

By: Senator(s) Carlton

To: Judiciary

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2626

1 AN ACT TO ENACT REVISED ARTICLE 9 - SECURED TRANSACTIONS OF  
2 THE UNIFORM COMMERCIAL CODE; TO CREATE A NATIONWIDE FILING SYSTEM  
3 BASED ON THE DEBTOR'S LOCATION OR RESIDENCE RATHER THAN THE  
4 LOCATION OF COLLATERAL; TO CODIFY A BROADER DEFINITION OF  
5 "PURCHASE MONEY SECURITY INTEREST"; TO REVISE RULES FOR PERFECTION  
6 OF A SECURITY INTEREST; TO REVISE CHOICE OF LAW PROVISIONS; TO  
7 PROVIDE FOR CENTRALIZED FILING OF FINANCING STATEMENTS AND OTHER  
8 SECURITY INTEREST DOCUMENTS; TO PROVIDE SPECIAL RULES FOR CERTAIN  
9 TRANSACTIONS IN WHICH THE DEBTOR IS A CONSUMER; TO REVISE  
10 PROVISIONS ON DEFAULT AND ENFORCEMENT OF SECURED INTERESTS; TO  
11 ENACT A DEFINITION OF "FORMER ARTICLE 9"; TO MAKE TRANSITION  
12 PROVISIONS; TO REPEAL SECTIONS 75-9-101 THROUGH 75-9-507,  
13 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE UNIFORM COMMERCIAL CODE  
14 ARTICLE 9 - SECURED TRANSACTIONS; TO CODIFY SECTION 75-5-118,  
15 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR SECURITY INTEREST OF  
16 ISSUER OR NOMINATED PERSON; TO AMEND SECTIONS 75-1-105, 75-1-201,  
17 75-2-103, 75-2-210, 75-2-326, 75-2-502, 75-2-716, 75-2A-103,  
18 75-2A-303, 75-2A-307, 75-2A-309, 75-4-210, 75-7-503, 75-8-103,  
19 75-8-106, 75-8-110, 75-8-301, 75-8-302, 75-8-510, 71-3-43,  
20 41-29-177, 49-7-251, 67-1-93, 97-17-4, 97-43-11, 53-3-41,  
21 75-11-106, 85-8-9, 99-41-23, 85-7-1, 89-7-51 AND 89-7-53,  
22 MISSISSIPPI CODE OF 1972, TO CONFORM; TO CODIFY SECTION 7-3-59,  
23 MISSISSIPPI CODE OF 1972, TO REQUIRE THE SECRETARY OF STATE TO  
24 REBATE TO THE CHANCERY CLERK OF THE COUNTY OF A DEBTOR DOMICILED  
25 IN THAT COUNTY A PORTION OF CERTAIN FILING FEES COLLECTED; AND FOR  
26 RELATED PURPOSES.

27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

28 SECTION 1. The following is Revised Article 9 - Secured  
29 Transactions of the Uniform Commercial Code, and shall be codified  
30 in Chapter 9 of Title 75, Mississippi Code of 1972, to replace  
31 Article 9 repealed in Section 2 of this act:

**ARTICLE 9 - SECURED TRANSACTIONS**

**PART 1**

**GENERAL PROVISIONS**

SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

36 **SECTION 75-9-101. Short title.** This article may be cited as  
37 Uniform Commercial Code - Secured Transactions.

38 **SECTION 75-9-102. Definitions and index of definitions.**

39 (a) In this article:



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

43           (2) "Account," except as used in "account for," means a  
44 right to payment of a monetary obligation, whether or not earned  
45 by performance, (i) for property that has been or is to be sold,  
46 leased, licensed, assigned, or otherwise disposed of, (ii) for  
47 services rendered or to be rendered, (iii) for a policy of  
48 insurance issued or to be issued, (iv) for a secondary obligation  
49 incurred or to be incurred, (v) for energy provided or to be  
50 provided, (vi) for the use or hire of a vessel under a charter or  
51 other contract, (vii) arising out of the use of a credit or charge  
52 card or information contained on or for use with the card, or  
53 (viii) as winnings in a lottery or other game of chance operated  
54 or sponsored by a state, governmental unit of a state, or person  
55 licensed or authorized to operate the game by a state or  
56 governmental unit of a state. The term includes  
57 health-care-insurance receivables. The term does not include (i)  
58 rights to payment evidenced by chattel paper or an instrument,  
59 (ii) commercial tort claims, (iii) deposit accounts, (iv)  
60 investment property, (v) letter-of-credit rights or letters of  
61 credit, or (vi) rights to payment for money or funds advanced or  
62 sold, other than rights arising out of the use of a credit or  
63 charge card or information contained on or for use with the card.

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

68           (4) "Accounting," except as used in "accounting for,"  
69 means a record:

- 70                   (A) Authenticated by a secured party;  
71                   (B) Indicating the aggregate unpaid secured  
72 obligations as of a date not more than thirty-five (35) days



73 earlier or thirty-five (35) days later than the date of the  
74 record; and

75 (C) Identifying the components of the obligations  
76 in reasonable detail.

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

79 (A) Which secures payment or performance of an  
80 obligation for:

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

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

85 (B) Which is created by statute in favor of a  
86 person that:

87 (i) In the ordinary course of its business  
88 furnished goods or services to a debtor in connection with a  
89 debtor's farming operation; or

90 (ii) Leased real property to a debtor in  
91 connection with the debtor's farming operation; and

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

94 (6) "As-extracted collateral" means:

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

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

99 (ii) Attaches to the minerals as extracted;

100 or

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

104 (7) "Authenticate" means:

105 (A) To sign; or



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

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

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

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

120                   (11) "Chattel paper" means a record or records that  
121 evidence both a monetary obligation and a security interest in  
122 specific goods, a security interest in specific goods and software  
123 used in the goods, a security interest in specific goods and  
124 license of software used in the goods, a lease of specific goods,  
125 or a lease of specific goods and license of software used in the  
126 goods. In this paragraph, "monetary obligation" means a monetary  
127 obligation secured by the goods or owed under a lease of the goods  
128 and includes a monetary obligation with respect to software used  
129 in the goods. The term does not include (i) charters or other  
130 contracts involving the use or hire of a vessel or (ii) records  
131 that evidence a right to payment arising out of the use of a  
132 credit or charge card or information contained on or for use with  
133 the card. If a transaction is evidenced by records that include  
134 an instrument or series of instruments, the group of records taken  
135 together constitutes chattel paper.

136                   (12) "Collateral" means the property subject to a  
137 security interest or agricultural lien. The term includes:



138                   (A) Proceeds to which a security interest  
139 attaches;

140                   (B) Accounts, chattel paper, payment intangibles,  
141 and promissory notes that have been sold; and

142                   (C) Goods that are the subject of a consignment.

143           (13) "Commercial tort claim" means a claim arising in  
144 tort with respect to which:

145                   (A) The claimant is an organization; or

146                   (B) The claimant is an individual and the claim:

147                         (i) Arose in the course of the claimant's  
148 business or profession; and

149                         (ii) Does not include damages arising out of  
150 personal injury to or the death of an individual.

151           (14) "Commodity account" means an account maintained by  
152 a commodity intermediary in which a commodity contract is carried  
153 for a commodity customer.

154           (15) "Commodity contract" means a commodity futures  
155 contract, an option on a commodity futures contract, a commodity  
156 option, or another contract if the contract or option is:

157                   (A) Traded on or subject to the rules of a board  
158 of trade that has been designated as a contract market for such a  
159 contract pursuant to federal commodities laws; or

160                   (B) Traded on a foreign commodity board of trade,  
161 exchange, or market, and is carried on the books of a commodity  
162 intermediary for a commodity customer.

163           (16) "Commodity customer" means a person for which a  
164 commodity intermediary carries a commodity contract on its books.

165           (17) "Commodity intermediary" means a person that:

166                   (A) Is registered as a futures commission merchant  
167 under federal commodities law; or

168                   (B) In the ordinary course of its business  
169 provides clearance or settlement services for a board of trade



170 that has been designated as a contract market pursuant to federal  
171 commodities law.

172 (18) "Communicate" means:

173 (A) To send a written or other tangible record;

174 (B) To transmit a record by any means agreed upon  
175 by the persons sending and receiving the record; or

176 (C) In the case of transmission of a record to or  
177 by a filing office, to transmit a record by any means prescribed  
178 by filing-office rule.

179 (19) "Consignee" means a merchant to which goods are  
180 delivered in a consignment.

181 (20) "Consignment" means a transaction, regardless of  
182 its form, in which a person delivers goods to a merchant for the  
183 purpose of sale and:

184 (A) The merchant:

185 (i) Deals in goods of that kind under a name  
186 other than the name of the person making delivery;

187 (ii) Is not an auctioneer; and

188 (iii) Is not generally known by its creditors  
189 to be substantially engaged in selling the goods of others;

190 (B) With respect to each delivery, the aggregate  
191 value of the goods is One Thousand Dollars (\$1,000.00) or more at  
192 the time of delivery;

193 (C) The goods are not consumer goods immediately  
194 before delivery; and

195 (D) The transaction does not create a security  
196 interest that secures an obligation.

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

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



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

204                   (24) "Consumer-goods transaction" means a consumer  
205 transaction in which:

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

208                               (B) A security interest in consumer goods secures  
209 the obligation.

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

214                   (26) "Consumer transaction" means a transaction in  
215 which (i) an individual incurs an obligation primarily for  
216 personal, family, or household purposes, (ii) a security interest  
217 secures the obligation, and (iii) the collateral is held or  
218 acquired primarily for personal, family, or household purposes.  
219 The term includes consumer-goods transactions.

220                   (27) "Continuation statement" means an amendment of a  
221 financing statement which:

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

224                               (B) Indicates that it is a continuation statement  
225 for, or that it is filed to continue the effectiveness of, the  
226 identified financing statement.

227                   (28) "Debtor" means:

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

231                               (B) A seller of accounts, chattel paper, payment  
232 intangibles, or promissory notes; or

233                               (C) A consignee.



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

238           (30) "Document" means a document of title or a receipt  
239 of the type described in Section 75-7-201(2).

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

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

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

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

251                   (A) Crops grown, growing, or to be grown,  
252 including:

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

255                           (ii) Aquatic goods produced in aquacultural  
256 operations;

257                   (B) Livestock, born or unborn, including aquatic  
258 goods produced in aquacultural operations;

259                   (C) Supplies used or produced in a farming  
260 operation; or

261                   (D) Products of crops or livestock in their  
262 unmanufactured states.

263           (35) "Farming operation" means raising, cultivating,  
264 propagating, fattening, grazing, or any other farming, livestock  
265 or aquacultural operation.



266 (36) "File number" means the number assigned to an  
267 initial financing statement pursuant to Section 9-519(a).

268 (37) "Filing office" means an office designated in  
269 Section 75-9-501 as the place to file a financing statement.

270 (38) "Filing-office rule" means a rule adopted pursuant  
271 to Section 75-9-526.

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

275 (40) "Fixture filing" means the filing of a financing  
276 statement covering goods that are or are to become fixtures and  
277 satisfying Section 75-9-502(a) and (b). The term includes the  
278 filing of a financing statement covering goods of a transmitting  
279 utility which are or are to become fixtures.

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

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

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

291 (44) "Goods" means all things that are movable when a  
292 security interest attaches. The term includes (i) fixtures, (ii)  
293 standing timber that is to be cut and removed under a conveyance  
294 or contract for sale, (iii) the unborn young of animals, (iv)  
295 crops grown, growing, or to be grown, even if the crops are  
296 produced on trees, vines, or bushes, (v) farm-raised fish produced  
297 in fresh water according to the usual and customary techniques of  
298 commercial agriculture, (vi) manufactured homes and (vii) marine



299 vessels (herein defined as every type of watercraft used, or  
300 capable of being used, as a means of transportation on water)  
301 including both marine vessels under construction, including  
302 engines and all items of equipment installed or to be installed  
303 therein, whether such vessels are being constructed by the  
304 shipbuilder for his own use or for sale (said vessels under  
305 construction being classified as inventory within the meaning of  
306 Section 75-9-102(48)), and marine vessels after completion of  
307 construction so long as such vessels have not become "vessels of  
308 the United States" within the meaning of the Ship Mortgage Act of  
309 1920, 46 USCS, Section 911(4), as same is now written or may  
310 hereafter be amended (said completed vessels being classified as  
311 equipment within the meaning of Section 75-9-102(33)). The term  
312 also includes a computer program embedded in goods and any  
313 supporting information provided in connection with a transaction  
314 relating to the program if (i) the program is associated with the  
315 goods in such a manner that it customarily is considered part of  
316 the goods, or (ii) by becoming the owner of the goods, a person  
317 acquires a right to use the program in connection with the goods.  
318 The term does not include a computer program embedded in goods  
319 that consist solely of the medium in which the program is  
320 embedded. The term also does not include accounts, chattel paper,  
321 commercial tort claims, deposit accounts, documents, general  
322 intangibles, instruments, investment property, letter-of-credit  
323 rights, letters of credit, money, or oil, gas, or other minerals  
324 before extraction.

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



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

336           (47) "Instrument" means a negotiable instrument or any  
337 other writing that evidences a right to the payment of a monetary  
338 obligation, is not itself a security agreement or lease, and is of  
339 a type that in ordinary course of business is transferred by  
340 delivery with any necessary endorsement or assignment. The term  
341 does not include (i) investment property, (ii) letters of credit,  
342 or (iii) writings that evidence a right to payment arising out of  
343 the use of a credit or charge card or information contained on or  
344 for use with the card.

345           (48) "Inventory" means goods, other than farm products,  
346 which:

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

348                   (B) Are held by a person for sale or lease or to  
349 be furnished under a contract of service;

350                   (C) Are furnished by a person under a contract of  
351 service; or

352                   (D) Consist of raw materials, work in process or  
353 materials used or consumed in a business.

354           (49) "Investment property" means a security, whether  
355 certificated or uncertificated, security entitlement, securities  
356 account, commodity contract or commodity account.

357           (50) "Jurisdiction of organization," with respect to a  
358 registered organization, means the jurisdiction under whose law  
359 the organization is organized.

360           (51) "Letter-of-credit right" means a right to payment  
361 or performance under a letter of credit, whether or not the  
362 beneficiary has demanded or is at the time entitled to demand  
363 payment or performance. The term does not include the right of a



364 beneficiary to demand payment or performance under a letter of  
365 credit.

366 (52) "Lien creditor" means:

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

369 (B) An assignee for benefit of creditors from the  
370 time of assignment;

371 (C) A trustee in bankruptcy from the date of the  
372 filing of the petition; or

373 (D) A receiver in equity from the time of  
374 appointment.

375 (53) "Manufactured home" means a structure,  
376 transportable in one or more sections, which, in the traveling  
377 mode, is eight (8) body feet or more in width or forty (40) body  
378 feet or more in length, or, when erected on site, is three hundred  
379 twenty (320) or more square feet, and which is built on a  
380 permanent chassis and designed to be used as a dwelling with or  
381 without a permanent foundation when connected to the required  
382 utilities, and includes the plumbing, heating, air-conditioning,  
383 and electrical systems contained therein. The term includes any  
384 structure that meets all of the requirements of this paragraph  
385 except the size requirements and with respect to which the  
386 manufacturer voluntarily files a certification required by the  
387 United States Secretary of Housing and Urban Development and  
388 complies with the standards established under Title 42 of the  
389 United States Code.

390 (54) "Manufactured-home transaction" means a secured  
391 transaction:

392 (A) That creates a purchase-money security  
393 interest in a manufactured home, other than a manufactured home  
394 held as inventory; or

395 (B) In which a manufactured home, other than a  
396 manufactured home held as inventory, is the primary collateral.



397           (55) "Mortgage" means a consensual interest in real  
398 property, including fixtures, which secures payment or performance  
399 of an obligation. "Mortgage" shall mean and include a deed of  
400 trust.

401           (56) "New debtor" means a person that becomes bound as  
402 debtor under Section 75-9-203(d) by a security agreement  
403 previously entered into by another person.

404           (57) "New value" means (i) money, (ii) money's worth in  
405 property, services, or new credit, or (iii) release by a  
406 transferee of an interest in property previously transferred to  
407 the transferee. The term does not include an obligation  
408 substituted for another obligation.

409           (58) "Noncash proceeds" means proceeds other than cash  
410 proceeds.

411           (59) "Obligor" means a person that, with respect to an  
412 obligation secured by a security interest in or an agricultural  
413 lien on the collateral, (i) owes payment or other performance of  
414 the obligation, (ii) has provided property other than the  
415 collateral to secure payment or other performance of the  
416 obligation, or (iii) is otherwise accountable in whole or in part  
417 for payment or other performance of the obligation. The term does  
418 not include issuers or nominated persons under a letter of credit.

419           (60) "Original debtor," except as used in Section  
420 75-9-310(c), means a person that, as debtor, entered into a  
421 security agreement to which a new debtor has become bound under  
422 Section 75-9-203(d).

423           (61) "Payment intangible" means a general intangible  
424 under which the account debtor's principal obligation is a  
425 monetary obligation.

426           (62) "Person related to," with respect to an  
427 individual, means:

428                   (A) The spouse of the individual;



429                   (B) A brother, brother-in-law, sister, or  
430 sister-in-law of the individual;  
431                   (C) An ancestor or lineal descendant of the  
432 individual or the individual's spouse; or  
433                   (D) Any other relative, by blood or marriage, of  
434 the individual or the individual's spouse who shares the same home  
435 with the individual.

436                   (63) "Person related to," with respect to an  
437 organization, means:

438                   (A) A person directly or indirectly controlling,  
439 controlled by, or under common control with the organization;

440                   (B) An officer or director of, or a person  
441 performing similar functions with respect to, the organization;

442                   (C) An officer or director of, or a person  
443 performing similar functions with respect to, a person described  
444 in subparagraph (A);

445                   (D) The spouse of an individual described in  
446 subparagraph (A), (B), or (C); or

447                   (E) An individual who is related by blood or  
448 marriage to an individual described in subparagraph (A), (B), (C),  
449 or (D) and shares the same home with the individual.

450                   (64) "Proceeds," except as used in Section 75-9-609(b),  
451 means the following property:

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

454                   (B) Whatever is collected on, or distributed on  
455 account of, collateral;

456                   (C) Rights arising out of collateral;

457                   (D) To the extent of the value of collateral,  
458 claims arising out of the loss, nonconformity, or interference  
459 with the use of, defects or infringement of rights in, or damage  
460 to, the collateral; or



461 (E) To the extent of the value of collateral and  
462 to the extent payable to the debtor or the secured party,  
463 insurance payable by reason of the loss or nonconformity of,  
464 defects or infringement of rights in, or damage to, the  
465 collateral.

466 (64A) "Production-money crops" means crops that secure  
467 a production-money obligation incurred with respect to the  
468 production of those crops.

469 (64B) "Production-money obligation" means an obligation  
470 of an obligor incurred for new value given to enable the debtor to  
471 produce crops if the value is in fact used for the production of  
472 the crops.

473 (64C) "Production of crops" includes tilling and  
474 otherwise preparing land for growing, planting, cultivating,  
475 fertilizing, irrigating, harvesting and gathering crops, and  
476 protecting them from damage or disease.

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

482 (66) "Proposal" means a record authenticated by a  
483 secured party which includes the terms on which the secured party  
484 is willing to accept collateral in full or partial satisfaction of  
485 the obligation it secures pursuant to Sections 75-9-620, 75-9-621,  
486 and 75-9-622.

487 (67) "Public-finance transaction" means a secured  
488 transaction in connection with which:

489 (A) Debt securities are issued;

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

492 (C) The debtor, obligor, secured party, account  
493 debtor or other person obligated on collateral, assignor or



494 assignee of a secured obligation, or assignor or assignee of a  
495 security interest is a state or a governmental unit of a state.

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

502 (69) "Record," except as used in "for record," "of  
503 record," "record or legal title," and "record owner," means  
504 information that is inscribed on a tangible medium or which is  
505 stored in an electronic or other medium and is retrievable in  
506 perceivable form.

507 (70) "Registered organization" means an organization  
508 organized solely under the law of a single state or the United  
509 States and as to which the state or the United States must  
510 maintain a public record showing the organization to have been  
511 organized.

512 (71) "Secondary obligor" means an obligor to the extent  
513 that:

514 (A) The obligor's obligation is secondary; or

515 (B) The obligor has a right of recourse with  
516 respect to an obligation secured by collateral against the debtor,  
517 another obligor, or property of either.

518 (72) "Secured party" means:

519 (A) A person in whose favor a security interest is  
520 created or provided for under a security agreement, whether or not  
521 any obligation to be secured is outstanding;

522 (B) A person that holds an agricultural lien;

523 (C) A consignor;

524 (D) A person to which accounts, chattel paper,  
525 payment intangibles, or promissory notes have been sold;



526 (E) A trustee, indenture trustee, agent,  
527 collateral agent, or other representative in whose favor a  
528 security interest or agricultural lien is created or provided for;  
529 or

530 (F) A person that holds a security interest  
531 arising under Section 75-2-401, 75-2-505, 75-2-711(3),  
532 75-2A-508(5), 75-4-210, or 75-5-118.

533 (73) "Security agreement" means an agreement that  
534 creates or provides for a security interest.

535 (74) "Send," in connection with a record or  
536 notification, means:

537 (A) To deposit in the mail, deliver for  
538 transmission, or transmit by any other usual means of  
539 communication, with postage or cost of transmission provided for,  
540 addressed to any address reasonable under the circumstances; or

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

544 (75) "Software" means a computer program and any  
545 supporting information provided in connection with a transaction  
546 relating to the program. The term does not include a computer  
547 program that is included in the definition of goods.

548 (76) "State" means a state of the United States, the  
549 District of Columbia, Puerto Rico, the United States Virgin  
550 Islands, or any territory or insular possession subject to the  
551 jurisdiction of the United States.

552 (77) "Supporting obligation" means a letter-of-credit  
553 right or secondary obligation that supports the payment or  
554 performance of an account, chattel paper, a document, a general  
555 intangible, an instrument, or investment property.

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



559 (79) "Termination statement" means an amendment of a  
560 financing statement which:

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

563 (B) Indicates either that it is a termination  
564 statement or that the identified financing statement is no longer  
565 effective.

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

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

570 (B) Transmitting communications electrically,  
571 electromagnetically, or by light;

572 (C) Transmitting goods by pipeline or sewer; or

573 (D) Transmitting or producing and transmitting  
574 electricity, steam, gas, or water.

575 (b) The following definitions in other articles apply to  
576 this article:

577 "Applicant" Section 75-5-102.

578 "Beneficiary" Section 75-5-102.

579 "Broker" Section 75-8-102.

580 "Certificated security" Section 75-8-102.

581 "Check" Section 75-3-104.

582 "Clearing corporation" Section 75-8-102.

583 "Contract for sale" Section 75-2-106.

584 "Customer" Section 75-4-104.

585 "Entitlement holder" Section 75-8-102.

586 "Financial asset" Section 75-8-102.

587 "Holder in due course" Section 75-3-302.

588 "Issuer" (with respect to  
589 a letter of credit or  
590 letter-of-credit right) Section 75-5-102.

591 "Issuer" (with respect to a



592	security)	Section 75-8-201.
593	"Lease"	Section 75-2A-103.
594	"Lease agreement"	Section 75-2A-103.
595	"Lease contract"	Section 75-2A-103.
596	"Leasehold interest"	Section 75-2A-103.
597	"Lessee"	Section 75-2A-103.
598	"Lessee in ordinary course	
599	of business"	Section 75-2A-103.
600	"Lessor"	Section 75-2A-103.
601	"Lessor's residual interest"	Section 75-2A-103.
602	"Letter of credit"	Section 75-5-102.
603	"Merchant"	Section 75-2-104.
604	"Negotiable instrument"	Section 75-3-104.
605	"Nominated person"	Section 75-5-102.
606	"Note"	Section 75-3-104.
607	"Proceeds of a letter of	
608	credit"	Section 75-5-114.
609	"Prove"	Section 75-3-103.
610	"Sale"	Section 75-2-106.
611	"Securities account"	Section 75-8-501.
612	"Securities intermediary"	Section 75-8-102.
613	"Security"	Section 75-8-102.
614	"Security certificate"	Section 75-8-102.
615	"Security entitlement"	Section 75-8-102.
616	"Uncertificated security"	Section 75-8-102.
617	(c) Article 1 contains general definitions and principles of	
618	construction and interpretation applicable throughout this	
619	article.	
620	<b>SECTION 75-9-103. Purchase-money security interest;</b>	
621	<b>application of payments; burden of establishing.</b>	
622	(a) In this section:	



623           (1) "Purchase-money collateral" means goods or software  
624 that secures a purchase-money obligation incurred with respect to  
625 that collateral; and

626           (2) "Purchase-money obligation" means an obligation of  
627 an obligor incurred as all or part of the price of the collateral  
628 or for value given to enable the debtor to acquire rights in or  
629 the use of the collateral if the value is in fact so used.

630           (b) A security interest in goods is a purchase-money  
631 security interest:

632           (1) To the extent that the goods are purchase-money  
633 collateral with respect to that security interest;

634           (2) If the security interest is in inventory that is or  
635 was purchase-money collateral, also to the extent that the  
636 security interest secures a purchase-money obligation incurred  
637 with respect to other inventory in which the secured party holds  
638 or held a purchase-money security interest; and

639           (3) Also to the extent that the security interest  
640 secures a purchase-money obligation incurred with respect to  
641 software in which the secured party holds or held a purchase-money  
642 security interest.

643           (c) A security interest in software is a purchase-money  
644 security interest to the extent that the security interest also  
645 secures a purchase-money obligation incurred with respect to goods  
646 in which the secured party holds or held a purchase-money security  
647 interest if:

648           (1) The debtor acquired its interest in the software in  
649 an integrated transaction in which it acquired an interest in the  
650 goods; and

651           (2) The debtor acquired its interest in the software  
652 for the principal purpose of using the software in the goods.

653           (d) The security interest of a consignor in goods that are  
654 the subject of a consignment is a purchase-money security interest  
655 in inventory.



656 (e) In a transaction other than a consumer-goods  
657 transaction, if the extent to which a security interest is a  
658 purchase-money security interest depends on the application of a  
659 payment to a particular obligation, the payment must be applied:

660 (1) In accordance with any reasonable method of  
661 application to which the parties agree;

662 (2) In the absence of the parties' agreement to a  
663 reasonable method, in accordance with any intention of the obligor  
664 manifested at or before the time of payment; or

665 (3) In the absence of an agreement to a reasonable  
666 method and a timely manifestation of the obligor's intention, in  
667 the following order:

668 (A) To obligations that are not secured; and

669 (B) If more than one (1) obligation is secured, to  
670 obligations secured by purchase-money security interests in the  
671 order in which those obligations were incurred.

672 (f) In a transaction other than a consumer-goods  
673 transaction, a purchase-money security interest does not lose its  
674 status as such, even if:

675 (1) The purchase-money collateral also secures an  
676 obligation that is not a purchase-money obligation;

677 (2) Collateral that is not purchase-money collateral  
678 also secures the purchase-money obligation; or

679 (3) The purchase-money obligation has been renewed,  
680 refinanced, consolidated, or restructured.

681 (g) In a transaction other than a consumer-goods  
682 transaction, a secured party claiming a purchase-money security  
683 interest has the burden of establishing the extent to which the  
684 security interest is a purchase-money security interest.

685 (h) The limitation of the rules in subsections (e), (f), and  
686 (g) to transactions other than consumer-goods transactions is  
687 intended to leave to the court the determination of the proper  
688 rules in consumer-goods transactions. The court may not infer



689 from that limitation the nature of the proper rule in  
690 consumer-goods transactions and may continue to apply established  
691 approaches.

692           **SECTION 75-9-103A. "Production-money crops";**  
693 **"production-money obligation"; production-money security interest;**  
694 **burden of establishing.**

695           (a) A security interest in crops is a production-money  
696 security interest to the extent that the crops are  
697 production-money crops.

698           (b) If the extent to which a security interest is a  
699 production-money security interest depends on the application of a  
700 payment to a particular obligation, the payment must be applied:

701                   (1) In accordance with any reasonable method of  
702 application to which the parties agree;

703                   (2) In the absence of the parties' agreement to a  
704 reasonable method, in accordance with any intention of the obligor  
705 manifested at or before the time of payment; or

706                   (3) In the absence of an agreement to a reasonable  
707 method and a timely manifestation of the obligor's intention, in  
708 the following order:

709                           (A) To obligations that are not secured; and

710                           (B) If more than one (1) obligation is secured, to  
711 obligations secured by production-money security interests in the  
712 order in which those obligations were incurred.

713           (c) A production-money security interest does not lose its  
714 status as such, even if:

715                   (1) The production-money crops also secure an  
716 obligation that is not a production-money obligation;

717                   (2) Collateral that is not production-money crops also  
718 secures the production-money obligation; or

719                   (3) The production-money obligation has been renewed,  
720 refinanced, or restructured.



721 (d) A secured party claiming a production-money security  
722 interest has the burden of establishing the extent to which the  
723 security interest is a production-money security interest.

724 **SECTION 75-9-104. Control of deposit account.**

725 (a) A secured party has control of a deposit account if:

726 (1) The secured party is the bank with which the  
727 deposit account is maintained;

728 (2) The debtor, secured party, and bank have agreed in  
729 an authenticated record that the bank will comply with  
730 instructions originated by the secured party directing disposition  
731 of the funds in the deposit account without further consent by the  
732 debtor; or

733 (3) The secured party becomes the bank's customer with  
734 respect to the deposit account.

735 (b) A secured party that has satisfied subsection (a) has  
736 control, even if the debtor retains the right to direct the  
737 disposition of funds from the deposit account.

738 **SECTION 75-9-105. Control of electronic chattel paper.** A  
739 secured party has control of electronic chattel paper if the  
740 record or records comprising the chattel paper are created,  
741 stored, and assigned in such a manner that:

742 (1) A single authoritative copy of the record or  
743 records exists which is unique, identifiable and, except as  
744 otherwise provided in paragraphs (4), (5), and (6), unalterable;

745 (2) The authoritative copy identifies the secured party  
746 as the assignee of the record or records;

747 (3) The authoritative copy is communicated to and  
748 maintained by the secured party or its designated custodian;

749 (4) Copies or revisions that add or change an  
750 identified assignee of the authoritative copy can be made only  
751 with the participation of the secured party;



752           (5) Each copy of the authoritative copy and any copy of  
753 a copy is readily identifiable as a copy that is not the  
754 authoritative copy; and

755           (6) Any revision of the authoritative copy is readily  
756 identifiable as an authorized or unauthorized revision.

757           **SECTION 75-9-106. Control of investment property.**

758           (a) A person has control of a certificated security,  
759 uncertificated security, or security entitlement as provided in  
760 Section 75-8-106.

761           (b) A secured party has control of a commodity contract if:

762               (1) The secured party is the commodity intermediary  
763 with which the commodity contract is carried; or

764               (2) The commodity customer, secured party, and  
765 commodity intermediary have agreed that the commodity intermediary  
766 will apply any value distributed on account of the commodity  
767 contract as directed by the secured party without further consent  
768 by the commodity customer.

769           (c) A secured party having control of all security  
770 entitlements or commodity contracts carried in a securities  
771 account or commodity account has control over the securities  
772 account or commodity account.

773           **SECTION 75-9-107. Control of letter-of-credit right.** A  
774 secured party has control of a letter-of-credit right to the  
775 extent of any right to payment or performance by the issuer or any  
776 nominated person if the issuer or nominated person has consented  
777 to an assignment of proceeds of the letter of credit under Section  
778 75-5-114(c) or otherwise applicable law or practice.

