2 transfer by sale, sublease, creation or enforcement of a security~~
~~3 interest, or attachment, levy, or other judicial process, of an interest~~
~~4 of a party under the lease contract or of the lessor's residual interest~~
~~5 in the goods; or~~

~~6 —(b) Makes such a transfer an event of default,~~
~~7 ↪ gives rise to the rights and remedies provided in subsection 4, but~~
~~8 a transfer that is prohibited or is an event of default under the lease~~
~~9 agreement is otherwise effective.~~

~~10 —3. A provision in a lease agreement which prohibits a transfer~~
~~11 of a right to damages for default with respect to the whole lease~~
~~12 contract or of a right to payment arising out of the transferor's due~~
~~13 performance of his entire obligation, or makes such a transfer an~~
~~14 event of default, is not enforceable, and such a transfer is not a~~
~~15 transfer that materially impairs the prospect of obtaining return~~
~~16 performance by, materially changes the duty of, or materially~~
~~17 increases the burden or risk imposed on, the other party to the lease~~
~~18 contract within the purview of subsection 4.~~

~~19 —4. Except as otherwise provided in subsection 3 and~~
~~20 NRS 104.9407:~~

~~21 —(a) If a transfer is made which is made an event of default under~~
~~22 a lease agreement, the party to the lease contract not making the~~
~~23 transfer, unless that party waives the default or otherwise agrees, has~~
~~24 the rights and remedies described in subsection 2 of~~
~~25 NRS 104A.2501.~~

~~26 —(b) If paragraph (a) is not applicable and if a transfer is made~~
~~27 that is prohibited under a lease agreement or materially impairs the~~
~~28 prospect of obtaining return performance by, materially changes~~
~~29 the duty of, or materially increases the burden or risk imposed on,~~
~~30 the other party to the lease contract, unless the party not making the~~
~~31 transfer agrees at any time to the transfer in the lease contract or~~
~~32 otherwise, then, except as limited by contract, the transferor is liable~~
~~33 to the party not making the transfer for damages caused by the~~
~~34 transfer to the extent that the damages could not reasonably be~~
~~35 prevented by the party not making the transfer and a court having~~
~~36 jurisdiction may grant other appropriate relief, including~~
~~37 cancellation of the lease contract or an injunction against the~~
~~38 transfer.] Subject to subsection 3 and except as otherwise provided~~
~~39 in NRS 104.9407 or as otherwise agreed, a provision in a lease~~
~~40 agreement which:~~

(a) Prohibits the voluntary or involuntary transfer, including a
transfer by sale, sublease, creation or enforcement of a security
interest, or attachment, levy, or other judicial process, of an
interest of a party under the lease contract or of the lessor's
residual interest in the goods; or



1 (b) *Makes such a transfer an event of default,*
2 ↳ *gives rise to the rights and remedies provided in subsection 4.*
3 *However, a transfer that is prohibited or is an event of default*
4 *under the lease agreement is otherwise effective.*

5 3. *A provision in a lease agreement which:*

6 (a) *Prohibits a transfer of a right to damages for default with*
7 *respect to the whole lease contract or of a right to payment arising*
8 *out of the transferor's due performance of the transferor's entire*
9 *obligation; or*

10 (b) *Makes such a transfer an event of default,*
11 ↳ *is not enforceable, and such a transfer is not a transfer that*
12 *materially impairs the prospect of obtaining return performance*
13 *by, materially changes the duty of, or materially increases the*
14 *burden or risk imposed on, the other party to the lease contract*
15 *within subsection 4.*

16 4. *Subject to subsection 3 and NRS 104.9407:*

17 (a) *If a transfer is made that is an event of default under a*
18 *lease agreement, the party to the lease contract not making the*
19 *transfer, unless that party waives the default or otherwise agrees,*
20 *has the rights and remedies described in subsection 2 of*
21 *NRS 104A.2501.*

22 (b) *If paragraph (a) is not applicable and if a transfer is made*
23 *that:*

24 (1) *Is prohibited under a lease agreement; or*

25 (2) *Materially impairs the prospect of obtaining return*
26 *performance by, materially changes the duty of, or materially*
27 *increases the burden or risk imposed on, the other party to the*
28 *lease contract,*

29 ↳ *unless the party not making the transfer agrees at any time to*
30 *the transfer in the lease contract or otherwise, then, except as*
31 *limited by contract, the transferor is liable to the party not making*
32 *the transfer for damages caused by the transfer to the extent that*
33 *the damages could not reasonably be prevented by the party not*
34 *making the transfer, and a court having jurisdiction may grant*
35 *other appropriate relief, including cancellation of the lease*
36 *contract or an injunction against the transfer.*

37 5. *A transfer of "the lease" or of "all my rights under the*
38 *lease," or a transfer in similar general terms, is a transfer of rights,*
39 *and, unless the language or the circumstances, as in a transfer for*
40 *security, indicate the contrary, the transfer is a delegation of duties*
41 *by the transferor to the transferee. Acceptance by the transferee*
42 *constitutes a promise by [him] the transferee to perform those*
43 *duties. The promise is enforceable by either the transferor or the*
44 *other party to the lease contract.*



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

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

Sec. 116. NRS 104A.2304 is hereby amended to read as follows:

104A.2304 1. Subject to the provisions of NRS 104A.2303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection 2 of this section and subsection 4 of NRS 104A.2527, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of purchase the lessor has that power even ~~though~~ **if**:

(a) The lessor's transferor was deceived as to the identity of the lessor;

(b) The delivery was in exchange for a check which is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale;" or

(d) The delivery was procured through **criminal** fraud .
~~[punishable as larcenous under the criminal law.]~~

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

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

Sec. 117. NRS 104A.2305 is hereby amended to read as follows:

104A.2305 1. Subject to ~~the provisions of~~ NRS 104A.2303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to