779           **SECTION 75-9-108. Sufficiency of description.**

780           (a) Except as otherwise provided in subsections (c), (d),  
781 and (e), a description of personal or real property is sufficient,  
782 whether or not it is specific, if it reasonably identifies what is  
783 described.



784 (b) Except as otherwise provided in subsection (d), a  
785 description of collateral reasonably identifies the collateral if  
786 it identifies the collateral by:

787 (1) Specific listing;

788 (2) Category;

789 (3) Except as otherwise provided in subsection (e), a  
790 type of collateral defined in the Uniform Commercial Code;

791 (4) Quantity;

792 (5) Computational or allocational formula or procedure;

793 or

794 (6) Except as otherwise provided in subsection (c), any  
795 other method, if the identity of the collateral is objectively  
796 determinable.

797 (c) A description of collateral as "all the debtor's assets"  
798 or "all the debtor's personal property" or using words of similar  
799 import does not reasonably identify the collateral.

800 (d) Except as otherwise provided in subsection (e), a  
801 description of a security entitlement, securities account, or  
802 commodity account is sufficient if it describes:

803 (1) The collateral by those terms or as investment  
804 property; or

805 (2) The underlying financial asset or commodity  
806 contract.

807 (e) A description only by type of collateral defined in the  
808 Uniform Commercial Code is an insufficient description of:

809 (1) A commercial tort claim; or

810 (2) In a consumer transaction, consumer goods, a  
811 security entitlement, a securities account, or a commodity  
812 account.

813 SUBPART 2. APPLICABILITY OF ARTICLE

814 **SECTION 75-9-109. Scope.**

815 (a) Except as otherwise provided in subsections (c) and (d),  
816 this article applies to:



817           (1) A transaction, regardless of its form, that creates  
818 a security interest in personal property or fixtures by contract;  
819           (2) An agricultural lien;  
820           (3) A sale of accounts, chattel paper, payment  
821 intangibles, or promissory notes;  
822           (4) A consignment;  
823           (5) A security interest arising under Section 75-2-401,  
824 75-2-505, 75-2-711(3), or 75-2A-508(5), as provided in Section  
825 75-9-110; and  
826           (6) A security interest arising under Section 75-4-210  
827 or 75-5-118.

828           (b) The application of this article to a security interest  
829 in a secured obligation is not affected by the fact that the  
830 obligation is itself secured by a transaction or interest to which  
831 this article does not apply.

832           (c) This article does not apply to the extent that:

833           (1) A statute, regulation, or treaty of the United  
834 States preempts this article;

835           (2) Another statute of this state expressly governs the  
836 creation, perfection, priority, or enforcement of a security  
837 interest created by this state or a governmental unit of this  
838 state;

839           (3) A statute of another state, a foreign country, or a  
840 governmental unit of another state or a foreign country, other  
841 than a statute generally applicable to security interests,  
842 expressly governs creation, perfection, priority, or enforcement  
843 of a security interest created by the state, country, or  
844 governmental unit; or

845           (4) The rights of a transferee beneficiary or nominated  
846 person under a letter of credit are independent and superior under  
847 Section 75-5-114.

848           (d) This article does not apply to:

849           (1) A landlord's lien, other than an agricultural lien;



850           (2) A lien, other than an agricultural lien, given by  
851 statute or other rule of law for services or materials, but  
852 Section 75-9-333 applies with respect to priority of the lien;

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

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

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

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

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

867           (8) A transfer of an interest in or an assignment of a  
868 claim under a policy of insurance, other than an assignment by or  
869 to a health-care provider of a health-care-insurance receivable  
870 and any subsequent assignment of the right to payment, but  
871 Sections 75-9-315 and 75-9-322 apply with respect to proceeds and  
872 priorities in proceeds;

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

876           (10) A right of recoupment or set-off, but:

877                   (A) Section 75-9-340 applies with respect to the  
878 effectiveness of rights of recoupment or set-off against deposit  
879 accounts; and

880                   (B) Section 75-9-404 applies with respect to  
881 defenses or claims of an account debtor;





914           **SECTION 75-9-201. General effectiveness of security**  
915 **agreement.**

916           (a) Except as otherwise provided in the Uniform Commercial  
917 Code, a security agreement is effective according to its terms  
918 between the parties, against purchasers of the collateral, and  
919 against creditors.

920           (b) A transaction subject to this article is subject to any  
921 applicable rule of law which establishes a different rule for  
922 consumers and to Sections 75-67-101 through 75-67-135, Sections  
923 75-67-201 through 75-67-243, Sections 75-67-1 through 75-67-39,  
924 Sections 63-19-1 through 63-19-55 and to any other statute or  
925 regulation of this state that regulates the rates, charges,  
926 agreements, and practices for loans, credit sales, or other  
927 extensions of credit, and to any consumer-protection statute or  
928 regulation of this state.

929           (c) In case of conflict between this article and a rule of  
930 law, statute, or regulation described in subsection (b), the rule  
931 of law, statute, or regulation controls. Failure to comply with a  
932 statute or regulation described in subsection (b) has only the  
933 effect the statute or regulation specifies.

934           (d) This article does not:

935                 (1) Validate any rate, charge, agreement, or practice  
936 that violates a rule of law, statute or regulation described in  
937 subsection (b); or

938                 (2) Extend the application of the rule of law, statute  
939 or regulation to a transaction not otherwise subject to it.

940           **SECTION 75-9-202. Title to collateral immaterial.** Except as  
941 otherwise provided with respect to consignments or sales of  
942 accounts, chattel paper, payment intangibles, or promissory notes,  
943 the provisions of this article with regard to rights and  
944 obligations apply whether title to collateral is in the secured  
945 party or the debtor.



946           **SECTION 75-9-203. Attachment and enforceability of security**  
947 **interest; proceeds; supporting obligations; formal requisites.**

948           (a) A security interest attaches to collateral when it  
949 becomes enforceable against the debtor with respect to the  
950 collateral, unless an agreement expressly postpones the time of  
951 attachment.

952           (b) Except as otherwise provided in subsections (c) through  
953 (i), a security interest is enforceable against the debtor and  
954 third parties with respect to the collateral only if:

955                   (1) Value has been given;

956                   (2) The debtor has rights in the collateral or the  
957 power to transfer rights in the collateral to a secured party; and

958                   (3) One (1) of the following conditions is met:

959                           (A) The debtor has authenticated a security  
960 agreement that provides a description of the collateral and, if  
961 the security interest covers timber to be cut, a description of  
962 the land concerned;

963                           (B) The collateral is not a certificated security  
964 and is in the possession of the secured party under Section  
965 75-9-313 pursuant to the debtor's security agreement;

966                           (C) The collateral is a certificated security in  
967 registered form and the security certificate has been delivered to  
968 the secured party under Section 75-8-301 pursuant to the debtor's  
969 security agreement; or

970                           (D) The collateral is deposit accounts, electronic  
971 chattel paper, investment property, or letter-of-credit rights,  
972 and the secured party has control under Section 75-9-104,  
973 75-9-105, 75-9-106 or 75-9-107 pursuant to the debtor's security  
974 agreement.

975           (c) Subsection (b) is subject to Section 75-4-210 on the  
976 security interest of a collecting bank, Section 75-5-118 on the  
977 security interest of a letter-of-credit issuer or nominated  
978 person, Section 75-9-110 on a security interest arising under



979 Article 2 or 2A of Title 75, and Section 75-9-206 on security  
980 interests in investment property.

981 (d) A person becomes bound as debtor by a security agreement  
982 entered into by another person if, by operation of law other than  
983 this article or by contract:

984 (1) The security agreement becomes effective to create  
985 a security interest in the person's property; or

986 (2) The person becomes generally obligated for the  
987 obligations of the other person, including the obligation secured  
988 under the security agreement, and acquires or succeeds to all or  
989 substantially all of the assets of the other person.

990 (e) If a new debtor becomes bound as debtor by a security  
991 agreement entered into by another person:

992 (1) The agreement satisfies subsection (b)(3) with  
993 respect to existing or after-acquired property of the new debtor  
994 to the extent the property is described in the agreement; and

995 (2) Another agreement is not necessary to make a  
996 security interest in the property enforceable.

997 (f) The attachment of a security interest in collateral  
998 gives the secured party the rights to proceeds provided by Section  
999 75-9-315 and is also attachment of a security interest in a  
1000 supporting obligation for the collateral.

1001 (g) The attachment of a security interest in a right to  
1002 payment or performance secured by a security interest or other  
1003 lien on personal or real property is also attachment of a security  
1004 interest in the security interest, mortgage, or other lien.

1005 (h) The attachment of a security interest in a securities  
1006 account is also attachment of a security interest in the security  
1007 entitlements carried in the securities account.

1008 (i) The attachment of a security interest in a commodity  
1009 account is also attachment of a security interest in the commodity  
1010 contracts carried in the commodity account.

1011 **SECTION 75-9-204. After-acquired property; future advances.**



1012 (a) Except as otherwise provided in subsection (b), a  
1013 security agreement may create or provide for a security interest  
1014 in after-acquired collateral.

1015 (b) A security interest does not attach under a term  
1016 constituting an after-acquired property clause to:

1017 (1) Consumer goods, other than an accession when given  
1018 as additional security, unless the debtor acquires rights in them  
1019 within ten (10) days after the secured party gives value; or

1020 (2) A commercial tort claim.

1021 (c) A security agreement may provide that collateral  
1022 secures, or that accounts, chattel paper, payment intangibles, or  
1023 promissory notes are sold in connection with, future advances or  
1024 other value, whether or not the advances or value are given  
1025 pursuant to commitment.

1026 **SECTION 75-9-205. Use or disposition of collateral**  
1027 **permissible.**

1028 (a) A security interest is not invalid or fraudulent against  
1029 creditors solely because:

1030 (1) The debtor has the right or ability to:

1031 (A) Use, commingle, or dispose of all or part of  
1032 the collateral, including returned or repossessed goods;

1033 (B) Collect, compromise, enforce, or otherwise  
1034 deal with collateral;

1035 (C) Accept the return of collateral or make  
1036 repossessions; or

1037 (D) Use, commingle, or dispose of proceeds; or

1038 (2) The secured party fails to require the debtor to  
1039 account for proceeds or replace collateral.

1040 (b) This section does not relax the requirements of  
1041 possession if attachment, perfection, or enforcement of a security  
1042 interest depends upon possession of the collateral by the secured  
1043 party.





1077 includes taking necessary steps to preserve rights against prior  
1078 parties unless otherwise agreed.

1079 (b) Except as otherwise provided in subsection (d), if a  
1080 secured party has possession of collateral:

1081 (1) Reasonable expenses, including the cost of  
1082 insurance and payment of taxes or other charges, incurred in the  
1083 custody, preservation, use, or operation of the collateral are  
1084 chargeable to the debtor and are secured by the collateral;

1085 (2) The risk of accidental loss or damage is on the  
1086 debtor to the extent of a deficiency in any effective insurance  
1087 coverage;

1088 (3) The secured party shall keep the collateral  
1089 identifiable, but fungible collateral may be commingled; and

1090 (4) The secured party may use or operate the  
1091 collateral:

1092 (A) For the purpose of preserving the collateral  
1093 or its value;

1094 (B) As permitted by an order of a court having  
1095 competent jurisdiction; or

1096 (C) Except in the case of consumer goods, in the  
1097 manner and to the extent agreed by the debtor.

1098 (c) Except as otherwise provided in subsection (d), a  
1099 secured party having possession of collateral or control of  
1100 collateral under Section 75-9-104, 75-9-105, 75-9-106, or  
1101 75-9-107:

1102 (1) May hold as additional security any proceeds,  
1103 except money or funds, received from the collateral;

1104 (2) Shall apply money or funds received from the  
1105 collateral to reduce the secured obligation, unless remitted to  
1106 the debtor; and

1107 (3) May create a security interest in the collateral.

1108 (d) If the secured party is a buyer of accounts, chattel  
1109 paper, payment intangibles, or promissory notes or a consignor:



1110           (1) Subsection (a) does not apply unless the secured  
1111 party is entitled under an agreement:

1112                   (A) To charge back uncollected collateral; or

1113                   (B) Otherwise to full or limited recourse against  
1114 the debtor or a secondary obligor based on the nonpayment or other  
1115 default of an account debtor or other obligor on the collateral;  
1116 and

1117           (2) Subsections (b) and (c) do not apply.

1118           **SECTION 75-9-208. Additional duties of secured party having**  
1119 **control of collateral.**

1120           (a) This section applies to cases in which there is no  
1121 outstanding secured obligation and the secured party is not  
1122 committed to make advances, incur obligations, or otherwise give  
1123 value.

1124           (b) Within ten (10) days after receiving an authenticated  
1125 demand by the debtor:

1126                   (1) A secured party having control of a deposit account  
1127 under Section 75-9-104(a)(2) shall send to the bank with which the  
1128 deposit account is maintained an authenticated statement that  
1129 releases the bank from any further obligation to comply with  
1130 instructions originated by the secured party;

1131                   (2) A secured party having control of a deposit account  
1132 under Section 75-9-104(a)(3) shall:

1133                           (A) Pay the debtor the balance on deposit in the  
1134 deposit account; or

1135                           (B) Transfer the balance on deposit into a deposit  
1136 account in the debtor's name;

1137                   (3) A secured party, other than a buyer, having control  
1138 of electronic chattel paper under Section 75-9-105 shall:

1139                           (A) Communicate the authoritative copy of the  
1140 electronic chattel paper to the debtor or its designated  
1141 custodian;



1142 (B) If the debtor designates a custodian that is  
1143 the designated custodian with which the authoritative copy of the  
1144 electronic chattel paper is maintained for the secured party,  
1145 communicate to the custodian an authenticated record releasing the  
1146 designated custodian from any further obligation to comply with  
1147 instructions originated by the secured party and instructing the  
1148 custodian to comply with instructions originated by the debtor;  
1149 and

1150 (C) Take appropriate action to enable the debtor  
1151 or its designated custodian to make copies of or revisions to the  
1152 authoritative copy which add or change an identified assignee of  
1153 the authoritative copy without the consent of the secured party;

1154 (4) A secured party having control of investment  
1155 property under Section 75-8-106(d)(2) or 75-9-106(b) shall send to  
1156 the securities intermediary or commodity intermediary with which  
1157 the security entitlement or commodity contract is maintained an  
1158 authenticated record that releases the securities intermediary or  
1159 commodity intermediary from any further obligation to comply with  
1160 entitlement orders or directions originated by the secured party;  
1161 and

1162 (5) A secured party having control of a  
1163 letter-of-credit right under Section 75-9-107 shall send to each  
1164 person having an unfulfilled obligation to pay or deliver proceeds  
1165 of the letter of credit to the secured party an authenticated  
1166 release from any further obligation to pay or deliver proceeds of  
1167 the letter of credit to the secured party.

1168 **SECTION 75-9-209. Duties of secured party if account debtor**  
1169 **has been notified of assignment.**

1170 (a) Except as otherwise provided in subsection (c), this  
1171 section applies if:

- 1172 (1) There is no outstanding secured obligation; and  
1173 (2) The secured party is not committed to make  
1174 advances, incur obligations, or otherwise give value.



1175 (b) Within ten (10) days after receiving an authenticated  
1176 demand by the debtor, a secured party shall send to an account  
1177 debtor that has received notification of an assignment to the  
1178 secured party as assignee under Section 75-9-406(a) an  
1179 authenticated record that releases the account debtor from any  
1180 further obligation to the secured party.

1181 (c) This section does not apply to an assignment  
1182 constituting the sale of an account, chattel paper, or payment  
1183 intangible.

1184 **SECTION 75-9-210. Request for accounting; request regarding**  
1185 **list of collateral or statement of account.**

1186 (a) In this section:

1187 (1) "Request" means a record of a type described in  
1188 paragraph (2), (3), or (4).

1189 (2) "Request for an accounting" means a record  
1190 authenticated by a debtor requesting that the recipient provide an  
1191 accounting of the unpaid obligations secured by collateral and  
1192 reasonably identifying the transaction or relationship that is the  
1193 subject of the request.

1194 (3) "Request regarding a list of collateral" means a  
1195 record authenticated by a debtor requesting that the recipient  
1196 approve or correct a list of what the debtor believes to be the  
1197 collateral securing an obligation and reasonably identifying the  
1198 transaction or relationship that is the subject of the request.

1199 (4) "Request regarding a statement of account" means a  
1200 record authenticated by a debtor requesting that the recipient  
1201 approve or correct a statement indicating what the debtor believes  
1202 to be the aggregate amount of unpaid obligations secured by  
1203 collateral as of a specified date and reasonably identifying the  
1204 transaction or relationship that is the subject of the request.

1205 (b) Subject to subsections (c), (d), (e), and (f), a secured  
1206 party, other than a buyer of accounts, chattel paper, payment



1207 intangibles, or promissory notes or a consignor, shall comply with  
1208 a request within fourteen (14) days after receipt:

1209 (1) In the case of a request for an accounting, by  
1210 authenticating and sending to the debtor an accounting; and

1211 (2) In the case of a request regarding a list of  
1212 collateral or a request regarding a statement of account, by  
1213 authenticating and sending to the debtor an approval or  
1214 correction.

1215 (c) A secured party that claims a security interest in all  
1216 of a particular type of collateral owned by the debtor may comply  
1217 with a request regarding a list of collateral by sending to the  
1218 debtor an authenticated record including a statement to that  
1219 effect within fourteen (14) days after receipt.

1220 (d) A person that receives a request regarding a list of  
1221 collateral, claims no interest in the collateral when it receives  
1222 the request, and claimed an interest in the collateral at an  
1223 earlier time shall comply with the request within fourteen (14)  
1224 days after receipt by sending to the debtor an authenticated  
1225 record:

1226 (1) Disclaiming any interest in the collateral; and

1227 (2) If known to the recipient, providing the name and  
1228 mailing address of any assignee of or successor to the recipient's  
1229 interest in the collateral.

1230 (e) A person that receives a request for an accounting or a  
1231 request regarding a statement of account, claims no interest in  
1232 the obligations when it receives the request, and claimed an  
1233 interest in the obligations at an earlier time shall comply with  
1234 the request within fourteen (14) days after receipt by sending to  
1235 the debtor an authenticated record:

1236 (1) Disclaiming any interest in the obligations; and

1237 (2) If known to the recipient, providing the name and  
1238 mailing address of any assignee of or successor to the recipient's  
1239 interest in the obligations.



1240 (f) A debtor is entitled without charge to one (1) response  
1241 to a request under this section during any six-month period. The  
1242 secured party may require payment of a charge not exceeding  
1243 Twenty-five Dollars (\$25.00) for each additional response.

1244 **PART 3**

1245 **PERFECTION AND PRIORITY**

1246 **SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY**

1247 **SECTION 75-9-301. Law governing perfection and priority of**  
1248 **security interests.** Except as otherwise provided in Sections  
1249 75-9-303 through 75-9-306, the following rules determine the law  
1250 governing perfection, the effect of perfection or nonperfection,  
1251 and the priority of a security interest in collateral:

1252 (1) Except as otherwise provided in this section, while  
1253 a debtor is located in a jurisdiction, the local law of that  
1254 jurisdiction governs perfection, the effect of perfection or  
1255 nonperfection, and the priority of a security interest in  
1256 collateral.

1257 (2) While collateral is located in a jurisdiction, the  
1258 local law of that jurisdiction governs perfection, the effect of  
1259 perfection or nonperfection, and the priority of a possessory  
1260 security interest in that collateral.

1261 (3) Except as otherwise provided in paragraph (4),  
1262 while negotiable documents, goods, instruments, money, or tangible  
1263 chattel paper is located in a jurisdiction, the local law of that  
1264 jurisdiction governs:

1265 (A) Perfection of a security interest in the goods  
1266 by filing a fixture filing;

1267 (B) Perfection of a security interest in timber to  
1268 be cut; and

1269 (C) The effect of perfection or nonperfection and  
1270 the priority of a nonpossessory security interest in the  
1271 collateral.



1272           (4) The local law of the jurisdiction in which the  
1273 wellhead or minehead is located governs perfection, the effect of  
1274 perfection or nonperfection, and the priority of a security  
1275 interest in as-extracted collateral.

1276           **SECTION 75-9-302. Law governing perfection and priority of**  
1277 **agricultural liens.** While farm products are located in a  
1278 jurisdiction, the local law of that jurisdiction governs  
1279 perfection, the effect of perfection or nonperfection, and the  
1280 priority of an agricultural lien on the farm products.

1281           **SECTION 75-9-303. Law governing perfection and priority of**  
1282 **security interests in goods covered by a certificate of title.**

1283           (a) This section applies to goods covered by a certificate  
1284 of title, even if there is no other relationship between the  
1285 jurisdiction under whose certificate of title the goods are  
1286 covered and the goods or the debtor.

1287           (b) Goods become covered by a certificate of title when a  
1288 valid application for the certificate of title and the applicable  
1289 fee are delivered to the appropriate authority. Goods cease to be  
1290 covered by a certificate of title at the earlier of the time the  
1291 certificate of title ceases to be effective under the law of the  
1292 issuing jurisdiction or the time the goods become covered  
1293 subsequently by a certificate of title issued by another  
1294 jurisdiction.

1295           (c) The local law of the jurisdiction under whose  
1296 certificate of title the goods are covered governs perfection, the  
1297 effect of perfection or nonperfection, and the priority of a  
1298 security interest in goods covered by a certificate of title from  
1299 the time the goods become covered by the certificate of title  
1300 until the goods cease to be covered by the certificate of title.

1301           **SECTION 75-9-304. Law governing perfection and priority of**  
1302 **security interests in deposit accounts.**

1303           (a) The local law of a bank's jurisdiction governs  
1304 perfection, the effect of perfection or nonperfection, and the



1305 priority of a security interest in a deposit account maintained  
1306 with that bank.

1307 (b) The following rules determine a bank's jurisdiction for  
1308 purposes of this part:

1309 (1) If an agreement between the bank and the debtor  
1310 governing the deposit account expressly provides that a particular  
1311 jurisdiction is the bank's jurisdiction for purposes of this part,  
1312 this article, or the Uniform Commercial Code, that jurisdiction is  
1313 the bank's jurisdiction.

1314 (2) If paragraph (1) does not apply and an agreement  
1315 between the bank and its customer governing the deposit account  
1316 expressly provides that the agreement is governed by the law of a  
1317 particular jurisdiction, that jurisdiction is the bank's  
1318 jurisdiction.

1319 (3) If neither paragraph (1) nor paragraph (2) applies  
1320 and an agreement between the bank and its customer governing the  
1321 deposit account expressly provides that the deposit account is  
1322 maintained at an office in a particular jurisdiction, that  
1323 jurisdiction is the bank's jurisdiction.

1324 (4) If none of the preceding paragraphs applies, the  
1325 bank's jurisdiction is the jurisdiction in which the office  
1326 identified in an account statement as the office serving the  
1327 customer's account is located.

1328 (5) If none of the preceding paragraphs applies, the  
1329 bank's jurisdiction is the jurisdiction in which the chief  
1330 executive office of the bank is located.

1331 **SECTION 75-9-305. Law governing perfection and priority of**  
1332 **security interests in investment property.**

1333 (a) Except as otherwise provided in subsection (c), the  
1334 following rules apply:

1335 (1) While a security certificate is located in a  
1336 jurisdiction, the local law of that jurisdiction governs  
1337 perfection, the effect of perfection or nonperfection, and the



1338 priority of a security interest in the certificated security  
1339 represented thereby.

1340           (2) The local law of the issuer's jurisdiction as  
1341 specified in Section 75-8-110(d) governs perfection, the effect of  
1342 perfection or nonperfection, and the priority of a security  
1343 interest in an uncertificated security.

1344           (3) The local law of the securities intermediary's  
1345 jurisdiction as specified in Section 75-8-110(e) governs  
1346 perfection, the effect of perfection or nonperfection, and the  
1347 priority of a security interest in a security entitlement or  
1348 securities account.

1349           (4) The local law of the commodity intermediary's  
1350 jurisdiction governs perfection, the effect of perfection or  
1351 nonperfection, and the priority of a security interest in a  
1352 commodity contract or commodity account.

1353           (b) The following rules determine a commodity intermediary's  
1354 jurisdiction for purposes of this part:

1355           (1) If an agreement between the commodity intermediary  
1356 and commodity customer governing the commodity account expressly  
1357 provides that a particular jurisdiction is the commodity  
1358 intermediary's jurisdiction for purposes of this part, this  
1359 article, or the Uniform Commercial Code, that jurisdiction is the  
1360 commodity intermediary's jurisdiction.

1361           (2) If paragraph (1) does not apply and an agreement  
1362 between the commodity intermediary and commodity customer  
1363 governing the commodity account expressly provides that the  
1364 agreement is governed by the law of a particular jurisdiction,  
1365 that jurisdiction is the commodity intermediary's jurisdiction.

1366           (3) If neither paragraph (1) nor paragraph (2) applies  
1367 and an agreement between the commodity intermediary and commodity  
1368 customer governing the commodity account expressly provides that  
1369 the commodity account is maintained at an office in a particular



1370 jurisdiction, that jurisdiction is the commodity intermediary's  
1371 jurisdiction.

1372 (4) If none of the preceding paragraphs applies, the  
1373 commodity intermediary's jurisdiction is the jurisdiction in which  
1374 the office identified in an account statement as the office  
1375 serving the commodity customer's account is located.

1376 (5) If none of the preceding paragraphs applies, the  
1377 commodity intermediary's jurisdiction is the jurisdiction in which  
1378 the chief executive office of the commodity intermediary is  
1379 located.

1380 (c) The local law of the jurisdiction in which the debtor is  
1381 located governs:

1382 (1) Perfection of a security interest in investment  
1383 property by filing;

1384 (2) Automatic perfection of a security interest in  
1385 investment property created by a broker or securities  
1386 intermediary; and

1387 (3) Automatic perfection of a security interest in a  
1388 commodity contract or commodity account created by a commodity  
1389 intermediary.

1390 **SECTION 75-9-306. Law governing perfection and priority of**  
1391 **security interests in letter-of-credit rights.**

1392 (a) Subject to subsection (c), the local law of the issuer's  
1393 jurisdiction or a nominated person's jurisdiction governs  
1394 perfection, the effect of perfection or nonperfection, and the  
1395 priority of a security interest in a letter-of-credit right if the  
1396 issuer's jurisdiction or nominated person's jurisdiction is a  
1397 state.

1398 (b) For purposes of this part, an issuer's jurisdiction or  
1399 nominated person's jurisdiction is the jurisdiction whose law  
1400 governs the liability of the issuer or nominated person with  
1401 respect to the letter-of-credit right as provided in Section  
1402 75-5-116.



1403 (c) This section does not apply to a security interest that  
1404 is perfected only under Section 75-9-308(d).

1405 **SECTION 75-9-307. Location of debtor.**

1406 (a) In this section, "place of business" means a place where  
1407 a debtor conducts its affairs.

1408 (b) Except as otherwise provided in this section, the  
1409 following rules determine a debtor's location:

1410 (1) A debtor who is an individual is located at the  
1411 individual's principal residence.

1412 (2) A debtor that is an organization and has only one  
1413 (1) place of business is located at its place of business.

1414 (3) A debtor that is an organization and has more than  
1415 one (1) place of business is located at its chief executive  
1416 office.

1417 (c) Subsection (b) applies only if a debtor's residence,  
1418 place of business, or chief executive office, as applicable, is  
1419 located in a jurisdiction whose law generally requires information  
1420 concerning the existence of a nonpossessory security interest to  
1421 be made generally available in a filing, recording, or  
1422 registration system as a condition or result of the security  
1423 interest's obtaining priority over the rights of a lien creditor  
1424 with respect to the collateral. If subsection (b) does not apply,  
1425 the debtor is located in the District of Columbia.

1426 (d) A person that ceases to exist, have a residence, or have  
1427 a place of business continues to be located in the jurisdiction  
1428 specified by subsections (b) and (c).

1429 (e) A registered organization that is organized under the  
1430 law of a state is located in that state.

1431 (f) Except as otherwise provided in subsection (i), a  
1432 registered organization that is organized under the law of the  
1433 United States and a branch or agency of a bank that is not  
1434 organized under the law of the United States or a state are  
1435 located:



1436 (1) In the state that the law of the United States  
1437 designates, if the law designates a state of location;

1438 (2) In the state that the registered organization,  
1439 branch or agency designates, if the law of the United States  
1440 authorizes the registered organization, branch, or agency to  
1441 designate its state of location; or

1442 (3) In the District of Columbia, if neither paragraph  
1443 (1) nor paragraph (2) applies.

1444 (g) A registered organization continues to be located in the  
1445 jurisdiction specified by subsection (e) or (f) notwithstanding:

1446 (1) The suspension, revocation, forfeiture, or lapse of  
1447 the registered organization's status as such in its jurisdiction  
1448 of organization; or

1449 (2) The dissolution, winding up, or cancellation of the  
1450 existence of the registered organization.

1451 (h) The United States is located in the District of  
1452 Columbia.

1453 (i) A branch or agency of a bank that is not organized under  
1454 the law of the United States or a state is located in the state in  
1455 which the branch or agency is licensed, if all branches and  
1456 agencies of the bank are licensed in only one (1) state.

1457 (j) A foreign air carrier under the Federal Aviation Act of  
1458 1958, as amended, is located at the designated office of the agent  
1459 upon which service of process may be made on behalf of the  
1460 carrier.

1461 (k) This section applies only for purposes of this part.

1462 SUBPART 2. PERFECTION

1463 **SECTION 75-9-308. When security interest or agricultural**  
1464 **lien is perfected; continuity of perfection.**

1465 (a) Except as otherwise provided in this section and Section  
1466 75-9-309, a security interest is perfected if it has attached and  
1467 all of the applicable requirements for perfection in Sections  
1468 75-9-310 through 75-9-316 have been satisfied. A security



1469 interest is perfected when it attaches if the applicable  
1470 requirements are satisfied before the security interest attaches.

1471 (b) An agricultural lien is perfected if it has become  
1472 effective and all of the applicable requirements for perfection in  
1473 Section 75-9-310 have been satisfied. An agricultural lien is  
1474 perfected when it becomes effective if the applicable requirements  
1475 are satisfied before the agricultural lien becomes effective.

1476 (c) A security interest or agricultural lien is perfected  
1477 continuously if it is originally perfected by one method under  
1478 this article and is later perfected by another method under this  
1479 article, without an intermediate period when it was unperfected.

1480 (d) Perfection of a security interest in collateral also  
1481 perfects a security interest in a supporting obligation for the  
1482 collateral.

1483 (e) Perfection of a security interest in a right to payment  
1484 or performance also perfects a security interest in a security  
1485 interest, mortgage, or other lien on personal or real property  
1486 securing the right.

1487 (f) Perfection of a security interest in a securities  
1488 account also perfects a security interest in the security  
1489 entitlements carried in the securities account.

1490 (g) Perfection of a security interest in a commodity account  
1491 also perfects a security interest in the commodity contracts  
1492 carried in the commodity account.

1493 **SECTION 75-9-309. Security interest perfected upon**  
1494 **attachment.** The following security interests are perfected when  
1495 they attach:

1496 (1) A purchase-money security interest in consumer  
1497 goods, except as otherwise provided in Section 75-9-311(b) with  
1498 respect to consumer goods that are subject to a statute or treaty  
1499 described in Section 75-9-311(a);

1500 (2) An assignment of accounts or payment intangibles  
1501 which does not by itself or in conjunction with other assignments



1502 to the same assignee transfer a significant part of the assignor's  
1503 outstanding accounts or payment intangibles;

1504 (3) A sale of a payment intangible;

1505 (4) A sale of a promissory note;

1506 (5) A security interest created by the assignment of a  
1507 health-care-insurance receivable to the provider of the  
1508 health-care goods or services;

1509 (6) A security interest arising under Section 75-2-401,  
1510 75-2-505, 75-2-711(3), or 75-2A-508(5), until the debtor obtains  
1511 possession of the collateral;

1512 (7) A security interest of a collecting bank arising  
1513 under Section 75-4-210;

1514 (8) A security interest of an issuer or nominated  
1515 person arising under Section 75-5-118;

1516 (9) A security interest arising in the delivery of a  
1517 financial asset under Section 75-9-206(c);

1518 (10) A security interest in investment property created  
1519 by a broker or securities intermediary;

1520 (11) A security interest in a commodity contract or a  
1521 commodity account created by a commodity intermediary;

1522 (12) An assignment for the benefit of all creditors of  
1523 the transferor and subsequent transfers by the assignee  
1524 thereunder; and

1525 (13) A security interest created by an assignment of a  
1526 beneficial interest in a decedent's estate.

1527 **SECTION 75-9-310. When filing required to perfect security**  
1528 **interest or agricultural lien; security interests and agricultural**  
1529 **liens to which filing provisions do not apply.**

1530 (a) Except as otherwise provided in subsection (b) and  
1531 Section 75-9-312(b), a financing statement must be filed to  
1532 perfect all security interests and agricultural liens.

1533 (b) The filing of a financing statement is not necessary to  
1534 perfect a security interest:



- 1535           (1) That is perfected under Section 75-9-308(d), (e),  
1536 (f), or (g);
- 1537           (2) That is perfected under Section 75-9-309 when it  
1538 attaches;
- 1539           (3) In property subject to a statute, regulation, or  
1540 treaty described in Section 75-9-311(a);
- 1541           (4) In goods in possession of a bailee which is  
1542 perfected under Section 75-9-312(d)(1) or (2);
- 1543           (5) In certificated securities, documents, goods or  
1544 instruments which is perfected without filing or possession under  
1545 Section 75-9-312(e), (f), or (g);
- 1546           (6) In collateral in the secured party's possession  
1547 under Section 75-9-313;
- 1548           (7) In a certificated security which is perfected by  
1549 delivery of the security certificate to the secured party under  
1550 Section 75-9-313;
- 1551           (8) In deposit accounts, electronic chattel paper,  
1552 investment property, or letter-of-credit rights which is perfected  
1553 by control under Section 75-9-314;
- 1554           (9) In proceeds which is perfected under Section  
1555 75-9-315; or
- 1556           (10) That is perfected under Section 75-9-316.
- 1557           (c) If a secured party assigns a perfected security interest  
1558 or agricultural lien, a filing under this article is not required  
1559 to continue the perfected status of the security interest against  
1560 creditors of and transferees from the original debtor.

1561           **SECTION 75-9-311. Perfection of security interests in**  
1562 **property subject to certain statutes, regulations, and treaties.**

1563           (a) Except as otherwise provided in subsection (d), the  
1564 filing of a financing statement is not necessary or effective to  
1565 perfect a security interest in property subject to:

1566           (1) A statute, regulation, or treaty of the United  
1567 States whose requirements for a security interest's obtaining



1568 priority over the rights of a lien creditor with respect to the  
1569 property preempt Section 75-9-310(a);

1570 (2) Sections 63-21-1 through 63-21-77 (the Mississippi  
1571 Motor Vehicle and Manufactured Housing Title Law) or a certificate  
1572 of title issued pursuant to Sections 59-25-1 through 59-25-17  
1573 (Certificates of Title for Boats and Other Vessels); or

1574 (3) A certificate-of-title statute of another  
1575 jurisdiction which provides for a security interest to be  
1576 indicated on the certificate as a condition or result of the  
1577 security interest's obtaining priority over the rights of a lien  
1578 creditor with respect to the property.

1579 (b) Compliance with the requirements of a statute,  
1580 regulation, or treaty described in subsection (a) for obtaining  
1581 priority over the rights of a lien creditor is equivalent to the  
1582 filing of a financing statement under this article. Except as  
1583 otherwise provided in subsection (d) and Sections 75-9-313 and  
1584 75-9-316(d) and (e) for goods covered by a certificate of title, a  
1585 security interest in property subject to a statute, regulation, or  
1586 treaty described in subsection (a) may be perfected only by  
1587 compliance with those requirements, and a security interest so  
1588 perfected remains perfected notwithstanding a change in the use or  
1589 transfer of possession of the collateral.

1590 (c) Except as otherwise provided in subsection (d) and  
1591 Section 75-9-316(d) and (e), duration and renewal of perfection of  
1592 a security interest perfected by compliance with the requirements  
1593 prescribed by a statute, regulation, or treaty described in  
1594 subsection (a) are governed by the statute, regulation, or treaty.  
1595 In other respects, the security interest is subject to this  
1596 article.

1597 (d) During any period in which collateral subject to a  
1598 statute specified in subsection (a)(2) is inventory held for sale  
1599 or lease by a person or leased by that person as lessor and that  
1600 person is in the business of selling goods of that kind, this



1601 section does not apply to a security interest in that collateral  
1602 created by that person.

1603           **SECTION 75-9-312. Perfection of security interests in**  
1604 **chattel paper, deposit accounts, documents, goods covered by**  
1605 **documents, instruments, investment property, letter-of-credit**  
1606 **rights, and money; perfection by permissive filing; temporary**  
1607 **perfection without filing or transfer of possession.**

1608           (a) A security interest in chattel paper, negotiable  
1609 documents, instruments, or investment property may be perfected by  
1610 filing.

1611           (b) Except as otherwise provided in Section 75-9-315(c) and

1612 (d) for proceeds:

1613                 (1) A security interest in a deposit account may be  
1614 perfected only by control under Section 75-9-314;

1615                 (2) And except as otherwise provided in Section  
1616 75-9-308(d), a security interest in a letter-of-credit right may  
1617 be perfected only by control under Section 75-9-314; and

1618                 (3) A security interest in money may be perfected only  
1619 by the secured party's taking possession under Section 75-9-313.

1620           (c) While goods are in the possession of a bailee that has  
1621 issued a negotiable document covering the goods:

1622                 (1) A security interest in the goods may be perfected  
1623 by perfecting a security interest in the document; and

1624                 (2) A security interest perfected in the document has  
1625 priority over any security interest that becomes perfected in the  
1626 goods by another method during that time.

1627           (d) While goods are in the possession of a bailee that has  
1628 issued a nonnegotiable document covering the goods, a security  
1629 interest in the goods may be perfected by:

1630                 (1) Issuance of a document in the name of the secured  
1631 party;

1632                 (2) The bailee's receipt of notification of the secured  
1633 party's interest; or



1634 (3) Filing as to the goods.

1635 (e) A security interest in certificated securities,  
1636 negotiable documents, or instruments is perfected without filing  
1637 or the taking of possession for a period of twenty (20) days from  
1638 the time it attaches to the extent that it arises for new value  
1639 given under an authenticated security agreement.

1640 (f) A perfected security interest in a negotiable document  
1641 or goods in possession of a bailee, other than one that has issued  
1642 a negotiable document for the goods, remains perfected for twenty  
1643 (20) days without filing if the secured party makes available to  
1644 the debtor the goods or documents representing the goods for the  
1645 purpose of:

1646 (1) Ultimate sale or exchange; or

1647 (2) Loading, unloading, storing, shipping,  
1648 transshipping, manufacturing, processing, or otherwise dealing  
1649 with them in a manner preliminary to their sale or exchange.

1650 (g) A perfected security interest in a certificated security  
1651 or instrument remains perfected for twenty (20) days without  
1652 filing if the secured party delivers the security certificate or  
1653 instrument to the debtor for the purpose of:

1654 (1) Ultimate sale or exchange; or

1655 (2) Presentation, collection, enforcement, renewal, or  
1656 registration of transfer.

1657 (h) After the twenty-day period specified in subsection (e),  
1658 (f), or (g) expires, perfection depends upon compliance with this  
1659 article.

1660 **SECTION 75-9-313. When possession by or delivery to secured**  
1661 **party perfects security interest without filing.**

1662 (a) Except as otherwise provided in subsection (b), a  
1663 secured party may perfect a security interest in negotiable  
1664 documents, goods, instruments, money, or tangible chattel paper by  
1665 taking possession of the collateral. A secured party may perfect



1666 a security interest in certificated securities by taking delivery  
1667 of the certificated securities under Section 75-8-301.

1668 (b) With respect to goods covered by a certificate of title  
1669 issued by this state, a secured party may perfect a security  
1670 interest in the goods by taking possession of the goods only in  
1671 the circumstances described in Section 75-9-316(d).

1672 (c) With respect to collateral other than certificated  
1673 securities and goods covered by a document, a secured party takes  
1674 possession of collateral in the possession of a person other than  
1675 the debtor, the secured party, or a lessee of the collateral from  
1676 the debtor in the ordinary course of the debtor's business, when:

1677 (1) The person in possession authenticates a record  
1678 acknowledging that it holds possession of the collateral for the  
1679 secured party's benefit; or

1680 (2) The person takes possession of the collateral after  
1681 having authenticated a record acknowledging that it will hold  
1682 possession of collateral for the secured party's benefit.

1683 (d) If perfection of a security interest depends upon  
1684 possession of the collateral by a secured party, perfection occurs  
1685 no earlier than the time the secured party takes possession and  
1686 continues only while the secured party retains possession.

1687 (e) A security interest in a certificated security in  
1688 registered form is perfected by delivery when delivery of the  
1689 certificated security occurs under Section 75-8-301 and remains  
1690 perfected by delivery until the debtor obtains possession of the  
1691 security certificate.

1692 (f) A person in possession of collateral is not required to  
1693 acknowledge that it holds possession for a secured party's  
1694 benefit.

1695 (g) If a person acknowledges that it holds possession for  
1696 the secured party's benefit:



1697           (1) The acknowledgment is effective under subsection  
1698 (c) or Section 75-8-301(a), even if the acknowledgment violates  
1699 the rights of a debtor; and

1700           (2) Unless the person otherwise agrees or law other  
1701 than this article otherwise provides, the person does not owe any  
1702 duty to the secured party and is not required to confirm the  
1703 acknowledgment to another person.

1704           (h) A secured party having possession of collateral does not  
1705 relinquish possession by delivering the collateral to a person  
1706 other than the debtor or a lessee of the collateral from the  
1707 debtor in the ordinary course of the debtor's business if the  
1708 person was instructed before the delivery or is instructed  
1709 contemporaneously with the delivery:

1710           (1) To hold possession of the collateral for the  
1711 secured party's benefit; or

1712           (2) A secured party does not relinquish possession,  
1713 even if a delivery under subsection (h) violates the rights of a  
1714 debtor. A person to which collateral is delivered under  
1715 subsection (h) does not owe any duty to the secured party and is  
1716 not required to confirm the delivery to another person unless the  
1717 person otherwise agrees or law other than this article otherwise  
1718 provides.

1719           **SECTION 75-9-314. Perfection by control.**

1720           (a) A security interest in investment property, deposit  
1721 accounts, letter-of-credit rights, or electronic chattel paper may  
1722 be perfected by control of the collateral under Section 75-9-104,  
1723 75-9-105, 75-9-106, or 75-9-107.

1724           (b) A security interest in deposit accounts, electronic  
1725 chattel paper or letter-of-credit rights is perfected by control  
1726 under Section 75-9-104, 75-9-105, or 75-9-107 when the secured  
1727 party obtains control and remains perfected by control only while  
1728 the secured party retains control.



1729 (c) A security interest in investment property is perfected  
1730 by control under Section 75-9-106 from the time the secured party  
1731 obtains control and remains perfected by control until:

1732 (1) The secured party does not have control; and

1733 (2) One (1) of the following occurs:

1734 (A) If the collateral is a certificated security,  
1735 the debtor has or acquires possession of the security certificate;

1736 (B) If the collateral is an uncertificated  
1737 security, the issuer has registered or registers the debtor as the  
1738 registered owner; or

1739 (C) If the collateral is a security entitlement,  
1740 the debtor is or becomes the entitlement holder.

1741 **SECTION 75-9-315. Secured party's rights on disposition of**  
1742 **collateral and in proceeds.**

1743 (a) Except as otherwise provided in this article and in  
1744 Section 75-2-403(2):

1745 (1) A security interest or agricultural lien continues  
1746 in collateral notwithstanding sale, lease, license, exchange, or  
1747 other disposition thereof unless the secured party authorized the  
1748 disposition free of the security interest or agricultural lien;  
1749 and

1750 (2) A security interest attaches to any identifiable  
1751 proceeds of collateral.

1752 (b) Proceeds that are commingled with other property are  
1753 identifiable proceeds:

1754 (1) If the proceeds are goods, to the extent provided  
1755 by Section 75-9-336; and

1756 (2) If the proceeds are not goods, to the extent that  
1757 the secured party identifies the proceeds by a method of tracing,  
1758 including application of equitable principles, that is permitted  
1759 under law other than this article with respect to commingled  
1760 property of the type involved.



1761 (c) A security interest in proceeds is a perfected security  
1762 interest if the security interest in the original collateral was  
1763 perfected.

1764 (d) A perfected security interest in proceeds becomes  
1765 unperfected on the twenty-first day after the security interest  
1766 attaches to the proceeds unless:

1767 (1) The following conditions are satisfied:

1768 (A) A filed financing statement covers the  
1769 original collateral;

1770 (B) The proceeds are collateral in which a  
1771 security interest may be perfected by filing in the office in  
1772 which the financing statement has been filed; and

1773 (C) The proceeds are not acquired with cash  
1774 proceeds;

1775 (2) The proceeds are identifiable cash proceeds; or

1776 (3) The security interest in the proceeds is perfected  
1777 other than under subsection (c) when the security interest  
1778 attaches to the proceeds or within twenty (20) days thereafter.

1779 (e) If a filed financing statement covers the original  
1780 collateral, a security interest in proceeds which remains  
1781 perfected under subsection (d) (1) becomes unperfected at the later  
1782 of:

1783 (1) When the effectiveness of the filed financing  
1784 statement lapses under Section 75-9-515 or is terminated under  
1785 Section 75-9-513; or

1786 (2) The twenty-first day after the security interest  
1787 attaches to the proceeds.

1788 **SECTION 75-9-316. Continued perfection of security interest**  
1789 **following change in governing law.**

1790 (a) A security interest perfected pursuant to the law of the  
1791 jurisdiction designated in Section 75-9-301(1) or 75-9-305(c)  
1792 remains perfected until the earliest of:



1793           (1) The time perfection would have ceased under the law  
1794 of that jurisdiction;

1795           (2) The expiration of four (4) months after a change of  
1796 the debtor's location to another jurisdiction; or

1797           (3) The expiration of one (1) year after a transfer of  
1798 collateral to a person that thereby becomes a debtor and is  
1799 located in another jurisdiction.

1800           (b) If a security interest described in subsection (a)  
1801 becomes perfected under the law of the other jurisdiction before  
1802 the earliest time or event described in that subsection, it  
1803 remains perfected thereafter. If the security interest does not  
1804 become perfected under the law of the other jurisdiction before  
1805 the earliest time or event, it becomes unperfected and is deemed  
1806 never to have been perfected as against a purchaser of the  
1807 collateral for value.

1808           (c) A possessory security interest in collateral, other than  
1809 goods covered by a certificate of title and as-extracted  
1810 collateral consisting of goods, remains continuously perfected if:

1811           (1) The collateral is located in one (1) jurisdiction  
1812 and subject to a security interest perfected under the law of that  
1813 jurisdiction;

1814           (2) Thereafter the collateral is brought into another  
1815 jurisdiction; and

1816           (3) Upon entry into the other jurisdiction, the  
1817 security interest is perfected under the law of the other  
1818 jurisdiction.

1819           (d) Except as otherwise provided in subsection (e), a  
1820 security interest in goods covered by a certificate of title which  
1821 is perfected by any method under the law of another jurisdiction  
1822 when the goods become covered by a certificate of title from this  
1823 state remains perfected until the security interest would have  
1824 become unperfected under the law of the other jurisdiction had the  
1825 goods not become so covered.



1826 (e) A security interest described in subsection (d) becomes  
1827 unperfected as against a purchaser of the goods for value and is  
1828 deemed never to have been perfected as against a purchaser of the  
1829 goods for value if the applicable requirements for perfection  
1830 under Section 75-9-311(b) or 75-9-313 are not satisfied before the  
1831 earlier of:

1832 (1) The time the security interest would have become  
1833 unperfected under the law of the other jurisdiction had the goods  
1834 not become covered by a certificate of title from this state; or

1835 (2) The expiration of four (4) months after the goods  
1836 had become so covered.

1837 (f) A security interest in deposit accounts,  
1838 letter-of-credit rights, or investment property which is perfected  
1839 under the law of the bank's jurisdiction, the issuer's  
1840 jurisdiction, a nominated person's jurisdiction, the securities  
1841 intermediary's jurisdiction, or the commodity intermediary's  
1842 jurisdiction, as applicable, remains perfected until the earlier  
1843 of:

1844 (1) The time the security interest would have become  
1845 unperfected under the law of that jurisdiction; or

1846 (2) The expiration of four (4) months after a change of  
1847 the applicable jurisdiction to another jurisdiction.

1848 (g) If a security interest described in subsection (f)  
1849 becomes perfected under the law of the other jurisdiction before  
1850 the earlier of the time or the end of the period described in that  
1851 subsection, it remains perfected thereafter. If the security  
1852 interest does not become perfected under the law of the other  
1853 jurisdiction before the earlier of that time or the end of that  
1854 period, it becomes unperfected and is deemed never to have been  
1855 perfected as against a purchaser of the collateral for value.

1856 SUBPART 3. PRIORITY

1857 **SECTION 75-9-317. Interests that take priority over or take**  
1858 **free of security interest or agricultural lien.**



1859           (a) A security interest or agricultural lien is subordinate  
1860 to the rights of:

1861                 (1) A person entitled to priority under Section  
1862 75-9-322; and

1863                 (2) Except as otherwise provided in subsection (e), a  
1864 person that becomes a lien creditor before the earlier of the  
1865 time:

1866                         (A) The security interest or agricultural lien is  
1867 perfected; or

1868                         (B) One (1) of the conditions specified in Section  
1869 75-9-203(b)(3) is met and a financing statement covering the  
1870 collateral is filed.

1871           (b) Except as otherwise provided in subsection (e), a buyer,  
1872 other than a secured party, of tangible chattel paper, documents,  
1873 goods, instruments, or a security certificate takes free of a  
1874 security interest or agricultural lien if the buyer gives value  
1875 and receives delivery of the collateral without knowledge of the  
1876 security interest or agricultural lien and before it is perfected.

1877           (c) Except as otherwise provided in subsection (e), a lessee  
1878 of goods takes free of a security interest or agricultural lien if  
1879 the lessee gives value and receives delivery of the collateral  
1880 without knowledge of the security interest or agricultural lien  
1881 and before it is perfected.

1882           (d) A licensee of a general intangible or a buyer, other  
1883 than a secured party, of accounts, electronic chattel paper,  
1884 general intangibles, or investment property other than a  
1885 certificated security takes free of a security interest if the  
1886 licensee or buyer gives value without knowledge of the security  
1887 interest and before it is perfected.

1888           (e) Except as otherwise provided in Sections 75-9-320 and  
1889 75-9-321, if a person files a financing statement with respect to  
1890 a purchase-money security interest before or within twenty (20)  
1891 days after the debtor receives delivery of the collateral, the



1892 security interest takes priority over the rights of a buyer,  
1893 lessee, or lien creditor which arise between the time the security  
1894 interest attaches and the time of filing.

1895 **SECTION 75-9-318. No interest retained in right to payment**  
1896 **that is sold; rights and title of seller of account or chattel**  
1897 **paper with respect to creditors and purchasers.**

1898 (a) A debtor that has sold an account, chattel paper,  
1899 payment intangible, or promissory note does not retain a legal or  
1900 equitable interest in the collateral sold.

1901 (b) For purposes of determining the rights of creditors of,  
1902 and purchasers for value of an account or chattel paper from, a  
1903 debtor that has sold an account or chattel paper, while the  
1904 buyer's security interest is unperfected, the debtor is deemed to  
1905 have rights and title to the account or chattel paper identical to  
1906 those the debtor sold.

1907 **SECTION 75-9-319. Rights and title of consignee with respect**  
1908 **to creditors and purchasers.**

1909 (a) Except as otherwise provided in subsection (b), for  
1910 purposes of determining the rights of creditors of, and purchasers  
1911 for value of goods from, a consignee, while the goods are in the  
1912 possession of the consignee, the consignee is deemed to have  
1913 rights and title to the goods identical to those the consignor had  
1914 or had power to transfer.

1915 (b) For purposes of determining the rights of a creditor of  
1916 a consignee, law other than this article determines the rights and  
1917 title of a consignee while goods are in the consignee's possession  
1918 if, under this part, a perfected security interest held by the  
1919 consignor would have priority over the rights of the creditor.

1920 **SECTION 75-9-320. Buyer of goods.**

1921 (a) Except as otherwise provided in subsection (e), a buyer  
1922 in ordinary course of business, other than a person buying farm  
1923 products from a person engaged in farming operations, takes free  
1924 of a security interest created by the buyer's seller, even if the



1925 security interest is perfected and the buyer knows of its  
1926 existence.

1927 (b) Except as otherwise provided in subsection (e), a buyer  
1928 of goods from a person who used or bought the goods for use  
1929 primarily for personal, family, or household purposes takes free  
1930 of a security interest, even if perfected, if the buyer buys:

1931 (1) Without knowledge of the security interest;

1932 (2) For value;

1933 (3) Primarily for the buyer's personal, family, or  
1934 household purposes; and

1935 (4) Before the filing of a financing statement covering  
1936 the goods.

1937 (c) To the extent that it affects the priority of a security  
1938 interest over a buyer of goods under subsection (b), the period of  
1939 effectiveness of a filing made in the jurisdiction in which the  
1940 seller is located is governed by Section 75-9-316(a) and (b).

1941 (d) A buyer in ordinary course of business buying oil, gas,  
1942 or other minerals at the wellhead or minehead or after extraction  
1943 takes free of an interest arising out of an encumbrance.

1944 (e) Subsections (a) and (b) do not affect a security  
1945 interest in goods in the possession of the secured party under  
1946 Section 75-9-313.

1947 (f) Notwithstanding subsection (a), a secured party may not  
1948 enforce a security interest in farm products against a buyer,  
1949 commission merchant or selling agent who purchases or sells farm  
1950 products in the ordinary course of business from or for a person  
1951 engaged in farming operations unless the secured party has  
1952 complied with the regulations issued by the Secretary of state  
1953 under subsection (g) or unless the buyer, commission merchant or  
1954 selling agent has received from the secured party or seller  
1955 written notice of the security interest which complies with the  
1956 requirements of Section 1324 of the Food Security Act of 1985, as  
1957 now enacted or as hereafter may be amended.



1958 (g) The Secretary of State shall issue regulations  
1959 implementing a central filing system relating to farm products  
1960 which conforms with the requirements of Section 1324 of the Food  
1961 Security Act of 1985, as now enacted or as hereafter may be  
1962 amended. The Secretary of State is authorized to set reasonable  
1963 fees to defray the costs of the central filing system established  
1964 pursuant to this section. At least thirty (30) days prior to the  
1965 promulgation of such regulations or any amendments thereto, the  
1966 Secretary of State shall give notice of such regulations and/or  
1967 amendments to all licensed attorneys in the State of Mississippi.

1968 **SECTION 75-9-321. Licensee of general intangible and lessee**  
1969 **of goods in ordinary course of business.**

1970 (a) In this section, "licensee in ordinary course of  
1971 business" means a person that becomes a licensee of a general  
1972 intangible in good faith, without knowledge that the license  
1973 violates the rights of another person in the general intangible,  
1974 and in the ordinary course from a person in the business of  
1975 licensing general intangibles of that kind. A person becomes a  
1976 licensee in the ordinary course if the license to the person  
1977 comports with the usual or customary practices in the kind of  
1978 business in which the licensor is engaged or with the licensor's  
1979 own usual or customary practices.

1980 (b) A licensee in ordinary course of business takes its  
1981 rights under a nonexclusive license free of a security interest in  
1982 the general intangible created by the licensor, even if the  
1983 security interest is perfected and the licensee knows of its  
1984 existence.

1985 (c) A lessee in ordinary course of business takes its  
1986 leasehold interest free of a security interest in the goods  
1987 created by the lessor, even if the security interest is perfected  
1988 and the lessee knows of its existence.

1989 **SECTION 75-9-322. Priorities among conflicting security**  
1990 **interests in and agricultural liens on same collateral.**



1991 (a) Except as otherwise provided in this section, priority  
1992 among conflicting security interests and agricultural liens in the  
1993 same collateral is determined according to the following rules:

1994 (1) Conflicting perfected security interests and  
1995 agricultural liens rank according to priority in time of filing or  
1996 perfection. Priority dates from the earlier of the time a filing  
1997 covering the collateral is first made or the security interest or  
1998 agricultural lien is first perfected, if there is no period  
1999 thereafter when there is neither filing nor perfection.

2000 (2) A perfected security interest or agricultural lien  
2001 has priority over a conflicting unperfected security interest or  
2002 agricultural lien.

2003 (3) The first security interest or agricultural lien to  
2004 attach or become effective has priority if conflicting security  
2005 interests and agricultural liens are unperfected.

2006 (b) For the purposes of subsection (a) (1):

2007 (1) The time of filing or perfection as to a security  
2008 interest in collateral is also the time of filing or perfection as  
2009 to a security interest in proceeds; and

2010 (2) The time of filing or perfection as to a security  
2011 interest in collateral supported by a supporting obligation is  
2012 also the time of filing or perfection as to a security interest in  
2013 the supporting obligation.

2014 (c) Except as otherwise provided in subsection (f), a  
2015 security interest in collateral which qualifies for priority over  
2016 a conflicting security interest under Section 75-9-327, 75-9-328,  
2017 75-9-329, 75-9-330, or 75-9-331 also has priority over a  
2018 conflicting security interest in:

2019 (1) Any supporting obligation for the collateral; and

2020 (2) Proceeds of the collateral if:

2021 (A) The security interest in proceeds is  
2022 perfected;



2023 (B) The proceeds are cash proceeds or of the same  
2024 type as the collateral; and

2025 (C) In the case of proceeds that are proceeds of  
2026 proceeds, all intervening proceeds are cash proceeds, proceeds of  
2027 the same type as the collateral, or an account relating to the  
2028 collateral.

2029 (d) Subject to subsection (e) and except as otherwise  
2030 provided in subsection (f), if a security interest in chattel  
2031 paper, deposit accounts, negotiable documents, instruments,  
2032 investment property, or letter-of-credit rights is perfected by a  
2033 method other than filing, conflicting perfected security interests  
2034 in proceeds of the collateral rank according to priority in time  
2035 of filing.

2036 (e) Subsection (d) applies only if the proceeds of the  
2037 collateral are not cash proceeds, chattel paper, negotiable  
2038 documents, instruments, investment property, or letter-of-credit  
2039 rights.

2040 (f) Subsections (a) through (e) are subject to:

2041 (1) Subsection (g) and the other provisions of this  
2042 part;

2043 (2) Section 75-4-210 with respect to a security  
2044 interest of a collecting bank;

2045 (3) Section 75-5-118 with respect to a security  
2046 interest of an issuer or nominated person; and

2047 (4) Section 75-9-110 with respect to a security  
2048 interest arising under Article 2 or 2A.

2049 (g) A perfected agricultural lien on collateral has priority  
2050 over a conflicting security interest in or agricultural lien on  
2051 the same collateral if the statute creating the agricultural lien  
2052 so provides.

2053 **SECTION 75-9-323. Future advances.**

2054 (a) Except as otherwise provided in subsection (c), for  
2055 purposes of determining the priority of a perfected security



2056 interest under Section 75-9-322(a)(1), perfection of the security  
2057 interest dates from the time an advance is made to the extent that  
2058 the security interest secures an advance that:

2059 (1) Is made while the security interest is perfected  
2060 only:

2061 (A) Under Section 75-9-309 when it attaches; or

2062 (B) Temporarily under Section 75-9-312(e), (f), or  
2063 (g); and

2064 (2) Is not made pursuant to a commitment entered into  
2065 before or while the security interest is perfected by a method  
2066 other than under Section 75-9-309 or 75-9-312(e), (f), or (g).

2067 (b) Except as otherwise provided in subsection (c), a  
2068 security interest is subordinate to the rights of a person that  
2069 becomes a lien creditor to the extent that the security interest  
2070 secures an advance made more than forty-five (45) days after the  
2071 person becomes a lien creditor unless the advance is made:

2072 (1) Without knowledge of the lien; or

2073 (2) Pursuant to a commitment entered into without  
2074 knowledge of the lien.

2075 (c) Subsections (a) and (b) do not apply to a security  
2076 interest held by a secured party that is a buyer of accounts,  
2077 chattel paper, payment intangibles, or promissory notes or a  
2078 consignor.

2079 (d) Except as otherwise provided in subsection (e), a buyer  
2080 of goods other than a buyer in ordinary course of business takes  
2081 free of a security interest to the extent that it secures advances  
2082 made after the earlier of:

2083 (1) The time the secured party acquires knowledge of  
2084 the buyer's purchase; or

2085 (2) Forty-five (45) days after the purchase.

2086 (e) Subsection (d) does not apply if the advance is made  
2087 pursuant to a commitment entered into without knowledge of the



2088 buyer's purchase and before the expiration of the forty-five-day  
2089 period.

2090 (f) Except as otherwise provided in subsection (g), a lessee  
2091 of goods, other than a lessee in ordinary course of business,  
2092 takes the leasehold interest free of a security interest to the  
2093 extent that it secures advances made after the earlier of:

2094 (1) The time the secured party acquires knowledge of  
2095 the lease; or

2096 (2) Forty-five (45) days after the lease contract  
2097 becomes enforceable.

2098 (g) Subsection (f) does not apply if the advance is made  
2099 pursuant to a commitment entered into without knowledge of the  
2100 lease and before the expiration of the forty-five-day period.

2101 **SECTION 75-9-324. Priority of purchase-money security**  
2102 **interests.**

2103 (a) Except as otherwise provided in subsection (g), a  
2104 perfected purchase-money security interest in goods other than  
2105 inventory or livestock has priority over a conflicting security  
2106 interest in the same goods, and, except as otherwise provided in  
2107 Section 75-9-327, a perfected security interest in its  
2108 identifiable proceeds also has priority, if the purchase-money  
2109 security interest is perfected when the debtor receives possession  
2110 of the collateral or within twenty (20) days thereafter.

2111 (b) Subject to subsection (c) and except as otherwise  
2112 provided in subsection (g), a perfected purchase-money security  
2113 interest in inventory has priority over a conflicting security  
2114 interest in the same inventory, has priority over a conflicting  
2115 security interest in chattel paper or an instrument constituting  
2116 proceeds of the inventory and in proceeds of the chattel paper, if  
2117 so provided in Section 75-9-330, and, except as otherwise provided  
2118 in Section 75-9-327, also has priority in identifiable cash  
2119 proceeds of the inventory to the extent the identifiable cash



2120 proceeds are received on or before the delivery of the inventory  
2121 to a buyer, if:

2122           (1) The purchase-money security interest is perfected  
2123 when the debtor receives possession of the inventory;

2124           (2) The purchase-money secured party sends an  
2125 authenticated notification to the holder of the conflicting  
2126 security interest;

2127           (3) The holder of the conflicting security interest  
2128 receives the notification within five (5) years before the debtor  
2129 receives possession of the inventory; and

2130           (4) The notification states that the person sending the  
2131 notification has or expects to acquire a purchase-money security  
2132 interest in inventory of the debtor and describes the inventory.