1 transfer, and except as provided in subsection 2 of this section and
2 subsection 4 of NRS 104A.2511, takes subject to the existing lease
3 contract. A lessee with a voidable leasehold interest has power to
4 transfer a good leasehold interest to a good faith buyer for value or a
5 good faith sublessee for value, but only to the extent set forth in the
6 preceding sentence. ~~{When}~~ *If* goods have been delivered under a
7 transaction of lease the lessee has that power even ~~{though-}~~ *if*:

8 (a) The lessor was deceived as to the identity of the lessee;

9 (b) The delivery was in exchange for a check which is later
10 dishonored; or

11 (c) The delivery was procured through *criminal* fraud .
12 ~~{punishable as larcenous under the criminal law-}~~

13 2. A buyer in the ordinary course of business or a sublessee in
14 the ordinary course of business from a lessee ~~{who}~~ *that* is a
15 merchant dealing in goods of that kind to ~~{whom}~~ *which* the goods
16 were entrusted by the lessor obtains, to the extent of the interest
17 transferred, all of the lessor's and lessee's rights to the goods, and
18 takes free of the existing lease contract.

19 3. A buyer or sublessee from the lessee of goods that are
20 subject to an existing lease contract and are covered by a certificate
21 of title issued under a statute of this State or of another jurisdiction
22 takes no greater rights than those provided both by this section and
23 by the certificate of title statute.

24 **Sec. 118.** NRS 104A.2306 is hereby amended to read as
25 follows:

26 104A.2306 If a person in the ordinary course of ~~{his}~~ *its*
27 business furnishes services or materials with respect to goods
28 subject to a lease contract, a lien upon those goods in the possession
29 of that person given by statute or rule of law for those materials or
30 services takes priority over any interest of the lessor or lessee under
31 the lease contract or this Article unless the lien is created by statute
32 and the statute provides otherwise or unless the lien is created by a
33 rule of law and the rule of law provides otherwise.

34 **Sec. 119.** NRS 104A.2309 is hereby amended to read as
35 follows:

36 104A.2309 1. In this section:

37 (a) Goods are "fixtures" ~~{when}~~ *if* they become so related to
38 particular real ~~{estate}~~ *property* that an interest in them arises under
39 real ~~{estate}~~ *property* law;

40 (b) A "fixture filing" is the filing, in the office where a mortgage
41 on the real ~~{estate}~~ *property* would be filed or recorded, of a
42 financing statement covering goods that are or are to become
43 fixtures and conforming to the requirements of subsections 1 and 2
44 of NRS 104.9502;



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

(d) A mortgage is a “construction mortgage” to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if ~~[the recorded writing]~~ *a recorded record of the mortgage* so indicates; and

(e) “Encumbrance” includes real ~~[estate]~~ *property* mortgages and other liens on real ~~[estate]~~ *property* and all other rights in real ~~[estate]~~ *property* that are not ownership interests.

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

3. This Article does not prevent creation of a lease of fixtures pursuant to real ~~[estate]~~ *property* law.

4. The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real ~~[estate]~~ *property* if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real ~~[estate]~~ *property* or is in possession of the real ~~[estate:]~~ *property*; or

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor’s interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real ~~[estate]~~ *property* or is in possession of the real ~~[estate:]~~ *property*.

5. The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real ~~[estate]~~ *property* if:

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

(b) The conflicting interest is a lien on the real ~~[estate]~~ *property* obtained by legal or equitable proceedings after the lease contract is enforceable;



(c) The encumbrancer or owner has consented in ~~{writing}~~ *a record* to the lease or has disclaimed an interest in the goods as fixtures; or

(d) The lessee has a right to remove the goods as against the encumbrancer or owner ~~{-H}~~, *but if* the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

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

7. In cases not ~~{within the preceding subsections,}~~ *covered by subsections 3 to 6, inclusive*, priority between the interest of a lessor of fixtures, including his residual interest, and the conflicting interest of an encumbrancer or owner of the real ~~{estate-who}~~ *property that* is not the lessee is determined by the priority rules governing conflicting interests in real ~~{estate,}~~ *property*.

8. If the interest of a lessor of fixtures, including his residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real ~~{estate,}~~ *property*, the lessor or the lessee may:

(a) On default, expiration, termination or cancellation of the lease agreement but subject to the lease agreement and this Article; or

(b) If necessary to enforce ~~{his}~~ other rights and remedies *of the lessor or lessee* under this Article,

➔ remove the goods from the real ~~{estate,}~~ *property*, free and clear of all conflicting interests of all owners and encumbrancers of the real ~~{estate, but he}~~ *property, but the lessor or lessee* must reimburse any encumbrancer or owner of the real ~~{estate-who}~~ *property that* is not the lessee and ~~{who}~~ *that* has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real ~~{estate}~~ *property* caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.



9. Even ~~though~~ *if* the lease agreement does not create a security interest, the interest of a lessor of fixtures, including ~~his~~ *the lessor's* residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of Article 9. ~~[on-secured-transactions.]~~

Sec. 120. NRS 104A.2310 is hereby amended to read as follows:

104A.2310 1. Goods are "accessions" when they are installed in or affixed to other goods.

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

3. The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection 4 but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in ~~writing~~ *a record* consented to the lease or disclaimed an interest in the goods as part of the whole.

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

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

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

5. When under subsections 2 or 3 and 4 a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may:

(a) On default, expiration, termination or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article; or

(b) If necessary to enforce ~~his~~ *other rights and remedies of the lessor or lessee* under this Article,

↪ remove the goods from the whole, free and clear of all interests in the whole, but ~~he~~ *the lessor or lessee* must reimburse any holder of an interest in the whole ~~who~~ *that* is not the lessee and ~~who~~ *that* has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to



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

3 **Sec. 121.** NRS 104A.2401 is hereby amended to read as
4 follows:

5 104A.2401 1. A lease contract imposes an obligation on each
6 party that the other's expectation of receiving due performance will
7 not be impaired.

8 2. If reasonable grounds for insecurity arise with respect to the
9 performance of either party, the insecure party may demand in
10 ~~writing~~ *a record* adequate assurance of due performance. Until the
11 insecure party receives that assurance, if commercially reasonable
12 the insecure party may suspend any performance for which ~~he~~ *the*
13 *insecure party* has not already received the agreed return.