2133           (c) Subsections (b)(2) through (4) apply only if the holder  
2134 of the conflicting security interest had filed a financing  
2135 statement covering the same types of inventory:

2136           (1) If the purchase-money security interest is  
2137 perfected by filing, before the date of the filing; or

2138           (2) If the purchase-money security interest is  
2139 temporarily perfected without filing or possession under Section  
2140 75-9-312(f), before the beginning of the twenty-day period  
2141 thereunder.

2142           (d) Subject to subsection (e) and except as otherwise  
2143 provided in subsection (g), a perfected purchase-money security  
2144 interest in livestock that are farm products has priority over a  
2145 conflicting security interest in the same livestock, and, except  
2146 as otherwise provided in Section 75-9-327, a perfected security  
2147 interest in their identifiable proceeds and identifiable products  
2148 in their unmanufactured states also has priority, if:

2149           (1) The purchase-money security interest is perfected  
2150 when the debtor receives possession of the livestock;



2151           (2) The purchase-money secured party sends an  
2152 authenticated notification to the holder of the conflicting  
2153 security interest;

2154           (3) The holder of the conflicting security interest  
2155 receives the notification within six (6) months before the debtor  
2156 receives possession of the livestock; and

2157           (4) The notification states that the person sending the  
2158 notification has or expects to acquire a purchase-money security  
2159 interest in livestock of the debtor and describes the livestock.

2160           (e) Subsections (d)(2) through (4) apply only if the holder  
2161 of the conflicting security interest had filed a financing  
2162 statement covering the same types of livestock:

2163           (1) If the purchase-money security interest is  
2164 perfected by filing, before the date of the filing; or

2165           (2) If the purchase-money security interest is  
2166 temporarily perfected without filing or possession under Section  
2167 75-9-312(f), before the beginning of the twenty-day period  
2168 thereunder.

2169           (f) Except as otherwise provided in subsection (g), a  
2170 perfected purchase-money security interest in software has  
2171 priority over a conflicting security interest in the same  
2172 collateral, and, except as otherwise provided in Section 75-9-327,  
2173 a perfected security interest in its identifiable proceeds also  
2174 has priority, to the extent that the purchase-money security  
2175 interest in the goods in which the software was acquired for use  
2176 has priority in the goods and proceeds of the goods under this  
2177 section.

2178           (g) If more than one (1) security interest qualifies for  
2179 priority in the same collateral under subsection (a), (b), (d), or  
2180 (f):

2181           (1) A security interest securing an obligation incurred  
2182 as all or part of the price of the collateral has priority over a  
2183 security interest securing an obligation incurred for value given



2184 to enable the debtor to acquire rights in or the use of  
2185 collateral; and

2186 (2) In all other cases, Section 75-9-322(a) applies to  
2187 the qualifying security interests.

2188 **SECTION 75-9-324A. Priority of production-money security**  
2189 **interests and agricultural liens.**

2190 (a) Except as otherwise provided in subsections (c), (d),  
2191 and (e), if the requirements of subsection (b) are satisfied, a  
2192 perfected production-money security interest in production-money  
2193 crops has priority over a conflicting security interest in the  
2194 same crops and, except as otherwise provided in Section 75-9-327,  
2195 also has priority in their identifiable proceeds.

2196 (b) A production-money security interest has priority under  
2197 subsection (a) if:

2198 (1) The production-money security interest is perfected  
2199 by filing when the production-money secured party first gives new  
2200 value to enable the debtor to produce the crops;

2201 (2) The production-money secured party sends an  
2202 authenticated notification to the holder of the conflicting  
2203 security interest not less than ten (10) or more than thirty (30)  
2204 days before the production-money secured party first gives new  
2205 value to enable the debtor to produce the crops if the holder had  
2206 filed a financing statement covering the crops before the date of  
2207 the filing made by the production-money secured party; and

2208 (3) The notification states that the production-money  
2209 secured party has or expects to acquire a production-money  
2210 security interest in the debtor's crops and provides a description  
2211 of the crops.

2212 (c) Except as otherwise provided in subsection (d) or (e),  
2213 if more than one (1) security interest qualifies for priority in  
2214 the same collateral under subsection (a), the security interests  
2215 rank according to priority in time of filing under Section  
2216 75-9-322(a).



2217 (d) To the extent that a person holding a perfected security  
2218 interest in production-money crops that are the subject of a  
2219 production-money security interest gives new value to enable the  
2220 debtor to produce the production-money crops and the value is in  
2221 fact used for the production of the production-money crops, the  
2222 security interests rank according to priority in time of filing  
2223 under Section 75-9-322(a).

2224 (e) To the extent that a person holds both an agricultural  
2225 lien and a production-money security interest in the same  
2226 collateral securing the same obligations, the rules of priority  
2227 applicable to agricultural liens govern priority.

2228 **SECTION 75-9-325. Priority of security interests in**  
2229 **transferred collateral.**

2230 (a) Except as otherwise provided in subsection (b), a  
2231 security interest created by a debtor is subordinate to a security  
2232 interest in the same collateral created by another person if:

2233 (1) The debtor acquired the collateral subject to the  
2234 security interest created by the other person;

2235 (2) The security interest created by the other person  
2236 was perfected when the debtor acquired the collateral; and

2237 (3) There is no period thereafter when the security  
2238 interest is unperfected.

2239 (b) Subsection (a) subordinates a security interest only if  
2240 the security interest:

2241 (1) Otherwise would have priority solely under Section  
2242 75-9-322(a) or 75-9-324; or

2243 (2) Arose solely under Section 75-2-711(3) or  
2244 75-2A-508(5).

2245 **SECTION 75-9-326. Priority of security interests created by**  
2246 **new debtor.**

2247 (a) Subject to subsection (b), a security interest created  
2248 by a new debtor which is perfected by a filed financing statement  
2249 that is effective solely under Section 75-9-508 in collateral in



2250 which a new debtor has or acquires rights is subordinate to a  
2251 security interest in the same collateral which is perfected other  
2252 than by a filed financing statement that is effective solely under  
2253 Section 75-9-508.

2254 (b) The other provisions of this part determine the priority  
2255 among conflicting security interests in the same collateral  
2256 perfected by filed financing statements that are effective solely  
2257 under Section 75-9-508. However, if the security agreements to  
2258 which a new debtor became bound as debtor were not entered into by  
2259 the same original debtor, the conflicting security interests rank  
2260 according to priority in time of the new debtor's having become  
2261 bound.

2262 **SECTION 75-9-327. Priority of security interests in deposit**  
2263 **account.** The following rules govern priority among conflicting  
2264 security interests in the same deposit account:

2265 (1) A security interest held by a secured party having  
2266 control of the deposit account under Section 75-9-104 has priority  
2267 over a conflicting security interest held by a secured party that  
2268 does not have control.

2269 (2) Except as otherwise provided in paragraphs (3) and  
2270 (4), security interests perfected by control under Section  
2271 75-9-314 rank according to priority in time of obtaining control.

2272 (3) Except as otherwise provided in paragraph (4), a  
2273 security interest held by the bank with which the deposit account  
2274 is maintained has priority over a conflicting security interest  
2275 held by another secured party.

2276 (4) A security interest perfected by control under  
2277 Section 75-9-104(a)(3) has priority over a security interest held  
2278 by the bank with which the deposit account is maintained.

2279 **SECTION 75-9-328. Priority of security interests in**  
2280 **investment property.** The following rules govern priority among  
2281 conflicting security interests in the same investment property:



2282           (1) A security interest held by a secured party having  
2283 control of investment property under Section 75-9-106 has priority  
2284 over a security interest held by a secured party that does not  
2285 have control of the investment property.

2286           (2) Except as otherwise provided in paragraphs (3) and  
2287 (4), conflicting security interests held by secured parties each  
2288 of which has control under Section 75-9-106 rank according to  
2289 priority in time of:

2290                   (A) If the collateral is a security, obtaining  
2291 control;

2292                   (B) If the collateral is a security entitlement  
2293 carried in a securities account and:

2294                           (i) If the secured party obtained control  
2295 under Section 75-8-106(d)(1), the secured party's becoming the  
2296 person for which the securities account is maintained;

2297                           (ii) If the secured party obtained control  
2298 under Section 75-8-106(d)(2), the securities intermediary's  
2299 agreement to comply with the secured party's entitlement orders  
2300 with respect to security entitlements carried or to be carried in  
2301 the securities account; or

2302                           (iii) If the secured party obtained control  
2303 through another person under Section 75-8-106(d)(3), the time on  
2304 which priority would be based under this paragraph if the other  
2305 person were the secured party; or

2306                   (C) If the collateral is a commodity contract  
2307 carried with a commodity intermediary, the satisfaction of the  
2308 requirement for control specified in Section 75-9-106(b)(2) with  
2309 respect to commodity contracts carried or to be carried with the  
2310 commodity intermediary.

2311           (3) A security interest held by a securities  
2312 intermediary in a security entitlement or a securities account  
2313 maintained with the securities intermediary has priority over a  
2314 conflicting security interest held by another secured party.



2315 (4) A security interest held by a commodity  
2316 intermediary in a commodity contract or a commodity account  
2317 maintained with the commodity intermediary has priority over a  
2318 conflicting security interest held by another secured party.

2319 (5) A security interest in a certificated security in  
2320 registered form which is perfected by taking delivery under  
2321 Section 75-9-313(a) and not by control under Section 75-9-314 has  
2322 priority over a conflicting security interest perfected by a  
2323 method other than control.

2324 (6) Conflicting security interests created by a broker,  
2325 securities intermediary, or commodity intermediary which are  
2326 perfected without control under Section 75-9-106 rank equally.

2327 (7) In all other cases, priority among conflicting  
2328 security interests in investment property is governed by Sections  
2329 75-9-322 and 75-9-323.

2330 **SECTION 75-9-329. Priority of security interests in**  
2331 **letter-of-credit right.** The following rules govern priority among  
2332 conflicting security interests in the same letter-of-credit right:

2333 (1) A security interest held by a secured party having  
2334 control of the letter-of-credit right under Section 75-9-107 has  
2335 priority to the extent of its control over a conflicting security  
2336 interest held by a secured party that does not have control.

2337 (2) Security interests perfected by control under  
2338 Section 75-9-314 rank according to priority in time of obtaining  
2339 control.

2340 **SECTION 75-9-330. Priority of purchaser of chattel paper or**  
2341 **instrument.**

2342 (a) A purchaser of chattel paper has priority over a  
2343 security interest in the chattel paper which is claimed merely as  
2344 proceeds of inventory subject to a security interest if:

2345 (1) In good faith and in the ordinary course of the  
2346 purchaser's business, the purchaser gives new value and takes



2347 possession of the chattel paper or obtains control of the chattel  
2348 paper under Section 75-9-105; and

2349           (2) The chattel paper does not indicate that it has  
2350 been assigned to an identified assignee other than the purchaser.

2351           (b) A purchaser of chattel paper has priority over a  
2352 security interest in the chattel paper which is claimed other than  
2353 merely as proceeds of inventory subject to a security interest if  
2354 the purchaser gives new value and takes possession of the chattel  
2355 paper or obtains control of the chattel paper under Section  
2356 75-9-105 in good faith, in the ordinary course of the purchaser's  
2357 business, and without knowledge that the purchase violates the  
2358 rights of the secured party.

2359           (c) Except as otherwise provided in Section 75-9-327, a  
2360 purchaser having priority in chattel paper under subsection (a) or  
2361 (b) also has priority in proceeds of the chattel paper to the  
2362 extent that:

2363           (1) Section 75-9-322 provides for priority in the  
2364 proceeds; or

2365           (2) The proceeds consist of the specific goods covered  
2366 by the chattel paper or cash proceeds of the specific goods, even  
2367 if the purchaser's security interest in the proceeds is  
2368 unperfected.

2369           (d) Except as otherwise provided in Section 75-9-331(a), a  
2370 purchaser of an instrument has priority over a security interest  
2371 in the instrument perfected by a method other than possession if  
2372 the purchaser gives value and takes possession of the instrument  
2373 in good faith and without knowledge that the purchase violates the  
2374 rights of the secured party.

2375           (e) For purposes of subsections (a) and (b), the holder of a  
2376 purchase-money security interest in inventory gives new value for  
2377 chattel paper constituting proceeds of the inventory.

2378           (f) For purposes of subsections (b) and (d), if chattel  
2379 paper or an instrument indicates that it has been assigned to an



2380 identified secured party other than the purchaser, a purchaser of  
2381 the chattel paper or instrument has knowledge that the purchase  
2382 violates the rights of the secured party.

2383           **SECTION 75-9-331. Priority of rights of purchasers of**  
2384 **instruments, documents, and securities under other articles;**  
2385 **priority of interests in financial assets and security**  
2386 **entitlements under Article 8.**

2387           (a) This article does not limit the rights of a holder in  
2388 due course of a negotiable instrument, a holder to which a  
2389 negotiable document of title has been duly negotiated, or a  
2390 protected purchaser of a security. These holders or purchasers  
2391 take priority over an earlier security interest, even if  
2392 perfected, to the extent provided in Articles 3, 7 and 8.

2393           (b) This article does not limit the rights of or impose  
2394 liability on a person to the extent that the person is protected  
2395 against the assertion of a claim under Article 8.

2396           (c) Filing under this article does not constitute notice of  
2397 a claim or defense to the holders, or purchasers, or persons  
2398 described in subsections (a) and (b).

2399           **SECTION 75-9-332. Transfer of money; transfer of funds from**  
2400 **deposit account.**

2401           (a) A transferee of money takes the money free of a security  
2402 interest unless the transferee acts in collusion with the debtor  
2403 in violating the rights of the secured party.

2404           (b) A transferee of funds from a deposit account takes the  
2405 funds free of a security interest in the deposit account unless  
2406 the transferee acts in collusion with the debtor in violating the  
2407 rights of the secured party.

2408           **SECTION 75-9-333. Priority of certain liens arising by**  
2409 **operation of law.**

2410           (a) In this section, "possessory lien" means an interest,  
2411 other than a security interest or an agricultural lien:



2412 (1) Which secures payment or performance of an  
2413 obligation for services or materials furnished with respect to  
2414 goods by a person in the ordinary course of the person's business;

2415 (2) Which is created by statute or rule of law in favor  
2416 of the person; and

2417 (3) Whose effectiveness depends on the person's  
2418 possession of the goods.

2419 (b) A possessory lien on goods has priority over a security  
2420 interest in the goods unless the lien is created by a statute that  
2421 expressly provides otherwise.

2422 **SECTION 75-9-334. Priority of security interests in fixtures**  
2423 **and crops.**

2424 (a) A security interest under this article may be created in  
2425 goods that are fixtures or may continue in goods that become  
2426 fixtures. A security interest does not exist under this article  
2427 in ordinary building materials incorporated into an improvement on  
2428 land.

2429 (b) This article does not prevent creation of an encumbrance  
2430 upon fixtures under real property law.

2431 (c) In cases not governed by subsections (d) through (h), a  
2432 security interest in fixtures is subordinate to a conflicting  
2433 interest of an encumbrancer or owner of the related real property  
2434 other than the debtor.

2435 (d) Except as otherwise provided in subsection (h), a  
2436 perfected security interest in fixtures has priority over a  
2437 conflicting interest of an encumbrancer or owner of the real  
2438 property if the debtor has an interest of record in or is in  
2439 possession of the real property and:

2440 (1) The security interest is a purchase-money security  
2441 interest;

2442 (2) The interest of the encumbrancer or owner arises  
2443 before the goods become fixtures; and



2444           (3) The security interest is perfected by a fixture  
2445 filing before the goods become fixtures or within twenty (20) days  
2446 thereafter.

2447           (e) A perfected security interest in fixtures has priority  
2448 over a conflicting interest of an encumbrancer or owner of the  
2449 real property if:

2450           (1) The debtor has an interest of record in the real  
2451 property or is in possession of the real property and the security  
2452 interest:

2453           (A) Is perfected by a fixture filing before the  
2454 interest of the encumbrancer or owner is of record; and

2455           (B) Has priority over any conflicting interest of  
2456 a predecessor in title of the encumbrancer or owner;

2457           (2) Before the goods become fixtures, the security  
2458 interest is perfected by any method permitted by this article and  
2459 the fixtures are readily removable:

2460           (A) Factory or office machines;

2461           (B) Equipment that is not primarily used or leased  
2462 for use in the operation of the real property; or

2463           (C) Replacements of domestic appliances that are  
2464 consumer goods;

2465           (3) The conflicting interest is a lien on the real  
2466 property obtained by legal or equitable proceedings after the  
2467 security interest was perfected by any method permitted by this  
2468 article; or

2469           (4) The security interest is:

2470           (A) Created in a manufactured home in a  
2471 manufactured-home transaction; and

2472           (B) Perfected pursuant to a statute described in  
2473 Section 75-9-311(a)(2).

2474           (f) A security interest in fixtures, whether or not  
2475 perfected, has priority over a conflicting interest of an  
2476 encumbrancer or owner of the real property if:



2477 (1) The encumbrancer or owner has, in an authenticated  
2478 record, consented to the security interest or disclaimed an  
2479 interest in the goods as fixtures; or

2480 (2) The debtor has a right to remove the goods as  
2481 against the encumbrancer or owner.

2482 (g) The priority of the security interest under paragraph  
2483 (f)(2) continues for a reasonable time if the debtor's right to  
2484 remove the goods as against the encumbrancer or owner terminates.

2485 (h) A mortgage is a construction mortgage to the extent that  
2486 it secures an obligation incurred for the construction of an  
2487 improvement on land, including the acquisition cost of the land,  
2488 if a recorded record of the mortgage so indicates. Except as  
2489 otherwise provided in subsections (e) and (f), a security interest  
2490 in fixtures is subordinate to a construction mortgage if a record  
2491 of the mortgage is recorded before the goods become fixtures and  
2492 the goods become fixtures before the completion of the  
2493 construction. A mortgage has this priority to the same extent as  
2494 a construction mortgage to the extent that it is given to  
2495 refinance a construction mortgage.

2496 (i) A perfected security interest in crops growing on real  
2497 property has priority over a conflicting interest of an  
2498 encumbrancer or owner of the real property if the debtor has an  
2499 interest of record in or is in possession of the real property.

2500 **SECTION 75-9-335. Accessions.**

2501 (a) A security interest may be created in an accession and  
2502 continues in collateral that becomes an accession.

2503 (b) If a security interest is perfected when the collateral  
2504 becomes an accession, the security interest remains perfected in  
2505 the collateral.

2506 (c) Except as otherwise provided in subsection (d), the  
2507 other provisions of this part determine the priority of a security  
2508 interest in an accession.



2509 (d) A security interest in an accession is subordinate to a  
2510 security interest in the whole which is perfected by compliance  
2511 with the requirements of a certificate-of-title statute under  
2512 Section 75-9-311(b).

2513 (e) After default, subject to Part 6, a secured party may  
2514 remove an accession from other goods if the security interest in  
2515 the accession has priority over the claims of every person having  
2516 an interest in the whole.

2517 (f) A secured party that removes an accession from other  
2518 goods under subsection (e) shall promptly reimburse any holder of  
2519 a security interest or other lien on, or owner of, the whole or of  
2520 the other goods, other than the debtor, for the cost of repair of  
2521 any physical injury to the whole or the other goods. The secured  
2522 party need not reimburse the holder or owner for any diminution in  
2523 value of the whole or the other goods caused by the absence of the  
2524 accession removed or by any necessity for replacing it. A person  
2525 entitled to reimbursement may refuse permission to remove until  
2526 the secured party gives adequate assurance for the performance of  
2527 the obligation to reimburse.

2528 **SECTION 75-9-336. Commingled goods.**

2529 (a) In this section, "commingled goods" means goods that are  
2530 physically united with other goods in such a manner that their  
2531 identity is lost in a product or mass.

2532 (b) A security interest does not exist in commingled goods  
2533 as such. However, a security interest may attach to a product or  
2534 mass that results when goods become commingled goods.

2535 (c) If collateral becomes commingled goods, a security  
2536 interest attaches to the product or mass.

2537 (d) If a security interest in collateral is perfected before  
2538 the collateral becomes commingled goods, the security interest  
2539 that attaches to the product or mass under subsection (c) is  
2540 perfected.



2541 (e) Except as otherwise provided in subsection (f), the  
2542 other provisions of this part determine the priority of a security  
2543 interest that attaches to the product or mass under subsection  
2544 (c).

2545 (f) If more than one (1) security interest attaches to the  
2546 product or mass under subsection (c), the following rules  
2547 determine priority:

2548 (1) A security interest that is perfected under  
2549 subsection (d) has priority over a security interest that is  
2550 unperfected at the time the collateral becomes commingled goods.

2551 (2) If more than one (1) security interest is perfected  
2552 under subsection (d), the security interests rank equally in  
2553 proportion to the value of the collateral at the time it became  
2554 commingled goods.

2555 **SECTION 75-9-337. Priority of security interests in goods**  
2556 **covered by certificate of title.** If, while a security interest in  
2557 goods is perfected by any method under the law of another  
2558 jurisdiction, this state issues a certificate of title that does  
2559 not show that the goods are subject to the security interest or  
2560 contain a statement that they may be subject to security interests  
2561 not shown on the certificate:

2562 (1) A buyer of the goods, other than a person in the  
2563 business of selling goods of that kind, takes free of the security  
2564 interest if the buyer gives value and receives delivery of the  
2565 goods after issuance of the certificate and without knowledge of  
2566 the security interest; and

2567 (2) The security interest is subordinate to a  
2568 conflicting security interest in the goods that attaches, and is  
2569 perfected under Section 75-9-311(b), after issuance of the  
2570 certificate and without the conflicting secured party's knowledge  
2571 of the security interest.

2572 **SECTION 75-9-338. Priority of security interest or**  
2573 **agricultural lien perfected by filed financing statement providing**



2574 **certain incorrect information.** If a security interest or  
2575 agricultural lien is perfected by a filed financing statement  
2576 providing information described in Section 75-9-516(b) (5) which is  
2577 incorrect at the time the financing statement is filed:

2578 (1) The security interest or agricultural lien is  
2579 subordinate to a conflicting perfected security interest in the  
2580 collateral to the extent that the holder of the conflicting  
2581 security interest gives value in reasonable reliance upon the  
2582 incorrect information; and

2583 (2) A purchaser, other than a secured party, of the  
2584 collateral takes free of the security interest or agricultural  
2585 lien to the extent that, in reasonable reliance upon the incorrect  
2586 information, the purchaser gives value and, in the case of chattel  
2587 paper, documents, goods, instruments, or a security certificate,  
2588 receives delivery of the collateral.

2589 **SECTION 75-9-339. Priority subject to subordination.** This  
2590 article does not preclude subordination by agreement by a person  
2591 entitled to priority.

2592 SUBPART 4. RIGHTS OF BANK

2593 **SECTION 75-9-340. Effectiveness of right of recoupment or**  
2594 **set-off against deposit account.**

2595 (a) Except as otherwise provided in subsection (c), a bank  
2596 with which a deposit account is maintained may exercise any right  
2597 of recoupment or set-off against a secured party that holds a  
2598 security interest in the deposit account.

2599 (b) Except as otherwise provided in subsection (c), the  
2600 application of this article to a security interest in a deposit  
2601 account does not affect a right of recoupment or set-off of the  
2602 secured party as to a deposit account maintained with the secured  
2603 party.

2604 (c) The exercise by a bank of a set-off against a deposit  
2605 account is ineffective against a secured party that holds a  
2606 security interest in the deposit account which is perfected by





2640 agricultural lien, or authority given to a debtor to dispose of or  
2641 use collateral, without more, does not subject a secured party to  
2642 liability in contract or tort for the debtor's acts or omissions.

2643           **SECTION 75-9-403. Agreement not to assert defenses against**  
2644 **assignee.**

2645           (a) In this section, "value" has the meaning provided in  
2646 Section 75-3-303(a).

2647           (b) Except as otherwise provided in this section, an  
2648 agreement between an account debtor and an assignor not to assert  
2649 against an assignee any claim or defense that the account debtor  
2650 may have against the assignor is enforceable by an assignee that  
2651 takes an assignment:

2652                   (1) For value;

2653                   (2) In good faith;

2654                   (3) Without notice of a claim of a property or  
2655 possessory right to the property assigned; and

2656                   (4) Without notice of a defense or claim in recoupment  
2657 of the type that may be asserted against a person entitled to  
2658 enforce a negotiable instrument under Section 75-3-305(a).

2659           (c) Subsection (b) does not apply to defenses of a type that  
2660 may be asserted against a holder in due course of a negotiable  
2661 instrument under Section 75-3-305(b).

2662           (d) In a consumer transaction, if a record evidences the  
2663 account debtor's obligation, law other than this article requires  
2664 that the record include a statement to the effect that the rights  
2665 of an assignee are subject to claims or defenses that the account  
2666 debtor could assert against the original obligee, and the record  
2667 does not include such a statement:

2668                   (1) The record has the same effect as if the record  
2669 included such a statement; and

2670                   (2) The account debtor may assert against an assignee  
2671 those claims and defenses that would have been available if the  
2672 record included such a statement.



2673 (e) This section is subject to law other than this article  
2674 which establishes a different rule for an account debtor who is an  
2675 individual and who incurred the obligation primarily for personal,  
2676 family, or household purposes.

2677 (f) Except as otherwise provided in subsection (d), this  
2678 section does not displace law other than this article which gives  
2679 effect to an agreement by an account debtor not to assert a claim  
2680 or defense against an assignee.

2681 **SECTION 75-9-404. Rights acquired by assignee; claims and**  
2682 **defenses against assignee.**

2683 (a) Unless an account debtor has made an enforceable  
2684 agreement not to assert defenses or claims, and subject to  
2685 subsections (b) through (e), the rights of an assignee are subject  
2686 to:

2687 (1) All terms of the agreement between the account  
2688 debtor and assignor and any defense or claim in recoupment arising  
2689 from the transaction that gave rise to the contract; and

2690 (2) Any other defense or claim of the account debtor  
2691 against the assignor which accrues before the account debtor  
2692 receives a notification of the assignment authenticated by the  
2693 assignor or the assignee.

2694 (b) Subject to subsection (c) and except as otherwise  
2695 provided in subsection (d), the claim of an account debtor against  
2696 an assignor may be asserted against an assignee under subsection  
2697 (a) only to reduce the amount the account debtor owes.

2698 (c) This section is subject to law other than this article  
2699 which establishes a different rule for an account debtor who is an  
2700 individual and who incurred the obligation primarily for personal,  
2701 family, or household purposes.

2702 (d) In a consumer transaction, if a record evidences the  
2703 account debtor's obligation, law other than this article requires  
2704 that the record include a statement to the effect that the account  
2705 debtor's recovery against an assignee with respect to claims and



2706 defenses against the assignor may not exceed amounts paid by the  
2707 account debtor under the record, and the record does not include  
2708 such a statement, the extent to which a claim of an account debtor  
2709 against the assignor may be asserted against an assignee is  
2710 determined as if the record included such a statement.

2711 (e) This section does not apply to an assignment of a  
2712 health-care-insurance receivable.

2713 **SECTION 75-9-405. Modification of assigned contract.**

2714 (a) A modification of or substitution for an assigned  
2715 contract is effective against an assignee if made in good faith.  
2716 The assignee acquires corresponding rights under the modified or  
2717 substituted contract. The assignment may provide that the  
2718 modification or substitution is a breach of contract by the  
2719 assignor. This subsection is subject to subsections (b) through  
2720 (d).

2721 (b) Subsection (a) applies to the extent that:

2722 (1) The right to payment or a part thereof under an  
2723 assigned contract has not been fully earned by performance; or

2724 (2) The right to payment or a part thereof has been  
2725 fully earned by performance and the account debtor has not  
2726 received notification of the assignment under Section 75-9-406(a).

2727 (c) This section is subject to law other than this article  
2728 which establishes a different rule for an account debtor who is an  
2729 individual and who incurred the obligation primarily for personal,  
2730 family, or household purposes.

2731 (d) This section does not apply to an assignment of a  
2732 health-care-insurance receivable.

2733 **SECTION 75-9-406. Discharge of account debtor; notification**  
2734 **of assignment; identification and proof of assignment;**  
2735 **restrictions on assignment of accounts, chattel paper, payment**  
2736 **intangibles, and promissory notes ineffective.**

2737 (a) Subject to subsections (b) through (i), an account  
2738 debtor on an account, chattel paper, or a payment intangible may



2739 discharge its obligation by paying the assignor until, but not  
2740 after, the account debtor receives a notification, authenticated  
2741 by the assignor or the assignee, that the amount due or to become  
2742 due has been assigned and that payment is to be made to the  
2743 assignee. After receipt of the notification, the account debtor  
2744 may discharge its obligation by paying the assignee and may not  
2745 discharge the obligation by paying the assignor.

2746 (b) Subject to subsection (h), notification is ineffective  
2747 under subsection (a):

2748 (1) If it does not reasonably identify the rights  
2749 assigned;

2750 (2) To the extent that an agreement between an account  
2751 debtor and a seller of a payment intangible limits the account  
2752 debtor's duty to pay a person other than the seller and the  
2753 limitation is effective under law other than this article; or

2754 (3) At the option of an account debtor, if the  
2755 notification notifies the account debtor to make less than the  
2756 full amount of any installment or other periodic payment to the  
2757 assignee, even if:

2758 (A) Only a portion of the account, chattel paper,  
2759 or payment intangible has been assigned to that assignee;

2760 (B) A portion has been assigned to another  
2761 assignee; or

2762 (C) The account debtor knows that the assignment  
2763 to that assignee is limited.

2764 (c) Subject to subsection (h), if requested by the account  
2765 debtor, an assignee shall seasonably furnish reasonable proof that  
2766 the assignment has been made. Unless the assignee complies, the  
2767 account debtor may discharge its obligation by paying the  
2768 assignor, even if the account debtor has received a notification  
2769 under subsection (a).

2770 (d) Except as otherwise provided in subsection (e) and  
2771 Sections 75-2A-303 and 75-9-407, and subject to subsection (h), a



2772 term in an agreement between an account debtor and an assignor or  
2773 in a promissory note is ineffective to the extent that it:

2774 (1) Prohibits, restricts, or requires the consent of  
2775 the account debtor or person obligated on the promissory note to  
2776 the assignment or transfer of, or the creation, attachment,  
2777 perfection or enforcement of a security interest in, the account,  
2778 chattel paper, payment intangible, or promissory note; or

2779 (2) Provides that the assignment or transfer or the  
2780 creation, attachment, perfection, or enforcement of the security  
2781 interest may give rise to a default, breach, right of recoupment,  
2782 claim, defense, termination, right of termination, or remedy under  
2783 the account, chattel paper, payment intangible, or promissory  
2784 note.

2785 (e) Subsection (d) does not apply to the sale of a payment  
2786 intangible or promissory note.

2787 (f) Except as otherwise provided in Sections 75-2A-303 and  
2788 75-9-407 and subject to subsections (h) and (i), a rule of law,  
2789 statute or regulation that prohibits, restricts, or requires the  
2790 consent of a government, governmental body or official, or account  
2791 debtor to the assignment or transfer of, or creation of a security  
2792 interest in, an account or chattel paper is ineffective to the  
2793 extent that the rule of law, statute, or regulation:

2794 (1) Prohibits, restricts, or requires the consent of  
2795 the government, governmental body or official, or account debtor  
2796 to the assignment or transfer of, or the creation, attachment,  
2797 perfection, or enforcement of a security interest in the account  
2798 or chattel paper; or

2799 (2) Provides that the assignment or transfer or the  
2800 creation, attachment, perfection, or enforcement of the security  
2801 interest may give rise to a default, breach, right of recoupment,  
2802 claim, defense, termination, right of termination, or remedy under  
2803 the account or chattel paper.