14 3. A repudiation of the lease contract occurs if assurance of due
15 performance adequate under the circumstances of the particular case
16 is not provided to the insecure party within a reasonable time, not to
17 exceed 30 days after receipt of a demand by the other party.

18 4. Between merchants, the reasonableness of grounds for
19 insecurity and the adequacy of any assurance offered must be
20 determined according to commercial standards.

21 5. Acceptance of any nonconforming delivery or payment does
22 not prejudice the aggrieved party's right to demand adequate
23 assurance of future performance.

24 **Sec. 122.** NRS 104A.2402 is hereby amended to read as
25 follows:

26 104A.2402 1. If either party repudiates a lease contract with
27 respect to a performance not yet due under the lease contract, the
28 loss of which performance will substantially impair the value of the
29 lease contract to the other, the aggrieved party may:

30 ~~1-1~~ (a) For a commercially reasonable time, await retraction of
31 repudiation and performance by the repudiating party;

32 ~~2-1~~ (b) Make demand pursuant to NRS 104A.2401 and await
33 assurance of future performance adequate under the circumstances
34 of the particular case; or

35 ~~3-1~~ (c) Resort to any right or remedy upon default under the
36 lease contract or this Article, even ~~though~~ *if* the aggrieved party
37 has notified the repudiating party that the aggrieved party would
38 await the repudiating party's performance and assurance and has
39 urged retraction.

40 ➤ In addition, whether or not the aggrieved party is pursuing one of
41 the foregoing remedies, the aggrieved party may suspend
42 performance or, if the aggrieved party is the lessor, proceed in
43 accordance with the provisions of this Article on the lessor's right to
44 identify goods to the lease contract notwithstanding default or to
45 salvage unfinished goods *under* ~~1-1~~ NRS 104A.2524. ~~2-1~~



2. *Repudiation includes language that a reasonable person would interpret to mean that the other person will not or cannot make a performance still due under the contract or voluntary, affirmative conduct that would appear to a reasonable party to make a future performance by the other party impossible.*

Sec. 123. NRS 104A.2404 is hereby amended to read as follows:

104A.2404 1. If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of ~~[delivery]~~ *performance* otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

2. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive or predatory.

Sec. 124. NRS 104A.2405 is hereby amended to read as follows:

104A.2405 Subject to NRS 104A.2404 on substituted performance, the following rules apply:

1. Delay in ~~[delivery or nondelivery]~~ *performance or nonperformance* in whole or in part by a lessor or a supplier ~~[who]~~ *that* complies with subsections 2 and 3 is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

2. If the causes mentioned in subsection 1 affect only part of the lessor's or the supplier's capacity to perform, ~~[he]~~ *the lessor or supplier* shall allocate production and deliveries among ~~[his]~~ *customers* but at ~~[his]~~ *the lessor's or supplier's* option may include regular customers not then under contract for sale or lease as well as ~~[his]~~ *the lessor's or supplier's* own requirements for further manufacture. ~~[He]~~ *The lessor or supplier* may so allocate in any manner that is fair and reasonable.



3. The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or ~~[nondelivery]~~ *nonperformance* and, if allocation is required under subsection 2, of the estimated quota thus made available for the lessee.

Sec. 125. NRS 104A.2406 is hereby amended to read as follows:

104A.2406 1. If the lessee receives notification of a material or indefinite delay or an allocation justified under NRS 104A.2405, the lessee may by ~~[written]~~ notification *in a record* to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (NRS 104A.2510):

(a) Terminate the lease contract (subsection 2 of NRS 104A.2505); or

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

2. If, after receipt of a notification from the lessor under NRS 104A.2405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract ~~[apses]~~ *is terminated* with respect to any ~~[deliveries]~~ *performance* affected.

Sec. 126. NRS 104A.2504 is hereby amended to read as follows:

104A.2504 1. Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission. *NRS 104A.2503 determines the enforceability of a term that limits but does not liquidate damages.*

2. If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection 1, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in the Article.

3. If the lessor justifiably withholds ~~for stops delivery of goods because of the lessee's default or insolvency (NRS 104A.2525 or 104A.2526), the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:~~

~~—(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection 1; or~~



~~1 (b) In the absence of those terms, 20 percent of the then present~~
~~2 value of the total rent the lessee was obligated to pay for the balance~~
~~3 of the lease term, or, in the case of a consumer lease, the lesser of~~
~~4 such amount or \$500.] delivery of goods or stops performance~~
~~5 because of the lessee's default or insolvency, the lessee is entitled~~
~~6 to restitution of any amount by which the sum of the lessee's~~
~~7 payments exceeds the amount to which the lessor is entitled by~~
~~8 virtue of terms liquidating the lessor's damages in accordance~~
~~9 with subsection 1.~~

10 4. A lessee's right to restitution under subsection 3 is subject to
11 offset to the extent the lessor establishes:

12 (a) A right to recover damages under the provisions of this
13 Article other than subsection 1; and

14 (b) The amount or value of any benefits received by the lessee
15 directly or indirectly by reason of the lease contract.

16 **Sec. 127.** NRS 104A.2506 is hereby amended to read as
17 follows:

18 104A.2506 1. An action for default under a lease contract,
19 including breach of warranty or indemnity, must be commenced
20 within 4 years after the cause of action accrued. ~~21 [In a lease that is~~
~~22 not a consumer lease, by the original lease contract the parties]~~
23 *Except in a consumer lease or an action for indemnity, the*
24 *original lease agreement* may reduce the period of limitation to not
25 less than ~~26 [one]~~ 1 year.

26 2. A cause of action for default accrues when the act or
27 omission on which the default or breach of warranty is based is or
28 should have been discovered by the aggrieved party, or when the
29 default occurs, whichever is later. A cause of action for indemnity
30 accrues when the act or omission on which the claim for indemnity
31 is based is or should have been discovered by the indemnified party,
32 whichever is later.

33 3. If an action commenced within the time limited by
34 subsection 1 is so terminated as to leave available a remedy by
35 another action for the same default or breach of warranty or
36 indemnity, the other action may be commenced after the expiration
37 of the time limited and within 6 months after the termination of the
38 first action unless the termination resulted from voluntary
39 discontinuance or from dismissal for failure or neglect to prosecute.

40 4. This section does not alter the law on tolling of the statute of
41 limitations nor does it apply to causes of action that have accrued
42 before January 1, 1990.

43 **Sec. 128.** NRS 104A.2508 is hereby amended to read as
44 follows:

45 104A.2508 1. If a lessor fails to deliver the goods in
conformity to the lease contract ~~46 [(NRS 104A.2509)]~~ or repudiates



1 the lease contract, ~~[(NRS 104A.2402),]~~ or a lessee rightfully rejects
2 the goods ~~[(NRS 104A.2509)]~~ or justifiably revokes acceptance
3 of the goods, ~~[(NRS 104A.2517), then with respect to any goods~~
4 ~~involved, and with respect to all of the goods if under an installment~~
5 ~~lease contract the value of the whole lease contract is substantially~~
6 ~~impaired (NRS 104A.2510),]~~ the lessor is in default under the lease
7 contract, and the lessee may ~~[-~~

8 ~~—(a) Cancel the lease contract (subsection 1 of NRS 104A.2505);~~

9 ~~—(b) Recover so much of the rent and security as has been paid~~
10 ~~and is just under the circumstances;~~

11 ~~—(c) Cover and recover damages as to all goods affected whether~~
12 ~~or not they have been identified to the lease contract (NRS~~
13 ~~104A.2518 and 104A.2520), or recover damages for nondelivery~~
14 ~~(NRS 104A.2519 and 104A.2520); and~~

15 ~~—(d) Exercise any other rights or pursue any other remedies~~
16 ~~provided in the lease contract.~~

17 ~~2. If a lessor fails to deliver the goods in conformity to the~~
18 ~~lease contract or repudiates the lease contract, the lessee may also:~~

19 ~~—(a) If the goods have been identified, recover them (NRS~~
20 ~~104A.2522); or~~

21 ~~—(b) In a proper case, obtain specific performance or replevy the~~
22 ~~goods (NRS 104A.2521).~~

23 ~~—3.] do one or more of the following:~~

24 *(a) Cancel the lease contract under subsection 1 of*
25 *NRS 104A.2505;*

26 *(b) Recover so much of the rent and security as has been paid*
27 *and is just under the circumstances;*

28 *(c) Cover and obtain damages under NRS 104A.2518;*

29 *(d) Recover damages for nondelivery under subsection 1 of*
30 *NRS 104A.2519;*

31 *(e) If an acceptance of goods has not been justifiably revoked,*
32 *recover damages for default with regard to accepted goods under*
33 *subsections 3 and 4 of NRS 104A.2519;*

34 *(f) Enforce a security interest under subsection 4;*

35 *(g) Recover identified goods under NRS 104A.2522;*

36 *(h) Obtain specific performance or obtain the goods by*
37 *replevin or similar remedy under section 91 of this act;*

38 *(i) Recover liquidated damages under NRS 104A.2504;*

39 *(j) Enforce limited remedies under NRS 104A.2503; or*

40 *(k) Exercise any other right or pursue any other remedy as*
41 *provided in the lease contract.*

42 *2. If a lessor is otherwise in default under a lease contract, the*
43 *lessee may exercise the rights and pursue the remedies provided in*
44 *the lease contract, which may include a right to cancel the lease, and*
45 *in subsection 3 of NRS 104A.2519.*



~~[4-]~~ 3. If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (subsection 4 of NRS 104A.2519).

~~[5-]~~ 4. On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to the provisions of subsection 5 of NRS 104A.2527.

~~[6-]~~ 5. Subject to the provisions of NRS 104A.2407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

Sec. 129. NRS 104A.2509 is hereby amended to read as follows:

104A.2509 1. Subject to ~~[the provisions of NRS 104A.2510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.~~

~~—2. Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.] NRS 104A.2503, 104A.2504, and 104A.2510, if the goods or the tender of delivery fail in any respect to conform to the contract, the lessee may:~~

(a) Reject the whole;

(b) Accept the whole; or

(c) Accept any commercial unit or units and reject the rest.

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

3. Subject to NRS 104A.2511, 104A.2512, and subsection 6 of NRS 104A.2517:

(a) After rejection any use by the lessee with respect to any commercial unit is wrongful as against the lessor or supplier; and

(b) If the lessee has before rejection taken physical possession of goods in which the lessee does not have a security interest under subsection 4 of NRS 104A.2508, the lessee is under a duty after rejection to hold them with reasonable care at the lessor's or supplier's disposition for a time sufficient to permit the lessor or supplier to remove them; but



1 (c) *The lessee has no further obligations with regard to goods*
2 *rightfully rejected.*

3 3. *The lessor's or supplier's remedies with respect to goods*
4 *wrongfully rejected are governed by NRS 104A.2523.*

5 **Sec. 130.** NRS 104A.2510 is hereby amended to read as
6 follows:

7 104A.2510 1. Under an installment lease contract a lessee
8 may reject any delivery that is nonconforming if the nonconformity
9 substantially impairs the value of that delivery ~~[and cannot be cured]~~
10 *to the lessee* or the nonconformity is a defect in the required
11 documents; but if the nonconformity does not fall within subsection
12 2 and the lessor or the supplier gives adequate assurance of its cure,
13 the lessee must accept that delivery.

14 2. ~~[Whenever]~~ *If a* nonconformity or default with respect to
15 one or more deliveries substantially impairs the value of the
16 installment lease contract as a whole there is a default with respect
17 to the whole. But, the aggrieved party reinstates the installment
18 lease contract as a whole if the aggrieved party accepts a
19 nonconforming delivery without seasonably notifying of
20 cancellation or brings an action with respect only to past deliveries
21 or demands performance as to future deliveries.