2804 (g) Subject to subsection (h), an account debtor may not  
2805 waive or vary its option under subsection (b)(3).

2806 (h) This section is subject to law other than this article  
2807 which establishes a different rule for an account debtor who is an  
2808 individual and who incurred the obligation primarily for personal,  
2809 family, or household purposes.

2810 (i) This section does not apply to an assignment of a  
2811 health-care-insurance receivable.

2812 (j) This section prevails over any inconsistent provision of  
2813 an existing or future statute, rule or regulation of this state  
2814 unless the provision is contained in a statute of this state,  
2815 refers expressly to this section, and states that the provision  
2816 prevails over this section.

2817 **SECTION 75-9-407. Restrictions on creation or enforcement of**  
2818 **security interest in leasehold interest or in lessor's residual**  
2819 **interest.**

2820 (a) Except as otherwise provided in subsection (b), a term  
2821 in a lease agreement is ineffective to the extent that it:

2822 (1) Prohibits, restricts, or requires the consent of a  
2823 party to the lease to the assignment or transfer of, or the  
2824 creation, attachment, perfection, or enforcement of a security  
2825 interest in, an interest of a party under the lease contract or in  
2826 the lessor's residual interest in the goods; or

2827 (2) Provides that the assignment or transfer or the  
2828 creation, attachment, perfection, or enforcement of the security  
2829 interest may give rise to a default, breach, right of recoupment,  
2830 claim, defense, termination, right of termination, or remedy under  
2831 the lease.

2832 (b) Except as otherwise provided in Section 75-2A-303(7), a  
2833 term described in subsection (a)(2) is effective to the extent  
2834 that there is:

2835 (1) A transfer by the lessee of the lessee's right of  
2836 possession or use of the goods in violation of the term; or



2837           (2) A delegation of a material performance of either  
2838 party to the lease contract in violation of the term.

2839           (c) The creation, attachment, perfection, or enforcement of  
2840 a security interest in the lessor's interest under the lease  
2841 contract or the lessor's residual interest in the goods is not a  
2842 transfer that materially impairs the lessee's prospect of  
2843 obtaining return performance or materially changes the duty of or  
2844 materially increases the burden or risk imposed on the lessee  
2845 within the purview of Section 75-2A-303(4) unless, and then only  
2846 to the extent that, enforcement actually results in a delegation  
2847 of material performance of the lessor.

2848           **SECTION 75-9-408. Restrictions on assignment of promissory**  
2849 **notes, health-care-insurance receivables, and certain general**  
2850 **intangibles ineffective.**

2851           (a) Except as otherwise provided in subsection (b), a term  
2852 in a promissory note or in an agreement between an account debtor  
2853 and a debtor which relates to a health-care-insurance receivable  
2854 or a general intangible, including a contract, permit, license, or  
2855 franchise, and which term prohibits, restricts, or requires the  
2856 consent of the person obligated on the promissory note or the  
2857 account debtor to, the assignment or transfer of, or creation,  
2858 attachment, or perfection of a security interest in, the  
2859 promissory note, health-care-insurance receivable, or general  
2860 intangible, is ineffective to the extent that the term:

2861           (1) Would impair the creation, attachment, or  
2862 perfection of a security interest; or

2863           (2) Provides that the assignment or transfer or the  
2864 creation, attachment, or perfection of the security interest may  
2865 give rise to a default, breach, right of recoupment, claim,  
2866 defense, termination, right of termination, or remedy under the  
2867 promissory note, health-care-insurance receivable, or general  
2868 intangible.



2869           (b) Subsection (a) applies to a security interest in a  
2870 payment intangible or promissory note only if the security  
2871 interest arises out of a sale of the payment intangible or  
2872 promissory note.

2873           (c) A rule of law, statute, or regulation that prohibits,  
2874 restricts, or requires the consent of a government, governmental  
2875 body or official, person obligated on a promissory note, or  
2876 account debtor to the assignment or transfer of, or creation of a  
2877 security interest in, a promissory note, health-care-insurance  
2878 receivable, or general intangible, including a contract, permit,  
2879 license, or franchise between an account debtor and a debtor, is  
2880 ineffective to the extent that the rule of law, statute, or  
2881 regulation:

2882                 (1) Would impair the creation, attachment, or  
2883 perfection of a security interest; or

2884                 (2) Provides that the assignment or transfer or the  
2885 creation, attachment, or perfection of the security interest may  
2886 give rise to a default, breach, right of recoupment, claim,  
2887 defense, termination, right of termination, or remedy under the  
2888 promissory note, health-care-insurance receivable, or general  
2889 intangible.

2890           (d) To the extent that a term in a promissory note or in an  
2891 agreement between an account debtor and a debtor which relates to  
2892 a health-care-insurance receivable or general intangible or a rule  
2893 of law, statute, or regulation described in subsection (c) would  
2894 be effective under law other than this article but is ineffective  
2895 under subsection (a) or (c), the creation, attachment, or  
2896 perfection of a security interest in the promissory note,  
2897 health-care-insurance receivable, or general intangible:

2898                 (1) Is not enforceable against the person obligated on  
2899 the promissory note or the account debtor;

2900                 (2) Does not impose a duty or obligation on the person  
2901 obligated on the promissory note or the account debtor;



2902           (3) Does not require the person obligated on the  
2903 promissory note or the account debtor to recognize the security  
2904 interest, pay or render performance to the secured party, or  
2905 accept payment or performance from the secured party;

2906           (4) Does not entitle the secured party to use or assign  
2907 the debtor's rights under the promissory note,  
2908 health-care-insurance receivable, or general intangible, including  
2909 any related information or materials furnished to the debtor in  
2910 the transaction giving rise to the promissory note,  
2911 health-care-insurance receivable, or general intangible;

2912           (5) Does not entitle the secured party to use, assign,  
2913 possess, or have access to any trade secrets or confidential  
2914 information of the person obligated on the promissory note or the  
2915 account debtor; and

2916           (6) Does not entitle the secured party to enforce the  
2917 security interest in the promissory note, health-care-insurance  
2918 receivable, or general intangible.

2919           (e) This section prevails over any inconsistent provision of  
2920 an existing or future statute, rule or regulation of this state  
2921 unless the provision is contained in a statute of this state,  
2922 refers expressly to this section, and states that the provision  
2923 prevails over this section.

2924           **SECTION 75-9-409. Restrictions on assignment of**  
2925 **letter-of-credit rights ineffective.**

2926           (a) A term in a letter of credit or a rule of law, statute,  
2927 regulation, custom, or practice applicable to the letter of credit  
2928 which prohibits, restricts, or requires the consent of an  
2929 applicant, issuer, or nominated person to a beneficiary's  
2930 assignment of or creation of a security interest in a  
2931 letter-of-credit right is ineffective to the extent that the term  
2932 or rule of law, statute, regulation, custom, or practice:



2933 (1) Would impair the creation, attachment, or  
2934 perfection of a security interest in the letter-of-credit right;  
2935 or

2936 (2) Provides that the assignment or the creation,  
2937 attachment, or perfection of the security interest may give rise  
2938 to a default, breach, right of recoupment, claim, defense,  
2939 termination, right of termination, or remedy under the  
2940 letter-of-credit right.

2941 (b) To the extent that a term in a letter of credit is  
2942 ineffective under subsection (a) but would be effective under law  
2943 other than this article or a custom or practice applicable to the  
2944 letter of credit, to the transfer of a right to draw or otherwise  
2945 demand performance under the letter of credit, or to the  
2946 assignment of a right to proceeds of the letter of credit, the  
2947 creation, attachment, or perfection of a security interest in the  
2948 letter-of-credit right:

2949 (1) Is not enforceable against the applicant, issuer,  
2950 nominated person, or transferee beneficiary;

2951 (2) Imposes no duties or obligations on the applicant,  
2952 issuer, nominated person, or transferee beneficiary; and

2953 (3) Does not require the applicant, issuer, nominated  
2954 person, or transferee beneficiary to recognize the security  
2955 interest, pay or render performance to the secured party, or  
2956 accept payment or other performance from the secured party.

2957 **PART 5**

2958 **FILING**

2959 **SUBPART 1. FILING OFFICE; CONTENTS AND**

2960 **EFFECTIVENESS OF FINANCING STATEMENT**

2961 **SECTION 75-9-501. Filing office.**

2962 (a) Except as otherwise provided in subsection (b), if the  
2963 local law of this state governs perfection of a security interest  
2964 or agricultural lien, the office in which to file a financing



2965 statement to perfect the security interest or agricultural lien  
2966 is:

2967 (1) The office designated for the filing or recording  
2968 of a record of a mortgage on the related real property, if:

2969 (A) The collateral is as-extracted collateral or  
2970 timber to be cut; or

2971 (B) The financing statement is filed as a fixture  
2972 filing and the collateral is goods that are or are to become  
2973 fixtures; or

2974 (2) The Office of the Secretary of State in all other  
2975 cases, including a case in which the collateral is goods that are  
2976 or are to become fixtures and the financing statement is not filed  
2977 as a fixture filing.

2978 (b) The office in which to file a financing statement to  
2979 perfect a security interest in collateral, including fixtures, of  
2980 a transmitting utility is the Office of the Secretary of State.  
2981 The financing statement also constitutes a fixture filing as to  
2982 the collateral indicated in the financing statement which is or is  
2983 to become fixtures.

2984 **SECTION 75-9-502. Contents of financing statement; record of**  
2985 **mortgage as financing statement; time of filing financing**  
2986 **statement.**

2987 (a) Subject to subsection (b), a financing statement is  
2988 sufficient only if it:

2989 (1) Provides the name of the debtor;

2990 (2) Provides the name of the secured party or a  
2991 representative of the secured party; and

2992 (3) Indicates the collateral covered by the financing  
2993 statement.

2994 (b) Except as otherwise provided in Section 75-9-501(b), to  
2995 be sufficient, a financing statement that covers as-extracted  
2996 collateral or timber to be cut, or which is filed as a fixture



2997 filing and covers goods that are or are to become fixtures, must  
2998 satisfy subsection (a) and also:

2999 (1) Indicate that it covers this type of collateral;

3000 (2) Indicate that it is to be filed for record in the  
3001 real property records;

3002 (3) Provide a description of the real property to which  
3003 the collateral is related sufficient to give constructive notice  
3004 of a mortgage under the law of this state if the description were  
3005 contained in a record of the mortgage of the real property; and

3006 (4) If the debtor does not have an interest of record  
3007 in the real property, provide the name of a record owner.

3008 (c) A record of a mortgage is effective, from the date of  
3009 recording, as a financing statement filed as a fixture filing or  
3010 as a financing statement covering as-extracted collateral or  
3011 timber to be cut only if:

3012 (1) The record indicates the goods or accounts that it  
3013 covers;

3014 (2) The goods are or are to become fixtures related to  
3015 the real property described in the record or the collateral is  
3016 related to the real property described in the record and is  
3017 as-extracted collateral or timber to be cut;

3018 (3) The record satisfies the requirements for a  
3019 financing statement in this section other than an indication that  
3020 it is to be filed in the real property records; and

3021 (4) The record is duly recorded.

3022 (d) A financing statement may be filed before a security  
3023 agreement is made or a security interest otherwise attaches.

3024 **SECTION 75-9-503. Name of debtor and secured party.**

3025 (a) A financing statement sufficiently provides the name of  
3026 the debtor:

3027 (1) If the debtor is a registered organization, only if  
3028 the financing statement provides the name of the debtor indicated



3029 on the public record of the debtor's jurisdiction of organization  
3030 which shows the debtor to have been organized;

3031 (2) If the debtor is a decedent's estate, only if the  
3032 financing statement provides the name of the decedent and  
3033 indicates that the debtor is an estate;

3034 (3) If the debtor is a trust or a trustee acting with  
3035 respect to property held in trust, only if the financing  
3036 statement:

3037 (A) Provides the name specified for the trust in  
3038 its organic documents or, if no name is specified, provides the  
3039 name of the settlor and additional information sufficient to  
3040 distinguish the debtor from other trusts having one or more of the  
3041 same settlors; and

3042 (B) Indicates, in the debtor's name or otherwise,  
3043 that the debtor is a trust or is a trustee acting with respect to  
3044 property held in trust; and

3045 (4) In other cases:

3046 (A) If the debtor has a name, only if it provides  
3047 the individual or organizational name of the debtor; and

3048 (B) If the debtor does not have a name, only if it  
3049 provides the names of the partners, members, associates, or other  
3050 persons comprising the debtor.

3051 (b) A financing statement that provides the name of the  
3052 debtor in accordance with subsection (a) is not rendered  
3053 ineffective by the absence of:

3054 (1) A trade name or other name of the debtor; or

3055 (2) Unless required under subsection (a)(4)(B), names  
3056 of partners, members, associates, or other persons comprising the  
3057 debtor.

3058 (c) A financing statement that provides only the debtor's  
3059 trade name does not sufficiently provide the name of the debtor.



3060 (d) Failure to indicate the representative capacity of a  
3061 secured party or representative of a secured party does not affect  
3062 the sufficiency of a financing statement.

3063 (e) A financing statement may provide the name of more than  
3064 one (1) debtor and the name of more than one (1) secured party.

3065 **SECTION 75-9-504. Indication of collateral.** A financing  
3066 statement sufficiently indicates the collateral that it covers if  
3067 the financing statement provides:

3068 (1) A description of the collateral pursuant to Section  
3069 75-9-108; or

3070 (2) An indication that the financing statement covers  
3071 all assets or all personal property.

3072 **SECTION 75-9-505. Filing and compliance with other statutes  
3073 and treaties for consignments, leases, other bailments, and other  
3074 transactions.**

3075 (a) A consignor, lessor, or other bailor of goods, a  
3076 licensor, or a buyer of a payment intangible or promissory note  
3077 may file a financing statement, or may comply with a statute or  
3078 treaty described in Section 75-9-311(a), using the terms  
3079 "consignor," "consignee," "lessor," "lessee," "bailor," "bailee,"  
3080 "licensor," "licensee," "owner," "registered owner," "buyer,"  
3081 "seller," or words of similar import, instead of the terms  
3082 "secured party" and "debtor."

3083 (b) This part applies to the filing of a financing statement  
3084 under subsection (a) and, as appropriate, to compliance that is  
3085 equivalent to filing a financing statement under Section  
3086 75-9-311(b), but the filing or compliance is not of itself a  
3087 factor in determining whether the collateral secures an  
3088 obligation. If it is determined for another reason that the  
3089 collateral secures an obligation, a security interest held by the  
3090 consignor, lessor, bailor, licensor, owner, or buyer which  
3091 attaches to the collateral is perfected by the filing or  
3092 compliance.



3093           **SECTION 75-9-506. Effect of errors or omissions.**

3094           (a) A financing statement substantially satisfying the  
3095 requirements of this part is effective, even if it has minor  
3096 errors or omissions, unless the errors or omissions make the  
3097 financing statement seriously misleading.

3098           (b) Except as otherwise provided in subsection (c), a  
3099 financing statement that fails sufficiently to provide the name of  
3100 the debtor in accordance with Section 75-9-503(a) is seriously  
3101 misleading.

3102           (c) If a search of the records of the filing office under  
3103 the debtor's correct name, using the filing office's standard  
3104 search logic, if any, would disclose a financing statement that  
3105 fails sufficiently to provide the name of the debtor in accordance  
3106 with Section 75-9-503(a), the name provided does not make the  
3107 financing statement seriously misleading.

3108           (d) For purposes of Section 75-9-508(b), the "debtor's  
3109 correct name" in subsection (c) means the correct name of the new  
3110 debtor.

3111           **SECTION 75-9-507. Effect of certain events on effectiveness**  
3112 **of financing statement.**

3113           (a) A filed financing statement remains effective with  
3114 respect to collateral that is sold, exchanged, leased, licensed,  
3115 or otherwise disposed of and in which a security interest or  
3116 agricultural lien continues, even if the secured party knows of or  
3117 consents to the disposition.

3118           (b) Except as otherwise provided in subsection (c) and  
3119 Section 75-9-508, a financing statement is not rendered  
3120 ineffective if, after the financing statement is filed, the  
3121 information provided in the financing statement becomes seriously  
3122 misleading under Section 75-9-506.

3123           (c) If a debtor so changes its name that a filed financing  
3124 statement becomes seriously misleading under Section 75-9-506:



3125           (1) The financing statement is effective to perfect a  
3126 security interest in collateral acquired by the debtor before, or  
3127 within four (4) months after, the change; and

3128           (2) The financing statement is not effective to perfect  
3129 a security interest in collateral acquired by the debtor more than  
3130 four (4) months after the change, unless an amendment to the  
3131 financing statement which renders the financing statement not  
3132 seriously misleading is filed within four (4) months after the  
3133 change.

3134           **SECTION 75-9-508. Effectiveness of financing statement if**  
3135 **new debtor becomes bound by security agreement.**

3136           (a) Except as otherwise provided in this section, a filed  
3137 financing statement naming an original debtor is effective to  
3138 perfect a security interest in collateral in which a new debtor  
3139 has or acquires rights to the extent that the financing statement  
3140 would have been effective had the original debtor acquired rights  
3141 in the collateral.

3142           (b) If the difference between the name of the original  
3143 debtor and that of the new debtor causes a filed financing  
3144 statement that is effective under subsection (a) to be seriously  
3145 misleading under Section 75-9-506:

3146           (1) The financing statement is effective to perfect a  
3147 security interest in collateral acquired by the new debtor before,  
3148 and within four (4) months after, the new debtor becomes bound  
3149 under Section 75-9-203(d); and

3150           (2) The financing statement is not effective to perfect  
3151 a security interest in collateral acquired by the new debtor more  
3152 than four (4) months after the new debtor becomes bound under  
3153 Section 75-9-203(d) unless an initial financing statement  
3154 providing the name of the new debtor is filed before the  
3155 expiration of that time.



3156 (c) This section does not apply to collateral as to which a  
3157 filed financing statement remains effective against the new debtor  
3158 under Section 75-9-507(a).

3159 **SECTION 75-9-509. Persons entitled to file a record.**

3160 (a) A person may file an initial financing statement,  
3161 amendment that adds collateral covered by a financing statement,  
3162 or amendment that adds a debtor to a financing statement only if:

3163 (1) The debtor authorizes the filing in an  
3164 authenticated record or pursuant to subsection (b) or (c); or

3165 (2) The person holds an agricultural lien that has  
3166 become effective at the time of filing and the financing statement  
3167 covers only collateral in which the person holds an agricultural  
3168 lien.

3169 (b) By authenticating or becoming bound as debtor by a  
3170 security agreement, a debtor or new debtor authorizes the filing  
3171 of an initial financing statement, and an amendment, covering:

3172 (1) The collateral described in the security agreement;  
3173 and

3174 (2) Property that becomes collateral under Section  
3175 75-9-315(a)(2), whether or not the security agreement expressly  
3176 covers proceeds.

3177 (c) By acquiring collateral in which a security interest or  
3178 agricultural lien continues under Section 75-9-315(a)(1), a debtor  
3179 authorizes the filing of an initial financing statement, and an  
3180 amendment, covering the collateral and property that becomes  
3181 collateral under Section 75-9-315(a)(2).

3182 (d) A person may file an amendment other than an amendment  
3183 that adds collateral covered by a financing statement or an  
3184 amendment that adds a debtor to a financing statement only if:

3185 (1) The secured party of record authorizes the filing;  
3186 or

3187 (2) The amendment is a termination statement for a  
3188 financing statement as to which the secured party of record has



3189 failed to file or send a termination statement as required by  
3190 Section 75-9-513(a) or (c), the debtor authorizes the filing, and  
3191 the termination statement indicates that the debtor authorized it  
3192 to be filed.

3193 (e) If there is more than one (1) secured party of record  
3194 for a financing statement, each secured party of record may  
3195 authorize the filing of an amendment under subsection (d).

3196 **SECTION 75-9-510. Effectiveness of filed record.**

3197 (a) A filed record is effective only to the extent that it  
3198 was filed by a person that may file it under Section 75-9-509.

3199 (b) A record authorized by one (1) secured party of record  
3200 does not affect the financing statement with respect to another  
3201 secured party of record.

3202 (c) A continuation statement that is not filed within the  
3203 six-month period prescribed by Section 75-9-515(d) is ineffective.

3204 **SECTION 75-9-511. Secured party of record.**

3205 (a) A secured party of record with respect to a financing  
3206 statement is a person whose name is provided as the name of the  
3207 secured party or a representative of the secured party in an  
3208 initial financing statement that has been filed. If an initial  
3209 financing statement is filed under Section 75-9-514(a), the  
3210 assignee named in the initial financing statement is the secured  
3211 party of record with respect to the financing statement.

3212 (b) If an amendment of a financing statement which provides  
3213 the name of a person as a secured party or a representative of a  
3214 secured party is filed, the person named in the amendment is a  
3215 secured party of record. If an amendment is filed under Section  
3216 75-9-514(b), the assignee named in the amendment is a secured  
3217 party of record.

3218 (c) A person remains a secured party of record until the  
3219 filing of an amendment of the financing statement which deletes  
3220 the person.

3221 **SECTION 75-9-512. Amendment of financing statement.**



3222 (a) Subject to Section 75-9-509, a person may add or delete  
3223 collateral covered by, continue or terminate the effectiveness of,  
3224 or, subject to subsection (e), otherwise amend the information  
3225 provided in, a financing statement by filing an amendment that:

3226 (1) Identifies, by its file number, the initial  
3227 financing statement to which the amendment relates; and

3228 (2) If the amendment relates to an initial financing  
3229 statement filed for record in a filing office described in Section  
3230 75-9-501(a)(1), provides the date that the initial financing  
3231 statement was filed for record and the information specified in  
3232 Section 75-9-502(b).

3233 (b) Except as otherwise provided in Section 75-9-515, the  
3234 filing of an amendment does not extend the period of effectiveness  
3235 of the financing statement.

3236 (c) A financing statement that is amended by an amendment  
3237 that adds collateral is effective as to the added collateral only  
3238 from the date of the filing of the amendment.

3239 (d) A financing statement that is amended by an amendment  
3240 that adds a debtor is effective as to the added debtor only from  
3241 the date of the filing of the amendment.

3242 (e) An amendment is ineffective to the extent it:

3243 (1) Purports to delete all debtors and fails to provide  
3244 the name of a debtor to be covered by the financing statement; or

3245 (2) Purports to delete all secured parties of record  
3246 and fails to provide the name of a new secured party of record.

3247 **SECTION 75-9-513. Termination statement.**

3248 (a) A secured party shall cause the secured party of record  
3249 for a financing statement to file a termination statement for the  
3250 financing statement if the financing statement covers consumer  
3251 goods and:

3252 (1) There is no obligation secured by the collateral  
3253 covered by the financing statement and no commitment to make an  
3254 advance, incur an obligation, or otherwise give value; or



3255           (2) The debtor did not authorize the filing of the  
3256 initial financing statement.

3257           (b) To comply with subsection (a), a secured party shall  
3258 cause the secured party of record to file the termination  
3259 statement:

3260           (1) Within one (1) month after there is no obligation  
3261 secured by the collateral covered by the financing statement and  
3262 no commitment to make an advance, incur an obligation, or  
3263 otherwise give value; or

3264           (2) If earlier, within twenty (20) days after the  
3265 secured party receives an authenticated demand from a debtor.

3266           (c) In cases not governed by subsection (a), within twenty  
3267 (20) days after a secured party receives an authenticated demand  
3268 from a debtor, the secured party shall cause the secured party of  
3269 record for a financing statement to send to the debtor a  
3270 termination statement for the financing statement or file the  
3271 termination statement in the filing office if:

3272           (1) Except in the case of a financing statement  
3273 covering accounts or chattel paper that has been sold or goods  
3274 that are the subject of a consignment, there is no obligation  
3275 secured by the collateral covered by the financing statement and  
3276 no commitment to make an advance, incur an obligation, or  
3277 otherwise give value;

3278           (2) The financing statement covers accounts or chattel  
3279 paper that has been sold but as to which the account debtor or  
3280 other person obligated has discharged its obligation;

3281           (3) The financing statement covers goods that were the  
3282 subject of a consignment to the debtor but are not in the debtor's  
3283 possession; or

3284           (4) The debtor did not authorize the filing of the  
3285 initial financing statement.

3286           (d) Except as otherwise provided in Section 75-9-510, upon  
3287 the filing of a termination statement with the filing office, the



3288 financing statement to which the termination statement relates  
3289 ceases to be effective. Except as otherwise provided in Section  
3290 75-9-510, for purposes of Sections 75-9-519(g), 75-9-522(a) and  
3291 75-9-523(c), the filing with the filing office of a termination  
3292 statement relating to a financing statement that indicates that  
3293 the debtor is a transmitting utility also causes the effectiveness  
3294 of the financing statement to lapse.

3295 **SECTION 75-9-514. Assignment of powers of secured party of**  
3296 **record.**

3297 (a) Except as otherwise provided in subsection (c), an  
3298 initial financing statement may reflect an assignment of all of  
3299 the secured party's power to authorize an amendment to the  
3300 financing statement by providing the name and mailing address of  
3301 the assignee as the name and address of the secured party.

3302 (b) Except as otherwise provided in subsection (c), a  
3303 secured party of record may assign of record all or part of its  
3304 power to authorize an amendment to a financing statement by filing  
3305 in the filing office an amendment of the financing statement  
3306 which:

3307 (1) Identifies, by its file number, the initial  
3308 financing statement to which it relates;

3309 (2) Provides the name of the assignor; and

3310 (3) Provides the name and mailing address of the  
3311 assignee.

3312 (c) An assignment of record of a security interest in a  
3313 fixture covered by a record of a mortgage which is effective as a  
3314 financing statement filed as a fixture filing under Section  
3315 75-9-502(c) may be made only by an assignment of record of the  
3316 mortgage in the manner provided by law of this state other than  
3317 the Uniform Commercial Code.

3318 **SECTION 75-9-515. Duration and effectiveness of financing**  
3319 **statement; effect of lapsed financing statement.**



3320 (a) Except as otherwise provided in subsections (b), (e),  
3321 (f), and (g), a filed financing statement is effective for a  
3322 period of five (5) years after the date of filing.

3323 (b) Except as otherwise provided in subsections (e), (f),  
3324 and (g), an initial financing statement filed in connection with a  
3325 public-finance transaction or manufactured-home transaction is  
3326 effective for a period of thirty (30) years after the date of  
3327 filing if it indicates that it is filed in connection with a  
3328 public-finance transaction or manufactured-home transaction.

3329 (c) The effectiveness of a filed financing statement lapses  
3330 on the expiration of the period of its effectiveness unless before  
3331 the lapse a continuation statement is filed pursuant to subsection  
3332 (d). Upon lapse, a financing statement ceases to be effective and  
3333 any security interest or agricultural lien that was perfected by  
3334 the financing statement becomes unperfected, unless the security  
3335 interest is perfected otherwise. If the security interest or  
3336 agricultural lien becomes unperfected upon lapse, it is deemed  
3337 never to have been perfected as against a purchaser of the  
3338 collateral for value.

3339 (d) A continuation statement may be filed only within six  
3340 (6) months before the expiration of the five-year period specified  
3341 in subsection (a) or the thirty-year period specified in  
3342 subsection (b), whichever is applicable.

3343 (e) Except as otherwise provided in Section 75-9-510, upon  
3344 timely filing of a continuation statement, the effectiveness of  
3345 the initial financing statement continues for a period of five (5)  
3346 years commencing on the day on which the financing statement would  
3347 have become ineffective in the absence of the filing. Upon the  
3348 expiration of the five-year period, the financing statement lapses  
3349 in the same manner as provided in subsection (c), unless, before  
3350 the lapse, another continuation statement is filed pursuant to  
3351 subsection (d). Succeeding continuation statements may be filed



3352 in the same manner to continue the effectiveness of the initial  
3353 financing statement.

3354 (f) If a debtor is a transmitting utility and a filed  
3355 financing statement so indicates, the financing statement is  
3356 effective until a termination statement is filed.

3357 (g) A record of a mortgage that is effective as a financing  
3358 statement filed as a fixture filing under Section 75-9-502(c)  
3359 remains effective as a financing statement filed as a fixture  
3360 filing until the mortgage is released or satisfied of record or  
3361 its effectiveness otherwise terminates as to the real property.

3362 **SECTION 75-9-516. What constitutes filing; effectiveness of**  
3363 **filing.**

3364 (a) Except as otherwise provided in subsection (b),  
3365 communication of a record to a filing office and tender of the  
3366 filing fee or acceptance of the record by the filing office  
3367 constitutes filing.

3368 (b) Filing does not occur with respect to a record that a  
3369 filing office refuses to accept because:

3370 (1) The record is not communicated by a method or  
3371 medium of communication authorized by the filing office;

3372 (2) An amount equal to or greater than the applicable  
3373 filing fee is not tendered;

3374 (3) The filing office is unable to index the record  
3375 because:

3376 (A) In the case of an initial financing statement,  
3377 the record does not provide a name for the debtor;

3378 (B) In the case of an amendment or correction  
3379 statement, the record:

3380 (i) Does not identify the initial financing  
3381 statement as required by Section 75-9-512 or 75-9-518, as  
3382 applicable; or

3383 (ii) Identifies an initial financing  
3384 statement whose effectiveness has lapsed under Section 75-9-515;



3385 (C) In the case of an initial financing statement  
3386 that provides the name of a debtor identified as an individual or  
3387 an amendment that provides a name of a debtor identified as an  
3388 individual which was not previously provided in the financing  
3389 statement to which the record relates, the record does not  
3390 identify the debtor's last name; or

3391 (D) In the case of a record filed, or filed for  
3392 record, in the filing office described in Section 75-9-501(a)(1),  
3393 the record does not provide a sufficient description of the real  
3394 property to which it relates;

3395 (4) In the case of an initial financing statement or an  
3396 amendment that adds a secured party of record, the record does not  
3397 provide a name and mailing address for the secured party of  
3398 record;

3399 (5) In the case of an initial financing statement or an  
3400 amendment that provides a name of a debtor which was not  
3401 previously provided in the financing statement to which the  
3402 amendment relates, the record does not:

3403 (A) Provide a mailing address for the debtor;

3404 (B) Indicate whether the debtor is an individual  
3405 or an organization; or

3406 (C) If the financing statement indicates that the  
3407 debtor is an organization, provide:

3408 (i) A type of organization for the debtor;

3409 (ii) A jurisdiction of organization for the  
3410 debtor; or

3411 (iii) An organizational identification number  
3412 for the debtor or indicate that the debtor has none;

3413 (6) In the case of an assignment reflected in an  
3414 initial financing statement under Section 75-9-514(a) or an  
3415 amendment filed under Section 75-9-514(b), the record does not  
3416 provide a name and mailing address for the assignee; or



3417 (7) In the case of a continuation statement, the record  
3418 is not filed within the six-month period prescribed by Section  
3419 75-9-515(d).

3420 (c) For purposes of subsection (b):

3421 (1) A record does not provide information if the filing  
3422 office is unable to read or decipher the information; and

3423 (2) A record that does not indicate that it is an  
3424 amendment or identify an initial financing statement to which it  
3425 relates, as required by Section 75-9-512, 75-9-514 or 75-9-518, is  
3426 an initial financing statement.

3427 (d) A record that is communicated to the filing office with  
3428 tender of the filing fee, but which the filing office refuses to  
3429 accept for a reason other than one set forth in subsection (b), is  
3430 effective as a filed record except as against a purchaser of the  
3431 collateral which gives value in reasonable reliance upon the  
3432 absence of the record from the files.

3433 **SECTION 75-9-517. Effect of indexing errors.** The failure of  
3434 the filing office to index a record correctly does not affect the  
3435 effectiveness of the filed record.

3436 **SECTION 75-9-518. Claim concerning inaccurate or wrongfully**  
3437 **filed record.**

3438 (a) A person may file in the filing office a correction  
3439 statement with respect to a record indexed there under the  
3440 person's name if the person believes that the record is inaccurate  
3441 or was wrongfully filed.

3442 (b) A correction statement must:

3443 (1) Identify the record to which it relates by:

3444 (A) The file number assigned to the initial  
3445 financing statement to which the record relates; and

3446 (B) If the correction statement relates to a  
3447 record filed for record in a filing office described in Section  
3448 75-9-501(a)(1), the date that the initial financing statement was



3449 filed for record and the information specified in Section  
3450 75-9-502(b);

3451 (2) Indicate that it is a correction statement; and

3452 (3) Provide the basis for the person's belief that the  
3453 record is inaccurate and indicate the manner in which the person  
3454 believes the record should be amended to cure any inaccuracy or  
3455 provide the basis for the person's belief that the record was  
3456 wrongfully filed.

3457 (c) The filing of a correction statement does not affect the  
3458 effectiveness of an initial financing statement or other filed  
3459 record.

3460 SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

3461 **SECTION 75-9-519. Numbering, maintaining, and indexing**  
3462 **records; communicating information provided in records.**

3463 (a) For each record filed in a filing office, the filing  
3464 office shall:

3465 (1) Assign a unique number to the filed record;

3466 (2) Create a record that bears the number assigned to  
3467 the filed record and the date and time of filing;

3468 (3) Maintain the filed record for public inspection;

3469 and

3470 (4) Index the filed record in accordance with

3471 subsections (c), (d), and (e).

3472 (b) Except as provided in subsection (i), a file number  
3473 assigned after January 1, 2002, must include a digit that:

3474 (1) Is mathematically derived from or related to the  
3475 other digits of the file number; and

3476 (2) Aids the filing office in determining whether a  
3477 number communicated as the file number includes a single-digit or  
3478 transpositional error.

3479 (c) Except as otherwise provided in subsections (d) and (e),  
3480 the filing office shall:



3481           (1) Index an initial financing statement according to  
3482 the name of the debtor and index all filed records relating to the  
3483 initial financing statement in a manner that associates with one  
3484 another an initial financing statement and all filed records  
3485 relating to the initial financing statement; and

3486           (2) Index a record that provides a name of a debtor  
3487 which was not previously provided in the financing statement to  
3488 which the record relates also according to the name that was not  
3489 previously provided.

3490           (d) If a financing statement is filed as a fixture filing or  
3491 covers as-extracted collateral or timber to be cut, it must be  
3492 filed for record and the filing office shall index it:

3493           (1) Under the names of the debtor and of each owner of  
3494 record shown on the financing statement as if they were the  
3495 mortgagors under a mortgage of the real property described; and

3496           (2) To the extent that the law of this state provides  
3497 for indexing of records of mortgages under the name of the  
3498 mortgagee, under the name of the secured party as if the secured  
3499 party were the mortgagee thereunder, or, if indexing is by  
3500 description, as if the financing statement were a record of a  
3501 mortgage of the real property described.

3502           (e) If a financing statement is filed as a fixture filing or  
3503 covers as-extracted collateral or timber to be cut, the filing  
3504 office shall index an assignment filed under Section 75-9-514(a)  
3505 or an amendment filed under Section 75-9-514(b):

3506           (1) Under the name of the assignor as grantor; and

3507           (2) To the extent that the law of this state provides  
3508 for indexing a record of the assignment of a mortgage under the  
3509 name of the assignee, under the name of the assignee.

3510           (f) The filing office shall maintain a capability:

3511           (1) To retrieve a record by the name of the debtor and:

3512           (A) If the filing office is described in Section  
3513 75-9-501(a)(1), by the file number assigned to the initial



3514 financing statement to which the record relates and the date and  
3515 time that the record was filed for record; or

3516 (B) If the filing office is described in Section  
3517 75-9-501(a)(2), by the file number assigned to the initial  
3518 financing statement to which the record relates; and

3519 (2) To associate and retrieve with one another an  
3520 initial financing statement and each filed record relating to the  
3521 initial financing statement.

3522 (g) The filing office may not remove a debtor's name from  
3523 the index until one (1) year after the effectiveness of a  
3524 financing statement naming the debtor lapses under Section  
3525 75-9-515 with respect to all secured parties of record.

3526 (h) Except as provided in subsection (i), the filing office  
3527 shall perform the acts required by subsections (a) through (e) at  
3528 the time and in the manner prescribed by filing-office rule, but  
3529 not later than two (2) business days after the filing office  
3530 receives the record in question.

3531 (i) Subsections (b) and (h) do not apply to a filing office  
3532 described in Section 75-9-501(a)(1).

3533 **SECTION 75-9-520. Acceptance and refusal to accept record.**

3534 (a) A filing office shall refuse to accept a record for  
3535 filing for a reason set forth in Section 75-9-516(b) and may  
3536 refuse to accept a record for filing only for a reason set forth  
3537 in Section 75-9-516(b).

3538 (b) If a filing office refuses to accept a record for  
3539 filing, it shall communicate to the person that presented the  
3540 record the fact of and reason for the refusal and the date and  
3541 time the record would have been filed had the filing office  
3542 accepted it. The communication must be made at the time and in  
3543 the manner prescribed by filing-office rule but, in the case of a  
3544 filing office described in Section 75-9-501(a)(1), in no event  
3545 more than two (2) business days after the filing office receives  
3546 the record.



3547 (c) A filed financing statement satisfying Section  
3548 75-9-502(a) and (b) is effective, even if the filing office is  
3549 required to refuse to accept it for filing under subsection (a).  
3550 However, Section 75-9-338 applies to a filed financing statement  
3551 providing information described in Section 75-9-516(b)(5) which is  
3552 incorrect at the time the financing statement is filed.

3553 (d) If a record communicated to a filing office provides  
3554 information that relates to more than one (1) debtor, this part  
3555 applies as to each debtor separately.

3556 **SECTION 75-9-521. Uniform form of written financing**  
3557 **statement and amendment.**

3558 (a) A filing office that accepts written records may not  
3559 refuse to accept a written initial financing statement in the form  
3560 and format set forth in the final official text of the 1999  
3561 revisions to Article 9 of the Uniform Commercial Code promulgated  
3562 by The American Law Institute and the National Conference of  
3563 Commissioners on Uniform State Laws, except for a reason set forth  
3564 in Section 75-9-516(b).

3565 (b) A filing office that accepts written records may not  
3566 refuse to accept a written record in the form and format set forth  
3567 in the final official text of the 1999 revisions to Article 9 of  
3568 the Uniform Commercial Code promulgated by The American Law  
3569 Institute and the National Conference of Commissioners on Uniform  
3570 State Laws, except for a reason set forth in Section 75-9-516(b).

3571 **SECTION 75-9-522. Maintenance and destruction of records.**

3572 (a) The filing office shall maintain a record of the  
3573 information provided in a filed financing statement for at least  
3574 one (1) year after the effectiveness of the financing statement  
3575 has lapsed under Section 75-9-515 with respect to all secured  
3576 parties of record. The record must be retrievable by using the  
3577 name of the debtor and:

3578 (1) If the record was filed or recorded in the filing  
3579 office described in Section 75-9-501(a)(1), by using the file



3580 number assigned to the initial financing statement to which the  
3581 record relates and the date that the record was filed for record;  
3582 or

3583 (2) If the record was filed in the filing office  
3584 described in Section 75-9-501(a)(2), by using the file number  
3585 assigned to the initial financing statement to which the record  
3586 relates.

3587 (b) Except to the extent that a statute governing  
3588 disposition of public records provides otherwise, the filing  
3589 office immediately may destroy any written record evidencing a  
3590 financing statement. However, if the filing office destroys a  
3591 written record, it shall maintain another record of the financing  
3592 statement which complies with subsection (a).

3593 **SECTION 75-9-523. Information from filing office; sale or**  
3594 **license of records.**

3595 (a) If a person that files a written record requests an  
3596 acknowledgment of the filing, the filing office shall send to the  
3597 person an image of the record showing the number assigned to the  
3598 record pursuant to Section 75-9-519(a)(1) and the date and time of  
3599 the filing of the record. However, if the person furnishes a copy  
3600 of the record to the filing office, the filing office may instead:

3601 (1) Note upon the copy the number assigned to the  
3602 record pursuant to Section 75-9-519(a)(1) and the date and time of  
3603 the filing of the record; and

3604 (2) Send the copy to the person.

3605 (b) If a person files a record other than a written record,  
3606 the filing office shall communicate to the person an  
3607 acknowledgment that provides:

3608 (1) The information in the record;

3609 (2) The number assigned to the record pursuant to  
3610 Section 75-9-519(a)(1); and

3611 (3) The date and time of the filing of the record.



3612 (c) The filing office shall communicate or otherwise make  
3613 available in a record the following information to any person that  
3614 requests it:

3615 (1) Whether there is on file on a date and time  
3616 specified by the filing office, but not a date earlier than three  
3617 (3) business days before the filing office receives the request,  
3618 any financing statement that:

3619 (A) Designates a particular debtor or, if the  
3620 request so states, designates a particular debtor at the address  
3621 specified in the request;

3622 (B) Has not lapsed under Section 75-9-515 with  
3623 respect to all secured parties of record; and

3624 (C) If the request so states, has lapsed under  
3625 Section 75-9-515 and a record of which is maintained by the filing  
3626 office under Section 75-9-522(a);

3627 (2) The date and time of filing of each financing  
3628 statement; and

3629 (3) The information provided in each financing  
3630 statement.

3631 (d) In complying with its duty under subsection (c), the  
3632 filing office may communicate information in any medium. However,  
3633 if requested, the filing office shall communicate information by  
3634 issuing its written certificate or, if so requested in writing, a  
3635 record that can be admitted into evidence in the courts of this  
3636 state without extrinsic evidence of its authenticity.

3637 (e) The filing office shall perform the acts required by  
3638 subsections (a) through (d) at the time and in the manner  
3639 prescribed by filing-office rule, but, in the case of a filing  
3640 office described in Section 75-9-501(a)(2), not later than two (2)  
3641 business days after the filing office receives the request.

3642 (f) At least weekly, the filing office shall offer to sell  
3643 or license to the public on a nonexclusive basis, in bulk, copies  
3644 of all records filed in it under this part, in every medium from



3645 time to time available to the filing office. This subsection  
3646 shall apply only to records filed in a filing office described in  
3647 Section 75-9-501(a)(2).

3648 **SECTION 75-9-524. Delay by filing office.** Delay by the  
3649 filing office beyond a time limit prescribed by this part is  
3650 excused if:

3651 (1) The delay is caused by interruption of  
3652 communication or computer facilities, war, emergency conditions,  
3653 failure of equipment, or other circumstances beyond control of the  
3654 filing office; and

3655 (2) The filing office exercises reasonable diligence  
3656 under the circumstances.

3657 **SECTION 75-9-525. Fees.**

3658 (a) Except as otherwise provided in subsection (e), the fee  
3659 for filing and indexing a record under this part, other than an  
3660 initial financing statement of the kind described in subsection  
3661 (b) is the amount specified in subsection (c), if applicable,  
3662 plus:

3663 (1) Ten Dollars (\$10.00) if the record is communicated  
3664 in writing and is in the standard form prescribed by the Secretary  
3665 of State;

3666 (2) Thirteen Dollars (\$13.00) if the record is  
3667 communicated in writing and is not in the standard form prescribed  
3668 by the Secretary of State; and

3669 (3) Ten Dollars (\$10.00) if the record is communicated  
3670 by another medium authorized by filing-office rule.

3671 (b) Except as otherwise provided in subsection (e), the fee  
3672 for filing and indexing an initial financing statement of the  
3673 following kind is the amount specified in subsection (c), if  
3674 applicable, plus:

3675 (1) Thirteen Dollars (\$13.00) if the financing  
3676 statement indicates that it is filed in connection with a  
3677 public-finance transaction;



3678           (2) Ten Dollars (\$10.00) if the financing statement  
3679 indicates that it is filed in connection with a manufactured-home  
3680 transaction.

3681           (c) Except as otherwise provided in subsection (e), if a  
3682 record is communicated in writing, the fee for each additional  
3683 debtor name more than one (1) required to be indexed is Four  
3684 Dollars (\$4.00).

3685           (d) The fee for responding to a request for information from  
3686 the filing office, including for issuing a certificate showing  
3687 whether there is on file any financing statement naming a  
3688 particular debtor, is:

3689           (1) Five Dollars (\$5.00) if the request is communicated  
3690 in writing on the standard form prescribed by the Secretary of  
3691 State;

3692           (2) Ten Dollars (\$10.00) if the request is communicated  
3693 in writing and is not in the standard form prescribed by the  
3694 Secretary of State;

3695           (3) Three Dollars (\$3.00) if the request is  
3696 communicated by another medium authorized by filing-office rule;  
3697 and

3698           (4) An additional fee of Two Dollars (\$2.00) shall be  
3699 paid by the requesting party for each financing statement listed  
3700 on the filing officer's certificate, the aggregate of which shall  
3701 be billed to the requesting party at the time the filing officer's  
3702 certificate is issued.

3703           (e) This section does not require a fee to the chancery  
3704 clerk with respect to a record of a mortgage which is effective as  
3705 a financing statement filed as a fixture filing or as a financing  
3706 statement covering as-extracted collateral or timber to be cut  
3707 under Section 75-9-502(c). However, the recording and  
3708 satisfaction fees to the chancery clerk that otherwise would be  
3709 applicable under Section 25-7-9 to the record of the mortgage  
3710 apply.



3711           **SECTION 75-9-526. Filing-office rules.**

3712           (a) The Secretary of State shall adopt and publish rules to  
3713 implement this article. The filing-office rules must be:

3714                   (1) Consistent with this article; and

3715                   (2) Adopted and published in accordance with the  
3716 Mississippi Administrative Procedures Act.

3717           (b) To keep the filing-office rules and practices of the  
3718 filing office in harmony with the rules and practices of filing  
3719 offices in other jurisdictions that enact substantially this part,  
3720 and to keep the technology used by the filing office compatible  
3721 with the technology used by filing offices in other jurisdictions  
3722 that enact substantially this part, the Secretary of State, so far  
3723 as is consistent with the purposes, policies, and provisions of  
3724 this article, in adopting, amending, and repealing filing-office  
3725 rules, shall:

3726                   (1) Consult with filing offices in other jurisdictions  
3727 that enact substantially this part; and

3728                   (2) Consult the most recent version of the Model Rules  
3729 promulgated by the International Association of Corporate  
3730 Administrators or any successor organization; and

3731                   (3) Take into consideration the rules and practices of,  
3732 and the technology used by, filing offices in other jurisdictions  
3733 that enact substantially this part.

3734           **SECTION 75-9-527. Duty to report.** The Secretary of State  
3735 shall report annually on or before January 2 to the Legislature on  
3736 the operation of the filing office. The report must contain a  
3737 statement of the extent to which:

3738                   (1) The filing-office rules are not in harmony with the  
3739 rules of filing offices in other jurisdictions that enact  
3740 substantially this part and the reasons for these variations; and

3741                   (2) The filing-office rules are not in harmony with the  
3742 most recent version of the Model Rules promulgated by the



3743 International Association of Corporate Administrators, or any  
3744 successor organization, and the reasons for these variations.

3745 **PART 6**

3746 **DEFAULT**

3747 SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

3748 **SECTION 75-9-601. Rights after default; judicial**  
3749 **enforcement; consignor or buyer of accounts, chattel paper,**  
3750 **payment intangibles, or promissory notes.**

3751 (a) After default, a secured party has the rights provided  
3752 in this part and, except as otherwise provided in Section  
3753 75-9-602, those provided by agreement of the parties. A secured  
3754 party:

3755 (1) May reduce a claim to judgment, foreclose, or  
3756 otherwise enforce the claim, security interest, or agricultural  
3757 lien by any available judicial procedure; and

3758 (2) If the collateral is documents, may proceed either  
3759 as to the documents or as to the goods they cover.

3760 (b) A secured party in possession of collateral or control  
3761 of collateral under Section 75-9-104, 75-9-105, 75-9-106, or  
3762 75-9-107 has the rights and duties provided in Section 75-9-207.

3763 (c) The rights under subsections (a) and (b) are cumulative  
3764 and may be exercised simultaneously.

3765 (d) Except as otherwise provided in subsection (g) and  
3766 Section 75-9-605, after default, a debtor and an obligor have the  
3767 rights provided in this part and by agreement of the parties.

3768 (e) If a secured party has reduced its claim to judgment,  
3769 the lien of any levy that may be made upon the collateral by  
3770 virtue of an execution based upon the judgment relates back to the  
3771 earliest of:

3772 (1) The date of perfection of the security interest or  
3773 agricultural lien in the collateral;

3774 (2) The date of filing a financing statement covering  
3775 the collateral; or



3776 (3) Any date specified in a statute under which the  
3777 agricultural lien was created.

3778 (f) A sale pursuant to an execution is a foreclosure of the  
3779 security interest or agricultural lien by judicial procedure  
3780 within the meaning of this section. A secured party may purchase  
3781 at the sale and thereafter hold the collateral free of any other  
3782 requirements of this article.

3783 (g) Except as otherwise provided in Section 75-9-607(c),  
3784 this part imposes no duties upon a secured party that is a  
3785 consignor or is a buyer of accounts, chattel paper, payment  
3786 intangibles, or promissory notes.

3787 **SECTION 75-9-602. Waiver and variance of rights and duties.**

3788 Except as otherwise provided in Section 75-9-624, to the extent  
3789 that they give rights to a debtor or obligor and impose duties on  
3790 a secured party, the debtor or obligor may not waive or vary the  
3791 rules stated in the following listed sections:

3792 (1) Section 75-9-207(b)(4)(C), which deals with use and  
3793 operation of the collateral by the secured party;

3794 (2) Section 75-9-210, which deals with requests for an  
3795 accounting and requests concerning a list of collateral and  
3796 statement of account;

3797 (3) Section 75-9-607(c), which deals with collection  
3798 and enforcement of collateral;

3799 (4) Sections 75-9-608(a) and 75-9-615(c) to the extent  
3800 that they deal with application or payment of noncash proceeds of  
3801 collection, enforcement, or disposition;

3802 (5) Sections 75-9-608(a) and 75-9-615(d) to the extent  
3803 that they require accounting for or payment of surplus proceeds of  
3804 collateral;

3805 (6) Section 75-9-609 to the extent that it imposes upon  
3806 a secured party that takes possession of collateral without  
3807 judicial process the duty to do so without breach of the peace;



3808           (7) Sections 75-9-610(b), 75-9-611, 75-9-613, and  
3809 75-9-614, which deal with disposition of collateral;

3810           (8) Section 75-9-615(f), which deals with calculation  
3811 of a deficiency or surplus when a disposition is made to the  
3812 secured party, a person related to the secured party, or a  
3813 secondary obligor;

3814           (9) Section 75-9-616, which deals with explanation of  
3815 the calculation of a surplus or deficiency;

3816           (10) Sections 75-9-620, 75-9-621, and 75-9-622, which  
3817 deal with acceptance of collateral in satisfaction of obligation;

3818           (11) Section 75-9-623, which deals with redemption of  
3819 collateral;

3820           (12) Section 75-9-624, which deals with permissible  
3821 waivers; and

3822           (13) Sections 75-9-625 and 75-9-626, which deal with  
3823 the secured party's liability for failure to comply with this  
3824 article.

3825           **SECTION 75-9-603. Agreement on standards concerning rights**  
3826 **and duties.**

3827           (a) The parties may determine by agreement the standards  
3828 measuring the fulfillment of the rights of a debtor or obligor and  
3829 the duties of a secured party under a rule stated in Section  
3830 75-9-602 if the standards are not manifestly unreasonable.

3831           (b) Subsection (a) does not apply to the duty under Section  
3832 75-9-609 to refrain from breaching the peace.

3833           **SECTION 75-9-604. Procedure if security agreement covers**  
3834 **real property or fixtures.**

3835           (a) If a security agreement covers both personal and real  
3836 property, a secured party may proceed:

3837           (1) Under this part as to the personal property without  
3838 prejudicing any rights with respect to the real property; or

3839           (2) As to both the personal property and the real  
3840 property in accordance with the rights with respect to the real



3841 property, in which case the other provisions of this part do not  
3842 apply.

3843 (b) Subject to subsection (c), if a security agreement  
3844 covers goods that are or become fixtures, a secured party may  
3845 proceed:

3846 (1) Under this part; or

3847 (2) In accordance with the rights with respect to real  
3848 property, in which case the other provisions of this part do not  
3849 apply.

3850 (c) Subject to the other provisions of this part, if a  
3851 secured party holding a security interest in fixtures has priority  
3852 over all owners and encumbrancers of the real property, the  
3853 secured party, after default, may remove the collateral from the  
3854 real property.

3855 (d) A secured party that removes collateral shall promptly  
3856 reimburse any encumbrancer or owner of the real property, other  
3857 than the debtor, for the cost of repair of any physical injury  
3858 caused by the removal. The secured party need not reimburse the  
3859 encumbrancer or owner for any diminution in value of the real  
3860 property caused by the absence of the goods removed or by any  
3861 necessity of replacing them. A person entitled to reimbursement  
3862 may refuse permission to remove until the secured party gives  
3863 adequate assurance for the performance of the obligation to  
3864 reimburse.

3865 **SECTION 75-9-605. Unknown debtor or secondary obligor.** A  
3866 secured party does not owe a duty based on its status as secured  
3867 party:

3868 (1) To a person that is a debtor or obligor, unless the  
3869 secured party knows:

3870 (A) That the person is a debtor or obligor;

3871 (B) The identity of the person; and

3872 (C) How to communicate with the person; or



3873           (2) To a secured party or lienholder that has filed a  
3874 financing statement against a person, unless the secured party  
3875 knows:

3876                   (A) That the person is a debtor; and

3877                   (B) The identity of the person.

3878           **SECTION 75-9-606. Time of default for agricultural lien.**

3879 For purposes of this part, a default occurs in connection with an  
3880 agricultural lien at the time the secured party becomes entitled  
3881 to enforce the lien in accordance with the statute under which it  
3882 was created.

3883           **SECTION 75-9-607. Collection and enforcement by secured**  
3884 **party.**

3885           (a) If so agreed, and in any event after default, a secured  
3886 party:

3887                   (1) May notify an account debtor or other person  
3888 obligated on collateral to make payment or otherwise render  
3889 performance to or for the benefit of the secured party;

3890                   (2) May take any proceeds to which the secured party is  
3891 entitled under Section 75-9-315;

3892                   (3) May enforce the obligations of an account debtor or  
3893 other person obligated on collateral and exercise the rights of  
3894 the debtor with respect to the obligation of the account debtor or  
3895 other person obligated on collateral to make payment or otherwise  
3896 render performance to the debtor, and with respect to any property  
3897 that secures the obligations of the account debtor or other person  
3898 obligated on the collateral;

3899                   (4) If it holds a security interest in a deposit  
3900 account perfected by control under Section 75-9-104(a)(1), may  
3901 apply the balance of the deposit account to the obligation secured  
3902 by the deposit account; and

3903                   (5) If it holds a security interest in a deposit  
3904 account perfected by control under Section 75-9-104(a)(2) or (3),



3905 may instruct the bank to pay the balance of the deposit account to  
3906 or for the benefit of the secured party.

3907 (b) If necessary to enable a secured party to exercise under  
3908 subsection (a) (3) the right of a debtor to enforce a mortgage  
3909 nonjudicially, the secured party may record in the office in which  
3910 a record of the mortgage is recorded:

3911 (1) A copy of the security agreement that creates or  
3912 provides for a security interest in the obligation secured by the  
3913 mortgage; and

3914 (2) The secured party's sworn affidavit in recordable  
3915 form stating that:

3916 (A) A default has occurred; and

3917 (B) The secured party is entitled to enforce the  
3918 mortgage nonjudicially.

3919 (c) A secured party shall proceed in a commercially  
3920 reasonable manner if the secured party:

3921 (1) Undertakes to collect from or enforce an obligation  
3922 of an account debtor or other person obligated on collateral; and

3923 (2) Is entitled to charge back uncollected collateral  
3924 or otherwise to full or limited recourse against the debtor or a  
3925 secondary obligor.

3926 (d) A secured party may deduct from the collections made  
3927 pursuant to subsection (c) reasonable expenses of collection and  
3928 enforcement, including reasonable attorney's fees and legal  
3929 expenses incurred by the secured party.

3930 (e) This section does not determine whether an account  
3931 debtor, bank, or other person obligated on collateral owes a duty  
3932 to a secured party.

3933 **SECTION 75-9-608. Application of proceeds of collection or**  
3934 **enforcement; liability for deficiency and right to surplus.**

3935 (a) If a security interest or agricultural lien secures  
3936 payment or performance of an obligation, the following rules  
3937 apply:



3938 (1) A secured party shall apply or pay over for  
3939 application the cash proceeds of collection or enforcement under  
3940 Section 75-9-607 in the following order to:

3941 (A) The reasonable expenses of collection and  
3942 enforcement and, to the extent provided for by agreement and not  
3943 prohibited by law, reasonable attorney's fees and legal expenses  
3944 incurred by the secured party;

3945 (B) The satisfaction of obligations secured by the  
3946 security interest or agricultural lien under which the collection  
3947 or enforcement is made; and

3948 (C) The satisfaction of obligations secured by any  
3949 subordinate security interest in or other lien on the collateral  
3950 subject to the security interest or agricultural lien under which  
3951 the collection or enforcement is made if the secured party  
3952 receives an authenticated demand for proceeds before distribution  
3953 of the proceeds is completed.

3954 (2) If requested by a secured party, a holder of a  
3955 subordinate security interest or other lien shall furnish  
3956 reasonable proof of the interest or lien within a reasonable time.  
3957 Unless the holder complies, the secured party need not comply with  
3958 the holder's demand under paragraph (1) (C).

3959 (3) A secured party need not apply or pay over for  
3960 application noncash proceeds of collection and enforcement under  
3961 Section 75-9-607 unless the failure to do so would be commercially  
3962 unreasonable. A secured party that applies or pays over for  
3963 application noncash proceeds shall do so in a commercially  
3964 reasonable manner.

3965 (4) A secured party shall account to and pay a debtor  
3966 for any surplus, and the obligor is liable for any deficiency.

3967 (b) If the underlying transaction is a sale of accounts,  
3968 chattel paper, payment intangibles, or promissory notes, the  
3969 debtor is not entitled to any surplus, and the obligor is not  
3970 liable for any deficiency.



3971           **SECTION 75-9-609. Secured party's right to take possession**  
3972 **after default.**

3973           (a) After default, a secured party:  
3974                 (1) May take possession of the collateral; and  
3975                 (2) Without removal, may render equipment unusable and  
3976 dispose of collateral on a debtor's premises under Section  
3977 75-9-610.

3978           (b) A secured party may proceed under subsection (a):  
3979                 (1) Pursuant to judicial process; or  
3980                 (2) Without judicial process, if it proceeds without  
3981 breach of the peace.

3982           (c) If so agreed, and in any event after default, a secured  
3983 party may require the debtor to assemble the collateral and make  
3984 it available to the secured party at a place to be designated by  
3985 the secured party which is reasonably convenient to both parties.

3986           **SECTION 75-9-610. Disposition of collateral after default.**

3987           (a) After default, a secured party may sell, lease, license,  
3988 or otherwise dispose of any or all of the collateral in its  
3989 present condition or following any commercially reasonable  
3990 preparation or processing.

3991           (b) Every aspect of a disposition of collateral, including  
3992 the method, manner, time, place, and other terms, must be  
3993 commercially reasonable. If commercially reasonable, a secured  
3994 party may dispose of collateral by public or private proceedings,  
3995 by one or more contracts, as a unit or in parcels, and at any time  
3996 and place and on any terms.

3997           (c) A secured party may purchase collateral:  
3998                 (1) At a public disposition; or  
3999                 (2) At a private disposition only if the collateral is  
4000 of a kind that is customarily sold on a recognized market or the  
4001 subject of widely distributed standard price quotations.

4002           (d) A contract for sale, lease, license, or other  
4003 disposition includes the warranties relating to title, possession,



4004 quiet enjoyment, and the like which by operation of law accompany  
4005 a voluntary disposition of property of the kind subject to the  
4006 contract.

4007 (e) A secured party may disclaim or modify warranties under  
4008 subsection (d):

4009 (1) In a manner that would be effective to disclaim or  
4010 modify the warranties in a voluntary disposition of property of  
4011 the kind subject to the contract of disposition; or

4012 (2) By communicating to the purchaser a record  
4013 evidencing the contract for disposition and including an express  
4014 disclaimer or modification of the warranties.

4015 (f) A record is sufficient to disclaim warranties under  
4016 subsection (e) if it indicates "There is no warranty relating to  
4017 title, possession, quiet enjoyment or the like in this  
4018 disposition" or uses words of similar import.

4019 **SECTION 75-9-611. Notification before disposition of**  
4020 **collateral.**

4021 (a) In this section, "notification date" means the earlier  
4022 of the date on which:

4023 (1) A secured party sends to the debtor and any  
4024 secondary obligor an authenticated notification of disposition; or

4025 (2) The debtor and any secondary obligor waive the  
4026 right to notification.

4027 (b) Except as otherwise provided in subsection (d), a  
4028 secured party that disposes of collateral under Section 75-9-610  
4029 shall send to the persons specified in subsection (c) a reasonable  
4030 authenticated notification of disposition.

4031 (c) To comply with subsection (b), the secured party shall  
4032 send an authenticated notification of disposition to:

4033 (1) The debtor;

4034 (2) Any secondary obligor; and

4035 (3) If the collateral is other than consumer goods:



4036 (A) Any other person from which the secured party  
4037 has received, before the notification date, an authenticated  
4038 notification of a claim of an interest in the collateral;

4039 (B) Any other secured party or lienholder that,  
4040 ten (10) days before the notification date, held a security  
4041 interest in or other lien on the collateral perfected by the  
4042 filing of a financing statement that:

4043 (i) Identified the collateral;

4044 (ii) Was indexed under the debtor's name as  
4045 of that date; and

4046 (iii) Was filed in the office in which to  
4047 file a financing statement against the debtor covering the  
4048 collateral as of that date; and

4049 (C) Any other secured party that, ten (10) days  
4050 before the notification date, held a security interest in the  
4051 collateral perfected by compliance with a statute, regulation, or  
4052 treaty described in Section 75-9-311(a).

4053 (d) Subsection (b) does not apply if the collateral is  
4054 perishable or threatens to decline speedily in value or is of a  
4055 type customarily sold on a recognized market.

4056 (e) A secured party complies with the requirement for  
4057 notification prescribed by subsection (c)(3)(B) if:

4058 (1) Not later than twenty (20) days or earlier than  
4059 thirty (30) days before the notification date, the secured party  
4060 requests, in a commercially reasonable manner, information  
4061 concerning financing statements indexed under the debtor's name in  
4062 the office indicated in subsection (c)(3)(B); and

4063 (2) Before the notification date, the secured party:

4064 (A) Did not receive a response to the request for  
4065 information; or

4066 (B) Received a response to the request for  
4067 information and sent an authenticated notification of disposition



4068 to each secured party or other lienholder named in that response  
4069 whose financing statement covered the collateral.