22 **Sec. 131.** NRS 104A.2511 is hereby amended to read as
23 follows:

24 104A.2511 1. Subject to any security interest of a lessee
25 (subsection ~~[5]~~ 4 of NRS 104A.2508), if a lessor or a supplier has
26 no agent or place of business at the market of rejection, a merchant
27 lessee, after rejection of goods in ~~[his]~~ *the lessee's* possession or
28 control, shall follow any reasonable instructions received from the
29 lessor or the supplier with respect to the goods. In the absence of
30 those instructions a merchant lessee shall make reasonable efforts to
31 sell, lease or otherwise dispose of the goods for the lessor's account
32 if they threaten to decline in value speedily. ~~[Instructions]~~ *In the*
33 *case of a rightful rejection, instructions* are not reasonable if on
34 demand indemnity for expenses is not forthcoming.

35 2. If a merchant lessee (subsection 1) or any other lessee (NRS
36 104A.2512) disposes of goods ~~[-he]~~ *following a rightful rejection,*
37 *the lessee* is entitled to reimbursement either from the lessor or the
38 supplier or out of the proceeds for reasonable expenses of caring for
39 and disposing of the goods and, if the expenses include no
40 disposition commission, to such commission as is usual in the trade,
41 or if there is none, to a reasonable sum not exceeding 10 percent of
42 the gross proceeds.

43 3. In complying with this section or NRS 104A.2512, the
44 lessee is held only to good faith. Good faith conduct hereunder is



1 neither acceptance or conversion nor the basis of an action for
2 damages.

3 4. A purchaser ~~[who]~~ *that* purchases in good faith from a lessee
4 pursuant to this section or NRS 104A.2512 takes the goods free of
5 any rights of the lessor and the supplier even ~~[though]~~ *if* the lessee
6 fails to comply with one or more of the requirements of this Article.

7 **Sec. 132.** NRS 104A.2512 is hereby amended to read as
8 follows:

9 104A.2512 1. ~~[Except as otherwise provided with respect to
10 goods that threaten to decline in value speedily (NRS 104A.2511)
11 and subject to any security interest of a lessee (subsection 5 of
12 NRS 104A.2508):~~

13 ~~—(a) The lessee, after rejection of goods in the lessee's
14 possession, shall hold them with reasonable care at the lessor's or
15 supplier's disposition for a reasonable time after the lessee's
16 seasonable notification of rejection;~~

17 ~~—(b) If the lessor or the supplier gives no instructions within a
18 reasonable time after notification of rejection, the lessee may store
19 the rejected goods for the lessor's or the supplier's account or ship
20 them to the lessor or the supplier or dispose of them for the lessor's
21 or the supplier's account with reimbursement in the manner
22 provided in NRS 104A.2511 . ~~[-; but~~~~

23 ~~—(c) The lessee has no further obligations with regard to goods
24 rightfully rejected.]~~

25 2. Action by the lessee pursuant to subsection 1 is not
26 acceptance or conversion.

27 **Sec. 133.** NRS 104A.2513 is hereby amended to read as
28 follows:

29 104A.2513 1. ~~[If any tender or delivery by the lessor or the
30 supplier is rejected because nonconforming and the time for
31 performance has not yet expired, the lessor or the supplier may
32 seasonably notify the lessee of the lessor's or the supplier's
33 intention to cure and may then make a conforming delivery within
34 the time provided in the lease contract.~~

35 ~~—2. If the lessee rejects a nonconforming tender that the lessor or
36 the supplier had reasonable grounds to believe would be acceptable
37 with or without money allowance, the lessor or the supplier may
38 have a further reasonable time to substitute a conforming tender if
39 he seasonably notifies the lessee.]~~ *If the lessee rejects goods or a
40 tender of delivery under NRS 104A.2509 or 104A.2510 or, except
41 in a consumer contract, justifiably revokes acceptance under
42 paragraph (b) of subsection 1 of NRS 104A.2517 and the agreed
43 time for performance has not expired, a lessor or a supplier that
44 has performed in good faith, upon seasonable notice to the lessee,
45 and at the lessor's or supplier's own expense, may cure the default*



1 *by making a conforming tender of delivery within the agreed time.*
2 *The lessor or supplier shall compensate the lessee for all of the*
3 *lessee's reasonable expenses caused by the lessor's or supplier's*
4 *default and subsequent cure.*

5 2. *If the lessee rejects goods or a tender of delivery under*
6 *NRS 104A.2509 or 104A.2510 or, except in a consumer lease,*
7 *justifiably revokes acceptance under paragraph (b) of subsection 1*
8 *of NRS 104A.2517 and the agreed time for performance has*
9 *expired, a lessor or supplier that has performed in good faith may,*
10 *upon reasonable notice to the lessee and at the lessor's or*
11 *supplier's own expense, cure the default, if the cure is appropriate*
12 *and timely under the circumstances, by making a tender of*
13 *conforming goods. The lessor or supplier shall compensate the*
14 *lessee for all of the lessee's reasonable expenses caused by the*
15 *lessor's or supplier's default and subsequent cure.*

16 **Sec. 134.** NRS 104A.2514 is hereby amended to read as
17 follows:

18 104A.2514 1. ~~In rejecting goods, a lessee's failure to state a~~
19 ~~particular defect that is ascertainable by reasonable inspection~~
20 ~~precludes the lessee from relying on the defect to justify rejection or~~
21 ~~to establish default:~~

22 ~~—(a) If, stated seasonably, the lessor or the supplier could have~~
23 ~~cured it (NRS 104A.2513); or~~

24 ~~—(b) Between merchants if the lessor or the supplier after~~
25 ~~rejection has made a request in writing for a full and final written~~
26 ~~statement of all defects on which the lessee proposes to rely.] A~~
27 *lessee's failure to state in connection with rejection a particular*
28 *defect or in connection with revocation of acceptance a defect that*
29 *justifies revocation precludes the lessee from relying on the*
30 *unstated defect to justify rejection or revocation of acceptance if*
31 *the defect is ascertainable by reasonable inspection:*

32 *(a) If the lessor or supplier had a right to cure the defect and*
33 *could have cured it if stated seasonably; or*

34 *(b) Between merchants if the lessor or the supplier after*
35 *rejection or revocation of acceptance has made a request in a*
36 *record for a full and final statement in a record of all defects on*
37 *which the lessee proposes to rely.*

38 2. A lessee's failure to reserve rights when paying rent or other
39 consideration against documents precludes recovery of the payment
40 for defects apparent ~~for on the face of~~ in the documents.