4070 **SECTION 75-9-612. Timeliness of notification before**  
4071 **disposition of collateral.**

4072 (a) Except as otherwise provided in subsection (b), whether  
4073 a notification is sent within a reasonable time is a question of  
4074 fact.

4075 (b) A notification of disposition sent after default and ten  
4076 (10) days or more before the earliest time of disposition set  
4077 forth in the notification is sent within a reasonable time before  
4078 the disposition.

4079 **SECTION 75-9-613. Contents and form of notification before**  
4080 **disposition of collateral: general.** Except in a consumer-goods  
4081 transaction, the following rules apply:

4082 (1) The contents of a notification of disposition are  
4083 sufficient if the notification:

4084 (A) Describes the debtor and the secured party;

4085 (B) Describes the collateral that is the subject  
4086 of the intended disposition;

4087 (C) States the method of intended disposition;

4088 (D) States that the debtor is entitled to an  
4089 accounting of the unpaid indebtedness and states the charge, if  
4090 any, for an accounting; and

4091 (E) States the time and place of a public  
4092 disposition or the time after which any other disposition is to be  
4093 made.

4094 (2) Whether the contents of a notification that lacks  
4095 any of the information specified in paragraph (1) are nevertheless  
4096 sufficient is a question of fact.

4097 (3) The contents of a notification providing  
4098 substantially the information specified in paragraph (1) are  
4099 sufficient, even if the notification includes:



4100 (A) Information not specified by that paragraph;  
4101 or

4102 (B) Minor errors that are not seriously  
4103 misleading.

4104 (4) A particular phrasing of the notification is not  
4105 required.

4106 (5) The following form of notification and the form  
4107 appearing in Section 75-9-614(3), when completed, each provides  
4108 sufficient information:

4109 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

4110 To: [Name of debtor, obligor or other  
4111 person to which the notification  
4112 is sent]

4113 From: [Name, address and telephone number  
4114 of secured party]

4115 Name of Debtor(s): [Include only if debtor(s) are not  
4116 an addressee]

4117 [For a public disposition:]

4118 We will sell (or lease or license, as applicable) the  
4119 [describe collateral] to the highest qualified bidder in  
4120 public as follows:

4121 Day and Date: \_\_\_\_\_

4122 Time: \_\_\_\_\_

4123 Place: \_\_\_\_\_

4124 [For a private disposition:]

4125 We will sell (or lease or license, as applicable), the  
4126 [describe collateral] privately sometime after [day and  
4127 date].

4128 You are entitled to an accounting of the unpaid indebtedness  
4129 secured by the property that we intend to sell (or lease or  
4130 license, as applicable) (for a charge of \$\_\_\_\_\_). You may  
4131 request an accounting by calling us at [telephone number].

4132 **[END OF FORM]**



4133           **SECTION 75-9-614. Contents and form of notification before**  
4134 **disposition of collateral: consumer-goods transaction.** In a  
4135 consumer-goods transaction, the following rules apply:

4136           (1) A notification of disposition must provide the  
4137 following information:

4138                   (A) The information specified in Section  
4139 75-9-613(1);

4140                   (B) A description of any liability for a  
4141 deficiency of the person to which the notification is sent;

4142                   (C) A telephone number from which the amount that  
4143 must be paid to the secured party to redeem the collateral under  
4144 Section 75-9-623 is available; and

4145                   (D) A telephone number or mailing address from  
4146 which additional information concerning the disposition and the  
4147 obligation secured is available.

4148           (2) A particular phrasing of the notification is not  
4149 required.

4150           (3) The following form of notification, when completed,  
4151 provides sufficient information:

4152   Name and address of secured party:

4153   Date:

4154                                   **NOTICE OF OUR PLAN TO SELL PROPERTY**

4155   Name and address of any obligor who is also a debtor:

4156   Subject:   [Identification of transaction]

4157   We have your:   [describe collateral] because you broke  
4158 promises in our agreement.

4159   [For a public disposition:]

4160   We will sell   [describe collateral] at public sale. A sale  
4161 could include a lease or license. The sale will be held as  
4162 follows:

4163           Date:                                   \_\_\_\_\_

4164           Time:                                   \_\_\_\_\_

4165           Place:                                   \_\_\_\_\_



4166 You may attend the sale and bring bidders if you want.  
4167 [For a private disposition]  
4168 We will sell  [describe collateral]  at private sale sometime  
4169 after  [date] . A sale could include a lease or license.  
4170 The money that we get from the sale (after paying our costs) will  
4171 reduce the amount you owe. If we get less money than you owe, you  
4172  [will or will not, as applicable]  still owe us the difference.  
4173 If we get more money than you owe, you will get the extra money,  
4174 unless we must pay it to someone else.  
4175 You can get the property back at any time before we sell it by  
4176 paying us the full amount you owe which is then due or past due,  
4177 (excluding any amount that would not be due except for an  
4178 acceleration provision), including our expenses. To learn the  
4179 exact amount you must pay, call us at  [telephone number] .  
4180 If you want us to explain to you in writing how we have figured  
4181 the amount that you owe us, you may call us at  [telephone  
4182  number] , or write us at  [secured party's address]  and  
4183 request a written explanation. We will charge you \$\_\_\_\_\_ for  
4184 the explanation if we sent you another written explanation of the  
4185 amount you owe us within the last six (6) months.  
4186 If you need more information about the sale call us at  
4187  [telephone number] , or write us at  [secured party's  
4188  address] .  
4189 We are sending this notice to the following other people who have  
4190 an interest in  [describe collateral]  or who owe money under  
4191 your agreement:  
4192  Names of all other debtors and obligors, if any:

4193 **[END OF FORM]**

4194 (4) A notification in the form of paragraph (3) is  
4195 sufficient, even if additional information appears at the end of  
4196 the form.

4197 (5) A notification in the form of paragraph (3) is  
4198 sufficient, even if it includes errors in information not required



4199 by paragraph (1), unless the error is misleading with respect to  
4200 rights arising under this article.

4201 (6) If a notification under this section is not in the  
4202 form of paragraph (3), law other than this article determines the  
4203 effect of including information not required by paragraph (1).

4204 **SECTION 75-9-615. Application of proceeds of disposition;**  
4205 **liability for deficiency and right to surplus.**

4206 (a) A secured party shall apply or pay over for application  
4207 the cash proceeds of disposition under Section 75-9-610 in the  
4208 following order to:

4209 (1) The reasonable expenses of retaking, holding,  
4210 preparing for disposition, processing, and disposing, and, to the  
4211 extent provided for by agreement and not prohibited by law,  
4212 reasonable attorney's fees and legal expenses incurred by the  
4213 secured party;

4214 (2) The satisfaction of obligations secured by the  
4215 security interest or agricultural lien under which the disposition  
4216 is made;

4217 (3) The satisfaction of obligations secured by any  
4218 subordinate security interest in or other subordinate lien on the  
4219 collateral if:

4220 (A) The secured party receives from the holder of  
4221 the subordinate security interest or other lien an authenticated  
4222 demand for proceeds before distribution of the proceeds is  
4223 completed; and

4224 (B) In a case in which a consignor has an interest  
4225 in the collateral, the subordinate security interest or other lien  
4226 is senior to the interest of the consignor; and

4227 (4) A secured party that is a consignor of the  
4228 collateral if the secured party receives from the consignor an  
4229 authenticated demand for proceeds before distribution of the  
4230 proceeds is completed.



4231 (b) If requested by a secured party, a holder of a  
4232 subordinate security interest or other lien shall furnish  
4233 reasonable proof of the interest or lien within a reasonable time.  
4234 Unless the holder does so, the secured party need not comply with  
4235 the holder's demand under subsection (a)(3).

4236 (c) A secured party need not apply or pay over for  
4237 application noncash proceeds of disposition under Section 75-9-610  
4238 unless the failure to do so would be commercially unreasonable. A  
4239 secured party that applies or pays over for application noncash  
4240 proceeds shall do so in a commercially reasonable manner.

4241 (d) If the security interest under which a disposition is  
4242 made secures payment or performance of an obligation, after making  
4243 the payments and applications required by subsection (a) and  
4244 permitted by subsection (c):

4245 (1) Unless subsection (a)(4) requires the secured party  
4246 to apply or pay over cash proceeds to a consignor, the secured  
4247 party shall account to and pay a debtor for any surplus; and

4248 (2) The obligor is liable for any deficiency.

4249 (e) If the underlying transaction is a sale of accounts,  
4250 chattel paper, payment intangibles, or promissory notes:

4251 (1) The debtor is not entitled to any surplus; and

4252 (2) The obligor is not liable for any deficiency.

4253 (f) The surplus or deficiency following a disposition is  
4254 calculated based on the amount of proceeds that would have been  
4255 realized in a disposition complying with this part to a transferee  
4256 other than the secured party, a person related to the secured  
4257 party, or a secondary obligor if:

4258 (1) The transferee in the disposition is the secured  
4259 party, a person related to the secured party, or a secondary  
4260 obligor; and

4261 (2) The amount of proceeds of the disposition is  
4262 significantly below the range of proceeds that a complying  
4263 disposition to a person other than the secured party, a person



4264 related to the secured party, or a secondary obligor would have  
4265 brought.

4266 (g) A secured party that receives cash proceeds of a  
4267 disposition in good faith and without knowledge that the receipt  
4268 violates the rights of the holder of a security interest or other  
4269 lien that is not subordinate to the security interest or  
4270 agricultural lien under which the disposition is made:

4271 (1) Takes the cash proceeds free of the security  
4272 interest or other lien;

4273 (2) Is not obligated to apply the proceeds of the  
4274 disposition to the satisfaction of obligations secured by the  
4275 security interest or other lien; and

4276 (3) Is not obligated to account to or pay the holder of  
4277 the security interest or other lien for any surplus.

4278 **SECTION 75-9-616. Explanation of calculation of surplus or**  
4279 **deficiency.**

4280 (a) In this section:

4281 (1) "Explanation" means a writing that:

4282 (A) States the amount of the surplus or  
4283 deficiency;

4284 (B) Provides an explanation in accordance with  
4285 subsection (c) of how the secured party calculated the surplus or  
4286 deficiency;

4287 (C) States, if applicable, that future debits,  
4288 credits, charges, including additional credit service charges or  
4289 interest, rebates, and expenses may affect the amount of the  
4290 surplus or deficiency; and

4291 (D) Provides a telephone number or mailing address  
4292 from which additional information concerning the transaction is  
4293 available.

4294 (2) "Request" means a record:

4295 (A) Authenticated by a debtor or consumer obligor;



4296 (B) Requesting that the recipient provide an  
4297 explanation; and

4298 (C) Sent after disposition of the collateral under  
4299 Section 75-9-610.

4300 (b) In a consumer-goods transaction in which the debtor is  
4301 entitled to a surplus or a consumer obligor is liable for a  
4302 deficiency under Section 75-9-615, the secured party shall:

4303 (1) Send an explanation to the debtor or consumer  
4304 obligor, as applicable, after the disposition and:

4305 (A) Before or when the secured party accounts to  
4306 the debtor and pays any surplus or first makes written demand on  
4307 the consumer obligor after the disposition for payment of the  
4308 deficiency; and

4309 (B) Within fourteen (14) days after receipt of a  
4310 request; or

4311 (2) In the case of a consumer obligor who is liable for  
4312 a deficiency, within fourteen (14) days after receipt of a  
4313 request, send to the consumer obligor a record waiving the secured  
4314 party's right to a deficiency.

4315 (c) To comply with subsection (a)(1)(B), a writing must  
4316 provide the following information in the following order:

4317 (1) The aggregate amount of obligations secured by the  
4318 security interest under which the disposition was made, and, if  
4319 the amount reflects a rebate of unearned interest or credit  
4320 service charge, an indication of that fact, calculated as of a  
4321 specified date:

4322 (A) If the secured party takes or receives  
4323 possession of the collateral after default, not more than  
4324 thirty-five (35) days before the secured party takes or receives  
4325 possession; or

4326 (B) If the secured party takes or receives  
4327 possession of the collateral before default or does not take



4328 possession of the collateral, not more than thirty-five (35) days  
4329 before the disposition;

4330 (2) The amount of proceeds of the disposition;

4331 (3) The aggregate amount of the obligations after  
4332 deducting the amount of proceeds;

4333 (4) The amount, in the aggregate or by type, and types  
4334 of expenses, including expenses of retaking, holding, preparing  
4335 for disposition, processing, and disposing of the collateral, and  
4336 attorney's fees secured by the collateral which are known to the  
4337 secured party and relate to the current disposition;

4338 (5) The amount, in the aggregate or by type, and types  
4339 of credits, including rebates of interest or credit service  
4340 charges, to which the obligor is known to be entitled and which  
4341 are not reflected in the amount in paragraph (1); and

4342 (6) The amount of the surplus or deficiency.

4343 (d) A particular phrasing of the explanation is not  
4344 required. An explanation complying substantially with the  
4345 requirements of subsection (a) is sufficient, even if it includes  
4346 minor errors that are not seriously misleading.

4347 (e) A debtor or consumer obligor is entitled without charge  
4348 to one (1) response to a request under this section during any  
4349 six-month period in which the secured party did not send to the  
4350 debtor or consumer obligor an explanation pursuant to subsection  
4351 (b)(1). The secured party may require payment of a charge not  
4352 exceeding Twenty-five Dollars (\$25.00) for each additional  
4353 response.

4354 **SECTION 75-9-617. Rights of transferee of collateral.**

4355 (a) A secured party's disposition of collateral after  
4356 default:

4357 (1) Transfers to a transferee for value all of the  
4358 debtor's rights in the collateral;

4359 (2) Discharges the security interest under which the  
4360 disposition is made; and



4361 (3) Discharges any subordinate security interest or  
4362 other subordinate lien.

4363 (b) A transferee that acts in good faith takes free of the  
4364 rights and interests described in subsection (a), even if the  
4365 secured party fails to comply with this article or the  
4366 requirements of any judicial proceeding.

4367 (c) If a transferee does not take free of the rights and  
4368 interests described in subsection (a), the transferee takes the  
4369 collateral subject to:

4370 (1) The debtor's rights in the collateral;

4371 (2) The security interest or agricultural lien under  
4372 which the disposition is made; and

4373 (3) Any other security interest or other lien.

4374 **SECTION 75-9-618. Rights and duties of certain secondary**  
4375 **obligors.**

4376 (a) A secondary obligor acquires the rights and becomes  
4377 obligated to perform the duties of the secured party after the  
4378 secondary obligor:

4379 (1) Receives an assignment of a secured obligation from  
4380 the secured party;

4381 (2) Receives a transfer of collateral from the secured  
4382 party and agrees to accept the rights and assume the duties of the  
4383 secured party; or

4384 (3) Is subrogated to the rights of a secured party with  
4385 respect to collateral.

4386 (b) An assignment, transfer, or subrogation described in  
4387 subsection (a):

4388 (1) Is not a disposition of collateral under Section  
4389 75-9-610; and

4390 (2) Relieves the secured party of further duties under  
4391 this article.

4392 **SECTION 75-9-619. Transfer of record or legal title.**



4393 (a) In this section, "transfer statement" means a record  
4394 authenticated by a secured party stating:

4395 (1) That the debtor has defaulted in connection with an  
4396 obligation secured by specified collateral;

4397 (2) That the secured party has exercised its  
4398 post-default remedies with respect to the collateral;

4399 (3) That, by reason of the exercise, a transferee has  
4400 acquired the rights of the debtor in the collateral; and

4401 (4) The name and mailing address of the secured party,  
4402 debtor, and transferee.

4403 (b) A transfer statement entitles the transferee to the  
4404 transfer of record of all rights of the debtor in the collateral  
4405 specified in the statement in any official filing, recording,  
4406 registration, or certificate-of-title system covering the  
4407 collateral. If a transfer statement is presented with the  
4408 applicable fee and request form to the official or office  
4409 responsible for maintaining the system, the official or office  
4410 shall:

4411 (1) Accept the transfer statement;

4412 (2) Promptly amend its records to reflect the transfer;

4413 and

4414 (3) If applicable, issue a new appropriate certificate  
4415 of title in the name of the transferee.

4416 (c) A transfer of the record or legal title to collateral to  
4417 a secured party under subsection (b) or otherwise is not of itself  
4418 a disposition of collateral under this article and does not of  
4419 itself relieve the secured party of its duties under this article.

4420 **SECTION 75-9-620. Acceptance of collateral in full or**  
4421 **partial satisfaction of obligation; compulsory disposition of**  
4422 **collateral.**

4423 (a) Except as otherwise provided in subsection (g), a  
4424 secured party may accept collateral in full or partial  
4425 satisfaction of the obligation it secures only if:



4426           (1) The debtor consents to the acceptance under  
4427 subsection (c);

4428           (2) The secured party does not receive, within the time  
4429 set forth in subsection (d), a notification of objection to the  
4430 proposal authenticated by:

4431                   (A) A person to which the secured party was  
4432 required to send a proposal under Section 75-9-621; or

4433                   (B) Any other person, other than the debtor,  
4434 holding an interest in the collateral subordinate to the security  
4435 interest that is the subject of the proposal;

4436           (3) If the collateral is consumer goods, the collateral  
4437 is not in the possession of the debtor when the debtor consents to  
4438 the acceptance; and

4439           (4) Subsection (e) does not require the secured party  
4440 to dispose of the collateral or the debtor waives the requirement  
4441 pursuant to Section 75-9-624.

4442           (b) A purported or apparent acceptance of collateral under  
4443 this section is ineffective unless:

4444                   (1) The secured party consents to the acceptance in an  
4445 authenticated record or sends a proposal to the debtor; and

4446                   (2) The conditions of subsection (a) are met.

4447           (c) For purposes of this section:

4448                   (1) A debtor consents to an acceptance of collateral in  
4449 partial satisfaction of the obligation it secures only if the  
4450 debtor agrees to the terms of the acceptance in a record  
4451 authenticated after default; and

4452                   (2) A debtor consents to an acceptance of collateral in  
4453 full satisfaction of the obligation it secures only if the debtor  
4454 agrees to the terms of the acceptance in a record authenticated  
4455 after default or the secured party:

4456                   (A) Sends to the debtor after default a proposal  
4457 that is unconditional or subject only to a condition that



4458 collateral not in the possession of the secured party be preserved  
4459 or maintained;

4460 (B) In the proposal, proposes to accept collateral  
4461 in full satisfaction of the obligation it secures; and

4462 (C) Does not receive a notification of objection  
4463 authenticated by the debtor within twenty (20) days after the  
4464 proposal is sent.

4465 (d) To be effective under subsection (a)(2), a notification  
4466 of objection must be received by the secured party:

4467 (1) In the case of a person to which the proposal was  
4468 sent pursuant to Section 75-9-621, within twenty (20) days after  
4469 notification was sent to that person; and

4470 (2) In other cases:

4471 (A) Within twenty (20) days after the last  
4472 notification was sent pursuant to Section 75-9-621; or

4473 (B) If a notification was not sent, before the  
4474 debtor consents to the acceptance under subsection (c).

4475 (e) A secured party that has taken possession of collateral  
4476 shall dispose of the collateral pursuant to Section 75-9-610  
4477 within the time specified in subsection (f) if:

4478 (1) Sixty percent (60%) of the cash price has been paid  
4479 in the case of a purchase-money security interest in consumer  
4480 goods; or

4481 (2) Sixty percent (60%) of the principal amount of the  
4482 obligation secured has been paid in the case of a  
4483 nonpurchase-money security interest in consumer goods.

4484 (f) To comply with subsection (e), the secured party shall  
4485 dispose of the collateral:

4486 (1) Within ninety (90) days after taking possession; or

4487 (2) Within any longer period to which the debtor and  
4488 all secondary obligors have agreed in an agreement to that effect  
4489 entered into and authenticated after default.



4490 (g) In a consumer transaction, a secured party may not  
4491 accept collateral in partial satisfaction of the obligation it  
4492 secures.

4493 **SECTION 75-9-621. Notification of proposal to accept**  
4494 **collateral.**

4495 (a) A secured party that desires to accept collateral in  
4496 full or partial satisfaction of the obligation it secures shall  
4497 send its proposal to:

4498 (1) Any person from which the secured party has  
4499 received, before the debtor consented to the acceptance, an  
4500 authenticated notification of a claim of an interest in the  
4501 collateral;

4502 (2) Any other secured party or lienholder that, ten  
4503 (10) days before the debtor consented to the acceptance, held a  
4504 security interest in or other lien on the collateral perfected by  
4505 the filing of a financing statement that:

4506 (A) Identified the collateral;

4507 (B) Was indexed under the debtor's name as of that  
4508 date; and

4509 (C) Was filed in the office or offices in which to  
4510 file a financing statement against the debtor covering the  
4511 collateral as of that date; and

4512 (3) Any other secured party that, ten (10) days before  
4513 the debtor consented to the acceptance, held a security interest  
4514 in the collateral perfected by compliance with a statute,  
4515 regulation, or treaty described in Section 75-9-311(a).

4516 (b) A secured party that desires to accept collateral in  
4517 partial satisfaction of the obligation it secures shall send its  
4518 proposal to any secondary obligor in addition to the persons  
4519 described in subsection (a).

4520 **SECTION 75-9-622. Effect of acceptance of collateral.**

4521 (a) A secured party's acceptance of collateral in full or  
4522 partial satisfaction of the obligation it secures:



4523           (1) Discharges the obligation to the extent consented  
4524 to by the debtor;

4525           (2) Transfers to the secured party all of a debtor's  
4526 rights in the collateral;

4527           (3) Discharges the security interest or agricultural  
4528 lien that is the subject of the debtor's consent and any  
4529 subordinate security interest or other subordinate lien; and

4530           (4) Terminates any other subordinate interest.

4531           (b) A subordinate interest is discharged or terminated under  
4532 subsection (a), even if the secured party fails to comply with  
4533 this article.

4534           **SECTION 75-9-623. Right to redeem collateral.**

4535           (a) A debtor, any secondary obligor, or any other secured  
4536 party or lienholder may redeem collateral.

4537           (b) To redeem collateral, a person shall tender:

4538           (1) Fulfillment of all obligations secured by the  
4539 collateral then due or past due (excluding any sums that would not  
4540 be due except for an acceleration provision); and

4541           (2) The reasonable expenses and attorney's fees  
4542 described in Section 75-9-615(a)(1).

4543           (c) A redemption may occur at any time before a secured  
4544 party:

4545           (1) Has collected collateral under Section 75-9-607;

4546           (2) Has disposed of collateral or entered into a  
4547 contract for its disposition under Section 75-9-610; or

4548           (3) Has accepted collateral in full or partial  
4549 satisfaction of the obligation it secures under Section 75-9-622.

4550           **SECTION 75-9-624. Waiver.**

4551           (a) A debtor or secondary obligor may waive the right to  
4552 notification of disposition of collateral under Section 75-9-611  
4553 only by an agreement to that effect entered into and authenticated  
4554 after default.



4555 (b) A debtor may waive the right to require disposition of  
4556 collateral under Section 75-9-620(e) only by an agreement to that  
4557 effect entered into and authenticated after default.

4558 (c) Except in a consumer-goods transaction, a debtor or  
4559 secondary obligor may waive the right to redeem collateral under  
4560 Section 75-9-623 only by an agreement to that effect entered into  
4561 and authenticated after default.

4562 SUBPART 2. NONCOMPLIANCE WITH ARTICLE

4563 **SECTION 75-9-625. Remedies for secured party's failure to**  
4564 **comply with article.**

4565 (a) If it is established that a secured party is not  
4566 proceeding in accordance with this article, a court may order or  
4567 restrain collection, enforcement, or disposition of collateral on  
4568 appropriate terms and conditions.

4569 (b) Subject to subsections (c), (d), and (f), a person is  
4570 liable for damages in the amount of any loss caused by a failure  
4571 to comply with this article. Loss caused by a failure to comply  
4572 may include loss resulting from the debtor's inability to obtain,  
4573 or increased costs of, alternative financing.

4574 (c) Except as otherwise provided in Section 75-9-628:

4575 (1) A person that, at the time of the failure, was a  
4576 debtor, was an obligor, or held a security interest in or other  
4577 lien on the collateral may recover damages under subsection (b)  
4578 for its loss; and

4579 (2) If the collateral is consumer goods, a person that  
4580 was a debtor or a secondary obligor at the time a secured party  
4581 failed to comply with this part may recover for that failure in  
4582 any event an amount not less than the credit service charge plus  
4583 ten percent (10%) of the principal amount of the obligation or the  
4584 time-price differential plus ten percent (10%) of the cash price.

4585 (d) A debtor whose deficiency is eliminated under Section  
4586 75-9-626 may recover damages for the loss of any surplus.  
4587 However, a debtor or secondary obligor whose deficiency is



4588 eliminated or reduced under Section 75-9-626 may not otherwise  
4589 recover under subsection (b) for noncompliance with the provisions  
4590 of this part relating to collection, enforcement, disposition, or  
4591 acceptance.

4592 (e) In addition to any damages recoverable under subsection  
4593 (b), the debtor, consumer obligor, or person named as a debtor in  
4594 a filed record, as applicable, may recover Five Hundred Dollars  
4595 (\$500.00) in each case from a person that:

4596 (1) Fails to comply with Section 75-9-208;

4597 (2) Fails to comply with Section 75-9-209;

4598 (3) Files a record that the person is not entitled to  
4599 file under Section 75-9-509(a) and fails to file a termination  
4600 statement with respect to the filed record within ten (10) days  
4601 after receiving an authenticated demand by the debtor, consumer  
4602 obligor, or person named as a debtor in the filed record;

4603 (4) Fails to cause the secured party of record to file  
4604 or send a termination statement as required by Section 75-9-513(a)  
4605 or (c);

4606 (5) Fails to comply with Section 75-9-616(b)(1) and  
4607 whose failure is part of a pattern, or consistent with a practice,  
4608 of noncompliance; or

4609 (6) Fails to comply with Section 75-9-616(b)(2).

4610 (f) A debtor or consumer obligor may recover damages under  
4611 subsection (b) and, in addition, Five Hundred Dollars (\$500.00) in  
4612 each case from a person that, without reasonable cause, fails to  
4613 comply with a request under Section 75-9-210. A recipient of a  
4614 request under Section 75-9-210 which never claimed an interest in  
4615 the collateral or obligations that are the subject of a request  
4616 under that section has a reasonable excuse for failure to comply  
4617 with the request within the meaning of this subsection.

4618 (g) If a secured party fails to comply with a request  
4619 regarding a list of collateral or a statement of account under  
4620 Section 75-9-210, the secured party may claim a security interest



4621 only as shown in the list or statement included in the request as  
4622 against a person that is reasonably misled by the failure.

4623           **SECTION 75-9-626. Action in which deficiency or surplus is**  
4624 **in issue.**

4625           (a) In an action arising from a transaction in which the  
4626 amount of a deficiency or surplus is in issue, the following rules  
4627 apply:

4628                   (1) A secured party need not prove compliance with the  
4629 provisions of this part relating to collection, enforcement,  
4630 disposition, or acceptance unless the debtor or a secondary  
4631 obligor places the secured party's compliance in issue.

4632                   (2) If the secured party's compliance is placed in  
4633 issue, the secured party has the burden of establishing that the  
4634 collection, enforcement, disposition, or acceptance was conducted  
4635 in accordance with this part.

4636                   (3) Except as otherwise provided in Section 75-9-628,  
4637 if a secured party fails to prove that the collection,  
4638 enforcement, disposition, or acceptance was conducted in  
4639 accordance with the provisions of this part relating to  
4640 collection, enforcement, disposition, or acceptance, the liability  
4641 of a debtor or a secondary obligor for a deficiency is limited to  
4642 an amount by which the sum of the secured obligation, expenses,  
4643 and attorney's fees exceeds the greater of:

4644                           (A) The proceeds of the collection, enforcement,  
4645 disposition, or acceptance; or

4646                           (B) The amount of proceeds that would have been  
4647 realized had the noncomplying secured party proceeded in  
4648 accordance with the provisions of this part relating to  
4649 collection, enforcement, disposition, or acceptance.

4650                   (4) For purposes of paragraph (3)(B), the amount of  
4651 proceeds that would have been realized is equal to the sum of the  
4652 secured obligation, expenses, and attorney's fees unless the  
4653 secured party proves that the amount is less than that sum.



4654           (5) If a deficiency or surplus is calculated under  
4655 Section 75-9-615(f), the debtor or obligor has the burden of  
4656 establishing that the amount of proceeds of the disposition is  
4657 significantly below the range of prices that a complying  
4658 disposition to a person other than the secured party, a person  
4659 related to the secured party, or a secondary obligor would have  
4660 brought.

4661           (b) The limitation of the rules in subsection (a) to  
4662 transactions other than consumer transactions is intended to leave  
4663 to the court the determination of the proper rules in consumer  
4664 transactions. The court may not infer from that limitation the  
4665 nature of the proper rule in consumer transactions and may  
4666 continue to apply established approaches.

4667           **SECTION 75-9-627. Determination of whether conduct was**  
4668 **commercially reasonable.**

4669           (a) The fact that a greater amount could have been obtained  
4670 by a collection, enforcement, disposition, or acceptance at a  
4671 different time or in a different method from that selected by the  
4672 secured party is not of itself sufficient to preclude the secured  
4673 party from establishing that the collection, enforcement,  
4674 disposition, or acceptance was made in a commercially reasonable  
4675 manner.

4676           (b) A disposition of collateral is made in a commercially  
4677 reasonable manner if the disposition is made:

4678                   (1) In the usual manner on any recognized market;

4679                   (2) At the price current in any recognized market at  
4680 the time of the disposition; or

4681                   (3) Otherwise in conformity with reasonable commercial  
4682 practices among dealers in the type of property that was the  
4683 subject of the disposition.

4684           (c) A collection, enforcement, disposition, or acceptance is  
4685 commercially reasonable if it has been approved:

4686                   (1) In a judicial proceeding;



- 4687           (2) By a bona fide creditors' committee;  
4688           (3) By a representative of creditors; or  
4689           (4) By an assignee for the benefit of creditors.

4690           (d) Approval under subsection (c) need not be obtained, and  
4691 lack of approval does not mean that the collection, enforcement,  
4692 disposition, or acceptance is not commercially reasonable.

4693           **SECTION 75-9-628. Nonliability and limitation on liability**  
4694 **of secured party; liability of secondary obligor.**

4695           (a) Unless a secured party knows that a person is a debtor  
4696 or obligor, knows the identity of the person, and knows how to  
4697 communicate with the person:

4698           (1) The secured party is not liable to the person, or  
4699 to a secured party or lienholder that has filed a financing  
4700 statement against the person, for failure to comply with this  
4701 article; and

4702           (2) The secured party's failure to comply with this  
4703 article does not affect the liability of the person for a  
4704 deficiency.

4705           (b) A secured party is not liable because of its status as  
4706 secured party:

4707           (1) To a person that is a debtor or obligor, unless the  
4708 secured party knows:

4709                   (A) That the person is a debtor or obligor;

4710                   (B) The identity of the person; and

4711                   (C) How to communicate with the person; or

4712           (2) To a secured party or lienholder that has filed a  
4713 financing statement against a person, unless the secured party  
4714 knows:

4715                   (A) That the person is a debtor; and

4716                   (B) The identity of the person.

4717           (c) A secured party is not liable to any person, and a  
4718 person's liability for a deficiency is not affected, because of  
4719 any act or omission arising out of the secured party's reasonable



4720 belief that a transaction is not a consumer-goods transaction or a  
4721 consumer transaction or that goods are not consumer goods, if the  
4722 secured party's belief is based on its reasonable reliance on:

4723 (1) A debtor's representation concerning the purpose  
4724 for which collateral was to be used, acquired, or held; or

4725 (2) An obligor's representation concerning the purpose  
4726 for which a secured obligation was incurred.