41 **Sec. 135.** NRS 104A.2515 is hereby amended to read as
42 follows:

43 104A.2515 1. Acceptance of goods occurs ~~after the lessee~~
44 ~~has had a reasonable opportunity to inspect the goods and:~~



~~—(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or~~

~~—(b) The lessee fails to make an effective rejection of the goods (subsection 2 of NRS 104A.2509).] when the lessee:~~

(a) After a reasonable opportunity to inspect the goods signifies to the lessor or supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity;

(b) Fails to make an effective rejection under subsection 2 of NRS 104A.2509, but such acceptance does not occur until the lessee has had a reasonable opportunity to inspect them; or

(c) Subject to subsection 6 of NRS 104A.2517, uses the goods in any manner that is inconsistent with the lessor's or supplier's rights.

2. Acceptance of a part of any commercial unit is acceptance of that entire unit.

Sec. 136. NRS 104A.2516 is hereby amended to read as follows:

104A.2516 1. A lessee must pay rent for any goods accepted in accordance with the lease contract . ~~[, with due allowance for goods rightfully rejected or not delivered.]~~

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

3. If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, ~~[or be barred from any remedy against the party not notified;] but failure to give timely notice bars the lessee from a remedy only to the extent that the lessor or supplier is prejudiced by the failure;~~

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (NRS 104A.2211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

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



4. If a lessee is sued for *indemnity*, breach of a warranty or other obligation for which ~~[a lessor or a supplier]~~ *another party* is answerable over the following *rules* apply:

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

(b) The ~~[lessor or the supplier]~~ *other party* may demand in ~~[writing]~~ *a record* that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (NRS 104A.2211) or else be barred from any remedy over. If the demand states that the ~~[lessor or the supplier]~~ *other party* agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

5. Subsections 3 and 4 apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (NRS 104A.2211).

Sec. 137. NRS 104A.2517 is hereby amended to read as follows:

104A.2517 1. A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if he has accepted it:

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

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

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

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

4. Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods



1 which is not caused by the nonconformity. Revocation is not
2 effective until the lessee notifies the lessor.

3 5. A lessee ~~[who]~~ *that* so revokes has the same rights and
4 duties with regard to the goods involved as if the lessee had rejected
5 them.

6 *6. If a lessee uses the goods after a rightful rejection or*
7 *justifiable revocation of acceptance, the following rules apply:*

8 *(a) Any use by the lessee which is unreasonable under the*
9 *circumstances is wrongful as against the lessor or supplier and is*
10 *an acceptance only if ratified by the lessor or supplier under*
11 *paragraph (c) of subsection 1 of NRS 104A.2515.*

12 *(b) Any use of the goods which is reasonable under the*
13 *circumstances is not wrongful as against the lessor or supplier and*
14 *is not an acceptance, but in an appropriate case the lessee shall be*
15 *obligated to the lessor or supplier for the value of the use to the*
16 *lessee.*

17 **Sec. 138.** NRS 104A.2522 is hereby amended to read as
18 follows:

19 104A.2522 1. Subject to subsection 2 and even ~~[though]~~ *if*
20 the goods have not been shipped, a lessee ~~[who]~~ *that* has paid a part
21 or all of the rent and security for goods identified to a lease contract
22 (NRS 104A.2217) on making and keeping good a tender of any
23 unpaid portion of the rent and security due under the lease contract
24 may recover the goods identified from the lessor if :

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

27 *(b) In all other cases,* the lessor becomes insolvent within
28 10 days after receipt of the first installment of rent and security.

29 2. A lessee acquires the right to recover goods identified to a
30 lease contract only if they conform to the lease contract.

31 **Sec. 139.** NRS 104A.2523 is hereby amended to read as
32 follows:

33 104A.2523 1. If a lessee wrongfully rejects or ~~[revokes]~~
34 *attempts to revoke* acceptance of goods or fails to make a payment
35 when due or repudiates with respect to a part or the whole, ~~[then;~~
36 ~~with respect to any goods involved, and with respect to all of the~~
37 ~~goods if under an installment lease contract the value of the whole~~
38 ~~lease contract is substantially impaired (NRS 104A.2510);]~~ the
39 lessee is in default under the lease contract ~~[and the lessor may:~~

40 ~~—(a) Cancel the lease contract (subsection 1 of NRS 104A.2505);~~

41 ~~—(b) Proceed respecting goods not identified to the lease contract~~
42 ~~(NRS 104A.2524);~~

43 ~~—(c) Withhold delivery of the goods and take possession of goods~~
44 ~~previously delivered (NRS 104A.2525);~~

45 ~~—(d) Stop delivery of the goods by any bailee (NRS 104A.2526);~~



~~—(e) Dispose of the goods and recover damages (NRS 104A.2527), or retain the goods and recover damages (NRS 104A.2528), or in a proper case recover rent (NRS 104A.2529); and~~
~~—(f) Exercise any other rights or pursue any other remedies provided in the lease contract.~~

~~—2.] with respect to any goods involved, and the lessor may do one or more of the following:~~

~~(a) Withhold delivery of the goods and take possession of goods previously delivered under NRS 104A.2525;~~

~~(b) Stop delivery of the goods by any carrier or bailee under NRS 104A.2526;~~

~~(c) Proceed under NRS 104A.2524 with respect to goods still unidentified to the lease contract or unfinished;~~

~~(d) Obtain specific performance under section 96 of this act or recover the rent under NRS 104A.2529;~~

~~(e) Dispose of the goods and recover damages under NRS 104A.2527 or retain the goods and recover damages under NRS 104A.2528;~~

~~(f) Cancel the lease contract under subsection 1 of NRS 104A.2505;~~

~~(g) Recover liquidated damages under NRS 104A.2504;~~

~~(h) Enforce limited remedies under NRS 104A.2503; or~~

~~(i) Exercise any other rights or pursue any other remedies provided in the lease agreement.~~

~~2. If a lessee becomes insolvent but is not in default of the lease contract under subsection 1 or 4, the lessor may:~~

~~(a) Refuse to deliver the goods under subsection 1 of NRS 104A.2525;~~

~~(b) Take possession of the goods under subsection 2 of NRS 104A.2525; or~~

~~(c) Stop delivery of the goods by any bailee or carrier under subsection 1 of NRS 104A.2526.~~

~~3. If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection 1, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental or consequential damages [3] allowed under NRS 104A.2530, less expenses saved in consequence of the lessee's default.~~

~~[3-] 4. If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:~~



(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsections 1 and ~~2;~~ 3; or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection ~~2;~~ 3.

Sec. 140. NRS 104A.2524 is hereby amended to read as follows:

104A.2524 1. After default by the lessee under the lease contract of the type described in subsection 1 or paragraph (a) of subsection ~~3;~~ 4 of NRS 104A.2523 or, if agreed, after other default by the lessee, the lessor may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) Dispose of goods (subsection 1 of NRS 104A.2527) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

2. If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

Sec. 141. NRS 104A.2525 is hereby amended to read as follows:

104A.2525 1. If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

2. After a default by the lessee under the lease contract of the type described in subsection 1 or paragraph (a) of subsection ~~3;~~ 4 of NRS 104A.2523 or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (NRS 104A.2527).

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



1 **Sec. 142.** NRS 104A.2526 is hereby amended to read as
2 follows:

3 104A.2526 1. A lessor may stop delivery of goods in the
4 possession of a carrier or other bailee if the lessor discovers the
5 lessee to be insolvent ~~{and may stop delivery of earload, truckload,~~
6 ~~planeload or larger shipments of express or freight}~~ **or** if the lessee
7 repudiates or fails to make a payment due before delivery, whether
8 for rent, security or otherwise under the lease contract, or for any
9 other reason the lessor has a right to withhold or take possession of
10 the goods.

11 2. In pursuing its remedies under subsection 1, the lessor may
12 stop delivery until:

13 (a) Receipt of the goods by the lessee;

14 (b) Acknowledgment to the lessee by any bailee of the goods,
15 except a carrier, that the bailee holds the goods for the lessee; or

16 (c) Such an acknowledgment to the lessee by a carrier via
17 reshipment or as ~~{warehouseman.}~~ **a warehouse.**

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

20 (b) After notification, the bailee shall hold and deliver the goods
21 according to the directions of the lessor, but the lessor is liable to the
22 bailee for any ensuing charges or damages.

23 (c) A carrier ~~{who}~~ **that** has issued a nonnegotiable bill of lading
24 is not obliged to obey a notification to stop received from a person
25 other than the consignor.

26 **Sec. 143.** NRS 104A.2527 is hereby amended to read as
27 follows:

28 104A.2527 1. After a default by a lessee under the lease
29 contract of the type described in subsection 1 or paragraph (a) of
30 subsection ~~{3}~~ **4** of NRS 104A.2523 or after the lessor refuses to
31 deliver or takes possession of goods (NRS 104A.2525 or
32 104A.2526), or, if agreed, after other default by the lessee, the lessor
33 may dispose of the goods concerned or the undelivered balance
34 thereof by lease, sale or otherwise.

35 2. Except as otherwise provided with respect to damages
36 liquidated in the lease agreement (NRS 104A.2504) or otherwise
37 determined pursuant to agreement of the parties (subsection 3 of
38 NRS 104.1102 and NRS 104A.2503), if the disposition is by lease
39 agreement substantially similar to the original lease agreement and
40 the lease agreement is made in good faith and in a commercially
41 reasonable manner, the lessor may recover from the lessee as
42 damages:

43 (a) Accrued and unpaid rent as of the date of the commencement
44 of the term of the new lease agreement;



(b) The present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and

(c) Any incidental *or consequential* damages allowed under NRS 104A.2530,

↳ less expenses saved in consequence of the lessee's default.

3. If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and NRS 104A.2528 governs.

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

5. The lessor is not accountable to the lessee for any profit made on any disposition. A lessee ~~{who}~~ *that* has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subsection ~~{5}~~ *4* of NRS 104A.2508).

Sec. 144. NRS 104A.2528 is hereby amended to read as follows:

104A.2528 1. Except as otherwise provided with respect to damages liquidated in the lease agreement (NRS 104A.2504) or otherwise determined pursuant to agreement of the parties (subsection 3 of NRS 104.1102 and NRS 104A.2503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2 of NRS 104A.2527, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in subsection 1 or paragraph (a) of subsection ~~{3}~~ *4* of NRS 104A.2523, or, if agreed, for other default of the lessee:

(a) Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(b) The present value as of the date determined under paragraph (a) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the



1 market rent at the place where the goods are located computed for
2 the same lease term; and

3 (c) Any incidental *or consequential* damages allowed under
4 NRS 104A.2530, less expenses saved in consequence of the lessee's
5 default.

6 2. If the measure of damages provided in subsection 1 is
7 inadequate to put a lessor in as good a position as performance
8 would have, the measure of damages is the present value of the
9 profit, including reasonable overhead, the lessor would have made
10 from full performance by the lessee, together with any incidental *or*
11 *consequential* damages allowed under NRS 104A.2530 . ~~[, due~~
12 ~~allowance for costs reasonably incurred and due credit for payments~~
13 ~~or proceeds of disposition.]~~

14 **Sec. 145.** NRS 104A.2529 is hereby amended to read as
15 follows:

16 104A.2529 1. After default by the lessee under the lease
17 contract of the type described in subsection 1 or paragraph (a) of
18 subsection ~~[3]~~ 4 of NRS 104A.2523 or, if agreed, after other default
19 by the lessee, if the lessor complies with subsection 2, the lessor
20 may recover from the lessee as damages:

21 (a) For goods accepted by the lessee and not repossessed by or
22 tendered to the lessor, and for conforming goods lost or damaged
23 within a commercially reasonable time after risk of loss passes to
24 the lessee (NRS 104A.2219):

25 (1) Accrued and unpaid rent as of the date of entry of
26 judgment in favor of the lessor;

27 (2) The present value as of the same date of the rent for the
28 then remaining lease term of the lease agreement; and

29 (3) Any incidental *or consequential* damages allowed under
30 NRS 104A.2530,

31 ➤ less expenses saved in consequence of the lessee's default; and

32 (b) For goods identified to the lease contract if the lessor is
33 unable after reasonable effort to dispose of them at a reasonable
34 price or the circumstances reasonably indicate that effort will be
35 unavailing:

36 (1) Accrued and unpaid rent as of the date of entry of
37 judgment in favor of the lessor;

38 (2) The present value as of the same date of the rent for the
39 then remaining lease term of the lease agreement; and

40 (3) Any incidental *or consequential* damages allowed under
41 NRS 104A.2530,

42 ➤ less expenses saved in consequence of the lessee's default.

43 2. Except as provided in subsection 3, the lessor shall hold for
44 the lessee for the remaining lease term of the lease agreement any



1 goods that have been identified to the lease contract and are in the
2 lessor's control.

3 3. The lessor may dispose of the goods at any time before
4 collection of the judgment for damages obtained pursuant to
5 subsection 1. If the disposition is before the end of the remaining
6 lease term of the lease agreement, the lessor's recovery against the
7 lessee for damages is governed by NRS 104A.2527 or 104A.2528,
8 and the lessor will cause an appropriate credit to be provided against
9 a judgment for damages to the extent that the amount of the
10 judgment exceeds the recovery available pursuant to NRS
11 104A.2527 or 104A.2528.

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

16 5. After default by the lessee under the lease contract of the
17 type described in subsection 1 or paragraph (a) of subsection ~~3~~ 4
18 of NRS 104A.2523 or, if agreed, after other default by the lessee, a
19 lessor ~~[who]~~ *that* is held not entitled to rent under this section must
20 nevertheless be awarded damages for nonacceptance under NRS
21 104A.2527 or 104A.2528.

22 **Sec. 146.** NRS 104A.2530 is hereby amended to read as
23 follows:

24 104A.2530 *1.* Incidental damages to an aggrieved lessor
25 include any commercially reasonable charges, expenses or
26 commissions incurred in stopping delivery, in the transportation,
27 care and custody of goods after the lessee's default, in connection
28 with return or disposition of the goods, or otherwise resulting from
29 the default.

30 *2. Consequential damages resulting from a lessee's default*
31 *include any loss resulting from general or particular requirements*
32 *and needs of which the lessee at the time of contracting had*
33 *reason to know and which could not reasonably be prevented by*
34 *disposition under NRS 104A.2527 or otherwise.*

35 *3. In a consumer lease contract, a lessor may not recover*
36 *consequential damages from a consumer.*

37 **Sec. 147.** NRS 104A.2531 is hereby amended to read as
38 follows:

39 104A.2531 1. If a third party so deals with goods that have
40 been identified to a lease contract as to cause actionable injury to a
41 party to the lease contract:

42 (a) The lessor has a right of action against the third party; and

43 (b) The lessee also has a right of action against the third party if
44 the lessee:



- 1 (1) Has a security interest in the goods;
- 2 (2) Has an insurable interest in the goods; or
- 3 (3) Bears the risk of loss under the lease contract or has since
- 4 the injury assumed that risk as against the lessor and the goods have
- 5 been converted or destroyed.

6 2. If at the time of the injury the party plaintiff did not bear the
7 risk of loss as against the other party to the lease contract and there
8 is no arrangement between them for disposition of the recovery,
9 ~~his~~ *the party plaintiff's* suit or settlement, subject to ~~his~~ *the party*
10 *plaintiff's* own interest, is as a fiduciary for the other party to the
11 lease contract.

12 3. Either party with the consent of the other may sue for the
13 benefit of ~~whom~~ *which* it may concern.

14 **Sec. 148.** NRS 104.2319, 104.2320, 104.2321, 104.2322,
15 104.2323, 104.2324 and 104A.2521 are hereby repealed.

16 **Sec. 149.** 1. The amendatory provisions of this act apply to a
17 transaction that is entered into on or after October 1, 2005.

18 2. The amendatory provisions of this act do not apply to:

19 (a) A transaction that is entered into before October 1, 2005,
20 even if the transaction would be subject to the amendatory
21 provisions of this act if it had been entered into after October 1,
22 2005; or

23 (b) A right of action that accrued before October 1, 2005.

24 3. A transaction entered into before October 1, 2005, and the
25 rights, obligations and interests flowing from that transaction, are
26 governed by any statute or other law amended or repealed by the
27 amendatory provisions of this act as if the amendment or repeal of
28 that statute or other law had not occurred and may be terminated,
29 completed, consummated or enforced under that statute or other law.

30 4. The amendatory provisions of section 7 of this act do not
31 apply to an advertisement or similar communication made before
32 October 1, 2005.

LEADLINES OF REPEALED SECTIONS

104.2319 F.O.B. and F.A.S. terms.

104.2320 C.I.F. and C. & F. terms.

104.2321 C.I.F. or C. & F.: "Net landed weights";
"payment on arrival"; warranty of condition on arrival.

104.2322 Delivery "ex-ship."

104.2323 Form of bill of lading required in overseas
shipment; "overseas."



104.2324 “No arrival, no sale” term.

**104A.2521 Lessee’s right to specific performance or
replevin.**