4727 (d) A secured party is not liable to any person under  
4728 Section 75-9-625(c)(2) for its failure to comply with Section  
4729 75-9-616.

4730 (e) A secured party is not liable under Section  
4731 75-9-625(c)(2) more than once with respect to any one (1) secured  
4732 obligation.

4733 **PART 7**

4734 **TRANSITION**

4735 **SECTION 75-9-701. Definitions.** (1) References in Part 7 to  
4736 "this act" refer to the legislative enactment by which this part  
4737 is added to Article 9 of the Uniform Commercial Code.

4738 (2) References in this part to "former Article 9" are to  
4739 Article 9 found in Chapter 9 of Title 75 as in effect on June 30,  
4740 2001.

4741 **SECTION 75-9-702. Savings clause.**

4742 (a) Except as otherwise provided in this part, this act  
4743 applies to a transaction or lien within its scope, even if the  
4744 transaction or lien was entered into or created before this act  
4745 takes effect.

4746 (b) Except as otherwise provided in subsection (c) and  
4747 Sections 75-9-703 through 75-9-709:

4748 (1) Transactions and liens that were not governed by  
4749 former Article 9, were validly entered into or created before this  
4750 act takes effect, and would be subject to this act if they had  
4751 been entered into or created after this act takes effect, and the



4752 rights, duties, and interests flowing from those transactions and  
4753 liens remain valid after this act takes effect; and

4754 (2) The transactions and liens may be terminated,  
4755 completed, consummated, and enforced as required or permitted by  
4756 this act or by the law that otherwise would apply if this act had  
4757 not taken effect.

4758 (c) This act does not affect an action, case, or proceeding  
4759 commenced before this act takes effect.

4760 **SECTION 75-9-703. Security interest perfected before**  
4761 **effective date.**

4762 (a) A security interest that is enforceable immediately  
4763 before this act takes effect and would have priority over the  
4764 rights of a person that becomes a lien creditor at that time is a  
4765 perfected security interest under this act if, when this act takes  
4766 effect, the applicable requirements for enforceability and  
4767 perfection under this act are satisfied without further action.

4768 (b) Except as otherwise provided in Section 75-9-705, if,  
4769 immediately before this act takes effect, a security interest is  
4770 enforceable and would have priority over the rights of a person  
4771 that becomes a lien creditor at that time, but the applicable  
4772 requirements for enforceability or perfection under this act are  
4773 not satisfied when this act takes effect, the security interest:

4774 (1) Is a perfected security interest for one (1) year  
4775 after this act takes effect;

4776 (2) Remains enforceable thereafter only if the security  
4777 interest becomes enforceable under Section 75-9-203 before the  
4778 year expires; and

4779 (3) Remains perfected thereafter only if the applicable  
4780 requirements for perfection under this act are satisfied before  
4781 the year expires.

4782 **SECTION 75-9-704. Security interest unperfected before**  
4783 **effective date.** A security interest that is enforceable  
4784 immediately before this act takes effect but which would be



4785 subordinate to the rights of a person that becomes a lien creditor  
4786 at that time:

4787 (1) Remains an enforceable security interest for one  
4788 (1) year after this act takes effect;

4789 (2) Remains enforceable thereafter if the security  
4790 interest becomes enforceable under Section 75-9-203 when this act  
4791 takes effect or within one (1) year thereafter; and

4792 (3) Becomes perfected:

4793 (A) Without further action, when this act takes  
4794 effect if the applicable requirements for perfection under this  
4795 act are satisfied before or at that time; or

4796 (B) When the applicable requirements for  
4797 perfection are satisfied if the requirements are satisfied after  
4798 that time.

4799 **SECTION 75-9-705. Effectiveness of action taken before**  
4800 **effective date.**

4801 (a) If action, other than the filing of a financing  
4802 statement, is taken before this act takes effect and the action  
4803 would have resulted in priority of a security interest over the  
4804 rights of a person that becomes a lien creditor had the security  
4805 interest become enforceable before this act takes effect, the  
4806 action is effective to perfect a security interest that attaches  
4807 under this act within one (1) year after this act takes effect.  
4808 An attached security interest becomes unperfected one (1) year  
4809 after this act takes effect unless the security interest becomes a  
4810 perfected security interest under this act before the expiration  
4811 of that period.

4812 (b) The filing of a financing statement before this act  
4813 takes effect is effective to perfect a security interest to the  
4814 extent the filing would satisfy the applicable requirements for  
4815 perfection under this act.

4816 (c) This act does not render ineffective an effective  
4817 financing statement that, before this act takes effect, is filed



4818 and satisfies the applicable requirements for perfection under the  
4819 law of the jurisdiction governing perfection as provided in former  
4820 Section 75-9-103. However, except as otherwise provided in  
4821 subsections (d) and (e) and Section 75-9-706, the financing  
4822 statement ceases to be effective at the earlier of:

4823 (1) The time the financing statement would have ceased  
4824 to be effective under the law of the jurisdiction in which it is  
4825 filed; or

4826 (2) June 30, 2006.

4827 (d) The filing of a continuation statement after this act  
4828 takes effect does not continue the effectiveness of the financing  
4829 statement filed before this act takes effect. However, upon the  
4830 timely filing of a continuation statement after this act takes  
4831 effect and in accordance with the law of the jurisdiction  
4832 governing perfection as provided in Part 3, the effectiveness of a  
4833 financing statement filed in the same office in that jurisdiction  
4834 before this act takes effect continues for the period provided by  
4835 the law of that jurisdiction.

4836 (e) Subsection (c)(2) applies to a financing statement that,  
4837 before this act takes effect, is filed against a transmitting  
4838 utility and satisfies the applicable requirements for perfection  
4839 under the law of the jurisdiction governing perfection as provided  
4840 in former Section 75-9-103 only to the extent that Part 3 provides  
4841 that the law of a jurisdiction other than the jurisdiction in  
4842 which the financing statement is filed governs perfection of a  
4843 security interest in collateral covered by the financing  
4844 statement.

4845 (f) A financing statement that includes a financing  
4846 statement filed before this act takes effect and a continuation  
4847 statement filed after this act takes effect is effective only to  
4848 the extent that it satisfies the requirements of Part 5 for an  
4849 initial financing statement.



4850           **SECTION 75-9-706. When initial financing statement suffices**  
4851 **to continue effectiveness of financing statement.**

4852           (a) The filing of an initial financing statement in the  
4853 office specified in Section 75-9-501 continues the effectiveness  
4854 of a financing statement filed before this act takes effect if:

4855                 (1) The filing of an initial financing statement in  
4856 that office would be effective to perfect a security interest  
4857 under this act;

4858                 (2) The pre-effective-date financing statement was  
4859 filed in an office in another state or another office in this  
4860 state; and

4861                 (3) The initial financing statement satisfies  
4862 subsection (c).

4863           (b) The filing of an initial financing statement under  
4864 subsection (a) continues the effectiveness of the  
4865 pre-effective-date financing statement:

4866                 (1) If the initial financing statement is filed before  
4867 this act takes effect, for the period provided in former Section  
4868 75-9-403 with respect to a financing statement; and

4869                 (2) If the initial financing statement is filed after  
4870 this act takes effect, for the period provided in Section 75-9-515  
4871 with respect to an initial financing statement.

4872           (c) To be effective for purposes of subsection (a), an  
4873 initial financing statement must:

4874                 (1) Satisfy the requirements of Part 5 for an initial  
4875 financing statement;

4876                 (2) Identify the pre-effective-date financing statement  
4877 by indicating the office in which the financing statement was  
4878 filed and providing the dates of filing and file numbers, if any,  
4879 of the financing statement and of the most recent continuation  
4880 statement filed with respect to the financing statement; and

4881                 (3) Indicate that the pre-effective-date financing  
4882 statement remains effective.



4883           **SECTION 75-9-707. Amendment of pre-effective-date financing**  
4884 **statement.**

4885           (a) In this section, "pre-effective-date financing  
4886 statement" means a financing statement filed before this act takes  
4887 effect.

4888           (b) After this act takes effect, a person may add or delete  
4889 collateral covered by, continue or terminate the effectiveness of,  
4890 or otherwise amend the information provided in, a  
4891 pre-effective-date financing statement only in accordance with the  
4892 law of the jurisdiction governing perfection as provided in Part.

4893           (3) However, the effectiveness of a pre-effective-date  
4894 financing statement also may be terminated in accordance with the  
4895 law of the jurisdiction in which the financing statement is filed.

4896           (c) Except as otherwise provided in subsection (d), if the  
4897 law of this state governs perfection of a security interest, the  
4898 information in a pre-effective-date financing statement may be  
4899 amended after this act takes effect only if:

4900           (1) The pre-effective-date financing statement and an  
4901 amendment are filed in the office specified in Section 75-9-501;

4902           (2) An amendment is filed in the office specified in  
4903 Section 75-9-501 concurrently with, or after the filing in that  
4904 office of, an initial financing statement that satisfies Section  
4905 75-9-706(c); or

4906           (3) An initial financing statement that provides the  
4907 information as amended and satisfies Section 75-9-706(c) is filed  
4908 in the office specified in Section 75-9-501.

4909           (d) If the law of this state governs perfection of a  
4910 security interest, the effectiveness of a pre-effective-date  
4911 financing statement may be continued only under Section  
4912 75-9-705(d) and (f) or 75-9-706.

4913           (e) Whether or not the law of this state governs perfection  
4914 of a security interest, the effectiveness of a pre-effective-date  
4915 financing statement filed in this state may be terminated after



4916 this act takes effect by filing a termination statement in the  
4917 office in which the pre-effective-date financing statement is  
4918 filed, unless an initial financing statement that satisfies  
4919 Section 75-9-706(c) has been filed in the office specified by the  
4920 law of the jurisdiction governing perfection as provided in Part 3  
4921 as the office in which to file a financing statement.

4922         **SECTION 75-9-708. Persons entitled to file initial financing**  
4923 **statement or continuation statement.** A person may file an initial  
4924 financing statement or a continuation statement under this part  
4925 if:

4926             (1) The secured party of record authorizes the filing;  
4927 and

4928             (2) The filing is necessary under this part:

4929                 (A) To continue the effectiveness of a financing  
4930 statement filed before this act takes effect; or

4931                 (B) To perfect or continue the perfection of a  
4932 security interest.

4933         **SECTION 75-9-709. Priority.**

4934             (a) This act determines the priority of conflicting claims  
4935 to collateral. However, if the relative priorities of the claims  
4936 were established before this act takes effect, former Article 9  
4937 determines priority.

4938             (b) For purposes of Section 75-9-322(a), the priority of a  
4939 security interest that becomes enforceable under Section 75-9-203  
4940 of this act dates from the time this act takes effect if the  
4941 security interest is perfected under this act by the filing of a  
4942 financing statement before this act takes effect which would not  
4943 have been effective to perfect the security interest under former  
4944 Article 9. This subsection does not apply to conflicting security  
4945 interests each of which is perfected by the filing of such a  
4946 financing statement.

4947         **SECTION 75-9-710. Special transitional provisions for**  
4948 **maintaining and searching local records.**



4949 (a) In this section:

4950 (1) "Local-filing office" means a filing office, other  
4951 than the statewide central filing office identified in Section  
4952 75-9-401(1) of former Article 9, that is designated as the proper  
4953 place to file a financing statement under Section 75-9-401(1) of  
4954 former Article 9. The term applies only with respect to a record  
4955 that covers a type of collateral as to which the filing office is  
4956 designated in that section as the proper place to file.

4957 (2) "Former-Article-9 records" means:

4958 (A) Financing statements and other records that  
4959 have been filed in a local-filing office before July 1, 2001, and  
4960 that are, or upon processing and indexing will be, reflected in  
4961 the index maintained, as of June 30, 2001, by the local-filing  
4962 office for financing statements and other records filed in the  
4963 local-filing office before July 1, 2001, and

4964 (B) The index as of June 30, 2001.

4965 The term does not include records presented to a local-filing  
4966 office for filing after June 30, 2001, whether or not the records  
4967 relate to financing statements filed in the local-filing office  
4968 before July 1, 2001.

4969 (3) "Mortgage," "as-extracted collateral," "fixture  
4970 filing," "goods" and "fixtures" have the meanings set forth in  
4971 Revised Article 9 for those terms.

4972 (b) Except as expressly provided in Part 5 of Article 9 as  
4973 effective on and after July 1, 2001, a local-filing office must  
4974 not accept for filing a record presented after June 30, 2001,  
4975 whether or not the record relates to a financing statement filed  
4976 in the local-filing office before July 1, 2001.

4977 (c) Until July 1, 2008, each local-filing office must  
4978 maintain all former-Article-9 records in accordance with former  
4979 Article 9. A former-Article-9 record that is not reflected on the  
4980 index maintained at June 30, 2001, by the local-filing office must  
4981 be processed and indexed, and reflected on the index as of June



4982 30, 2001, as soon as practicable but in any event no later than  
4983 July 30, 2001.

4984 (d) Until at least June 30, 2008, each local-filing office  
4985 must respond to requests for information with respect to  
4986 former-Article-9 records relating to a debtor and issue  
4987 certificates in accordance with former Article 9.

4988 (1) Upon request in writing of any person, the filing  
4989 officer shall issue his certificate showing whether there is on  
4990 file, on the date and hour stated therein, any presently effective  
4991 financing statements naming a particular debtor thereof, and if  
4992 there is, giving the date and hour of filing and file number of  
4993 each such financing statement and the name and address of each  
4994 secured party or his assignee therein. Each such request shall be  
4995 accompanied by a search fee of Five Dollars (\$5.00) if the request  
4996 is made on the standard form prescribed by the Secretary of State,  
4997 and otherwise it shall be Ten Dollars (\$10.00). An additional fee  
4998 of Two Dollars (\$2.00) shall be paid by the requesting party for  
4999 each financing statement listed on the filing officer's  
5000 certificate, the aggregate of which shall be billed to the  
5001 requesting party at the time the filing officer's certificate is  
5002 issued. Failure to pay the additional fee by any requesting party  
5003 when due may result in denial of further service to the requesting  
5004 party until the amount due has been paid.

5005 (2) Upon request, the filing officer shall furnish a  
5006 copy of any presently effective financing statements on file for a  
5007 uniform fee of Two Dollars (\$2.00) per page naming a particular  
5008 debtor when the request is made on the form and in the manner  
5009 hereinbefore provided for listing the same.

5010 (e) After June 30, 2008, each local-filing office may remove  
5011 and destroy, in accordance with any then applicable record  
5012 retention law of this state, all former-Article-9 records,  
5013 including the related index.



5014 (f) This section does not apply, with respect to financing  
5015 statements and other records, to a filing office in which  
5016 mortgages or records of mortgages on real property are required to  
5017 be filed or recorded, if:

5018 (1) The collateral is timber to be cut or as-extracted  
5019 collateral, or

5020 (2) The record is or relates to a financing statement  
5021 filed as a fixture filing and the collateral is goods that are or  
5022 are to become fixtures.

5023 SECTION 2. Sections 75-9-101, 75-9-102, 75-9-103, 75-9-104,  
5024 75-9-105, 75-9-106, 75-9-107, 75-9-108, 75-9-109, 75-9-110,  
5025 75-9-111, 75-9-112, 75-9-113, 75-9-114, 75-9-115, 75-9-116,  
5026 75-9-201, 75-9-202, 75-9-203, 75-9-204, 75-9-205, 75-9-206,  
5027 75-9-207, 75-9-208, 75-9-301, 75-9-302, 75-9-303, 75-9-304,  
5028 75-9-305, 75-9-306, 75-9-307, 75-9-308, 75-9-309, 75-9-310,  
5029 75-9-311, 75-9-312, 75-9-313, 75-9-314, 75-9-315, 75-9-316,  
5030 75-9-317, 75-9-318, 75-9-319, 75-9-401, 75-9-402, 75-9-403,  
5031 75-9-404, 75-9-405, 75-9-406, 75-9-407, 75-9-408, 75-9-409,  
5032 75-9-410, 75-9-501, 75-9-502, 75-9-503, 75-9-504, 75-9-505,  
5033 75-9-506 and 75-9-507, Mississippi Code of 1972, which comprise  
5034 Uniform Commercial Code Article 9 - Secured Transactions, are  
5035 repealed.

5036 SECTION 3. The following shall be codified as Section  
5037 75-5-118, Mississippi Code of 1972:

5038 75-5-118. **Security interest of issuer or nominated person.**

5039 (a) An issuer or nominated person has a security interest in  
5040 a document presented under a letter of credit to the extent that  
5041 the issuer or nominated person honors or gives value for the  
5042 presentation.

5043 (b) So long as and to the extent that an issuer or nominated  
5044 person has not been reimbursed or has not otherwise recovered the  
5045 value given with respect to a security interest in a document



5046 under subsection (a), the security interest continues and is  
5047 subject to Article 9 of the Uniform Commercial Code, but:

5048 (1) A security agreement is not necessary to make the  
5049 security interest enforceable under Section 75-9-203(b)(3);

5050 (2) If the document is presented in a medium other than  
5051 a written or other tangible medium, the security interest is  
5052 perfected; and

5053 (3) If the document is presented in a written or other  
5054 tangible medium and is not a certificated security, chattel paper,  
5055 a document of title, an instrument, or a letter of credit, the  
5056 security interest is perfected and has priority over a conflicting  
5057 security interest in the document so long as the debtor does not  
5058 have possession of the document.

5059 SECTION 4. Section 75-1-105, Mississippi Code of 1972, is  
5060 amended as follows:

5061 75-1-105. (1) Except as provided hereafter in this section,  
5062 when a transaction bears a reasonable relation to this state and  
5063 also to another state or nation the parties may agree that the law  
5064 either of this state or of such other state or nation shall govern  
5065 their rights and duties. Failing such agreement, this code  
5066 applies to transactions bearing an appropriate relation to this  
5067 state. Provided, however, the law of the State of Mississippi  
5068 shall always govern the rights and duties of the parties in regard  
5069 to disclaimers of implied warranties of merchantability or  
5070 fitness, limitations of remedies for breaches of implied  
5071 warranties of merchantability or fitness, or the necessity for  
5072 privity of contract to maintain a civil action for breach of  
5073 implied warranties of merchantability or fitness notwithstanding  
5074 any agreement by the parties that the laws of some other state or  
5075 nation shall govern the rights and duties of the parties.

5076 (2) Where one of the following provisions of this code  
5077 specifies the applicable law, that provision governs and a



5078 contrary agreement is effective only to the extent permitted by  
5079 the law (including the conflict of laws rules) so specified:

5080 Rights of creditors against sold goods (Section 75-2-402).

5081 Applicability of the Article on Leases (Sections 75-2A-105  
5082 and 75-2A-106).

5083 Applicability of the Article on Bank Deposits and Collections  
5084 (Section 75-4-102).

5085 Governing law in the Article on Funds Transfers (Section  
5086 75-4A-507).

5087 Letters of credit (Section 75-5-116).

5088 Applicability of the Article on Investment Securities  
5089 (Section 75-8-110).

5090 Law governing perfection, the effect of perfection or  
5091 nonperfection, and the priority of security interests and  
5092 agricultural liens (Sections 75-9-301 through 75-9-307).

5093 SECTION 5. Section 75-1-201, Mississippi Code of 1972, is  
5094 amended as follows:

5095 75-1-201. Subject to additional definitions contained in the  
5096 subsequent chapters of this code which are applicable to specific  
5097 chapters or parts thereof, and unless the context otherwise  
5098 requires, in this code:

5099 (1) "Action" in the sense of a judicial proceeding  
5100 includes recoupment, counterclaim, set-off, suit in equity and any  
5101 other proceedings in which rights are determined.

5102 (2) "Aggrieved party" means a party entitled to resort  
5103 to a remedy.

5104 (3) "Agreement" means the bargain of the parties in  
5105 fact as found in their language or by implication from other  
5106 circumstances including course of dealing or usage of trade or  
5107 course of performance as provided in this code (Sections 75-1-205  
5108 and 75-2-208). Whether an agreement has legal consequences is  
5109 determined by the provisions of this code, if applicable;



5110 otherwise by the law of contracts (Section 75-1-103). (Compare  
5111 "Contract.")

5112 (4) "Bank" means any person engaged in the business of  
5113 banking.

5114 (5) "Bearer" means the person in possession of an  
5115 instrument, document of title, or certificated security payable to  
5116 bearer or indorsed in blank.

5117 (6) "Bill of lading" means a document evidencing the  
5118 receipt of goods for shipment issued by a person engaged in the  
5119 business of transporting or forwarding goods, and includes an  
5120 airbill. "Airbill" means a document serving for air  
5121 transportation as a bill of lading does for marine or rail  
5122 transportation, and includes an air consignment note or air  
5123 waybill.

5124 (7) "Branch" includes a separately incorporated foreign  
5125 branch of a bank.

5126 (8) "Burden of establishing" a fact means the burden of  
5127 persuading the triers of fact that the existence of the fact is  
5128 more probable than its nonexistence.

5129 (9) "Buyer in ordinary course of business" means a  
5130 person that buys goods in good faith, without knowledge that the  
5131 sale violates the \* \* \* rights \* \* \* of another person in the  
5132 goods, and in the ordinary course from a person, other than a  
5133 pawnbroker, in the business of selling goods of that kind \* \* \*.  
5134 A person buys goods in the ordinary course if the sale to the  
5135 person comports with the usual or customary practices in the kind  
5136 of business in which the seller is engaged or with the seller's  
5137 own usual or customary practices. A person that sells oil, gas,  
5138 or other minerals at the wellhead or minehead is a person in the  
5139 business of selling goods of that kind. A buyer in the ordinary  
5140 course of business may buy for cash, by exchange of other  
5141 property, or on secured or unsecured credit, and may acquire goods  
5142 or documents of title under a preexisting contract for sale \* \* \*.



5143 Only a buyer that takes possession of the goods or has a right to  
5144 recover the goods from the seller under Article 2 may be a buyer  
5145 in ordinary course of business. A person that acquires goods in a  
5146 transfer in bulk or as security for or in total or partial  
5147 satisfaction of a money debt is not a buyer in ordinary course of  
5148 business.

5149           (10) "Conspicuous": A term or clause is conspicuous  
5150 when it is so written that a reasonable person against whom it is  
5151 to operate ought to have noticed it. A printed heading in  
5152 capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous.  
5153 Language in the body of a form is "conspicuous" if it is in larger  
5154 or other contrasting type or color. But in a telegram any stated  
5155 term is "conspicuous." Whether a term or clause is "conspicuous"  
5156 or not is for decision by the court.

5157           (11) "Contract" means the total legal obligation which  
5158 results from the parties' agreement as affected by this code and  
5159 any other applicable rules of law. (Compare "Agreement.")

5160           (12) "Creditor" includes a general creditor, a secured  
5161 creditor, a lien creditor and any representative of creditors,  
5162 including an assignee for the benefit of creditors, a trustee in  
5163 bankruptcy, a receiver in equity and an executor or administrator  
5164 of an insolvent debtor's or assignor's estate.

5165           (13) "Defendant" includes a person in the position of  
5166 defendant in a cross-action or counterclaim.

5167           (14) "Delivery" with respect to instruments, documents  
5168 of title, chattel paper, or certificated securities means  
5169 voluntary transfer of possession.

5170           (15) "Document of title" includes bill of lading, dock  
5171 warrant, dock receipt, warehouse receipt or order for the delivery  
5172 of goods, and also any other document which in the regular course  
5173 of business or financing is treated as adequately evidencing that  
5174 the person in possession of it is entitled to receive, hold and  
5175 dispose of the document and the goods it covers. To be a document



5176 of title a document must purport to be issued by or addressed to a  
5177 bailee and purport to cover goods in the bailee's possession which  
5178 are either identified or are fungible portions of an identified  
5179 mass.

5180 (16) "Fault" means wrongful act, omission or breach.

5181 (17) "Fungible" with respect to goods or securities  
5182 means goods or securities of which any unit is, by nature or usage  
5183 of trade, the equivalent of any other like unit. Goods which are  
5184 not fungible shall be deemed fungible for the purposes of this  
5185 code to the extent that under a particular agreement or document  
5186 unlike units are treated as equivalents.

5187 (18) "Genuine" means free of forgery or counterfeiting.

5188 (19) "Good faith" means honesty in fact in the conduct  
5189 or transaction concerned.

5190 (20) "Holder," with respect to a negotiable instrument,  
5191 means the person in possession if the instrument is payable to  
5192 bearer or, in the case of an instrument payable to an identified  
5193 person, if the identified person is in possession. "Holder," with  
5194 respect to a document of title, means the person in possession if  
5195 the goods are deliverable to bearer or to the order of the person  
5196 in possession.

5197 (21) To "honor" is to pay or to accept and pay, or  
5198 where a credit so engages to purchase or discount a draft  
5199 complying with the terms of the credit.

5200 (22) "Insolvency proceedings" includes any assignment  
5201 for the benefit of creditors or other proceedings intended to  
5202 liquidate or rehabilitate the estate of the person involved.

5203 (23) A person is "insolvent" who either has ceased to  
5204 pay his debts in the ordinary course of business or cannot pay his  
5205 debts as they become due or is insolvent within the meaning of the  
5206 federal bankruptcy law.

5207 (24) "Money" means a medium of exchange authorized or  
5208 adopted by a domestic or foreign government and includes a



5209 monetary unit of account established by an intergovernmental  
5210 organization or by agreement between two (2) or more nations.

5211 (25) A person has "notice" of a fact when

5212 (a) He has actual knowledge of it; or

5213 (b) He has received a notice or notification of  
5214 it; or

5215 (c) From all the facts and circumstances known to  
5216 him at the time in question he has reason to know that it exists.

5217 A person "knows" or has "knowledge" of a fact when he has  
5218 actual knowledge of it. "Discover" or "learn" or a word or phrase  
5219 of similar import refers to knowledge rather than to reason to  
5220 know. The time and circumstances under which a notice or  
5221 notification may cease to be effective are not determined by this  
5222 code.

5223 (26) A person "notifies" or "gives" a notice or  
5224 notification to another by taking such steps as may be reasonably  
5225 required to inform the other in ordinary course whether or not  
5226 such other actually comes to know of it. A person "receives" a  
5227 notice or notification when:

5228 (a) It comes to his attention; or

5229 (b) It is duly delivered at the place of business  
5230 through which the contract was made or at any other place held out  
5231 by him as the place for receipt of such communications.

5232 (27) Notice, knowledge or a notice or notification  
5233 received by an organization is effective for a particular  
5234 transaction from the time when it is brought to the attention of  
5235 the individual conducting that transaction, and in any event from  
5236 the time when it would have been brought to his attention if the  
5237 organization had exercised due diligence. An organization  
5238 exercises due diligence if it maintains reasonable routines for  
5239 communicating significant information to the person conducting the  
5240 transaction and there is reasonable compliance with the routines.  
5241 Due diligence does not require an individual acting for the



5242 organization to communicate information unless such communication  
5243 is part of his regular duties or unless he has reason to know of  
5244 the transaction and that the transaction would be materially  
5245 affected by the information.

5246 (28) "Organization" includes a corporation, government  
5247 or governmental subdivision or agency, business trust, estate,  
5248 trust, partnership or association, two (2) or more persons having  
5249 a joint or common interest, or any other legal or commercial  
5250 entity.

5251 (29) "Party," as distinct from "third party," means a  
5252 person who has engaged in a transaction or made an agreement  
5253 within this code.

5254 (30) "Person" includes an individual or an organization  
5255 (see Section 75-1-102).

5256 (31) "Presumption" or "presumed" means that the trier  
5257 of fact must find the existence of the fact presumed unless and  
5258 until evidence is introduced which would support a finding of its  
5259 nonexistence.

5260 (32) "Purchase" includes taking by sale, discount,  
5261 negotiation, mortgage, pledge, lien, security interest, issue or  
5262 reissue, gift or any other voluntary transaction creating an  
5263 interest in property.

5264 (33) "Purchaser" means a person who takes by purchase.

5265 (34) "Remedy" means any remedial right to which an  
5266 aggrieved party is entitled with or without resort to a tribunal.

5267 (35) "Representative" includes an agent, an officer of  
5268 a corporation or association, and a trustee, executor or  
5269 administrator of an estate, or any other person empowered to act  
5270 for another.

5271 (36) "Rights" includes remedies.

5272 (37) "Security interest" means an interest in personal  
5273 property or fixtures which secures payment or performance of an  
5274 obligation.



5275 (a) \* \* \* The term also includes any interest of a  
5276 consignor and a buyer of accounts, chattel paper, a payment  
5277 intangible, or a promissory note in a transaction that is subject  
5278 to Article 9. The special property interest of a buyer of goods  
5279 on identification of such goods to a contract for sale under  
5280 Section 75-2-401 is not a "security interest," but a buyer may  
5281 also acquire "security interest," by complying with Article 9.  
5282 Except as otherwise provided in Section 75-2-505, the right of a  
5283 seller or lessor of goods under Article 2 or 2A to retain or  
5284 acquire possession of the goods is not a "security interest," but  
5285 a seller or lessor may also acquire a "security interest" by  
5286 complying with Article 9. The retention or reservation of title  
5287 by a seller of goods notwithstanding shipment or delivery to the  
5288 buyer (Section 75-2-401) is limited in effect to a reservation of  
5289 a security interest.

5290 (b) Whether a transaction creates a lease or  
5291 security interest is determined by the facts of each case;  
5292 however, a transaction creates a security interest if the  
5293 consideration the lessee is to pay the lessor for the right to  
5294 possession and use of the goods is an obligation for the term of  
5295 the lease not subject to termination by the lessee, and

5296 (i) The original term of the lease is equal  
5297 to or greater than the remaining economic life of the goods,

5298 (ii) The lessee is bound to renew the lease  
5299 for the remaining economic life of the goods or is bound to become  
5300 the owner of the goods,

5301 (iii) The lessee has an option to renew the  
5302 lease for the remaining economic life of the goods for no  
5303 additional consideration or nominal additional consideration upon  
5304 compliance with the lease agreement, or

5305 (iv) The lessee has an option to become the  
5306 owner of the goods for no additional consideration or nominal  
5307 additional consideration upon compliance with the lease agreement.



5308 (c) A transaction does not create a security  
5309 interest merely because it provides that:

5310 (i) The present value of the consideration  
5311 the lessee is obligated to pay the lessor for the right to  
5312 possession and use of the goods is substantially equal to or is  
5313 greater than the fair market value of the goods at the time the  
5314 lease is entered into,

5315 (ii) The lessee assumes risk of loss of the  
5316 goods, or agrees to pay taxes, insurance, filing, recording, or  
5317 registration fees, or service or maintenance costs with respect to  
5318 the goods,

5319 (iii) The lessee has an option to renew the  
5320 lease or to become the owner of the goods,

5321 (iv) The lessee has an option to renew the  
5322 lease for a fixed rent that is equal to or greater than the  
5323 reasonably predictable fair market rent for the use of the goods  
5324 for the term of the renewal at the time the option is to be  
5325 performed, or

5326 (v) The lessee has an option to become the  
5327 owner of the goods for a fixed price that is equal to or greater  
5328 than the reasonably predictable fair market value of the goods at  
5329 the time the option is to be performed.

5330 (d) For purposes of this subsection (37):

5331 (i) Additional consideration is not nominal  
5332 if

5333 1. When the option to renew the lease is  
5334 granted to the lessee the rent is stated to be the fair market  
5335 rent for the use of the goods for the term of the renewal  
5336 determined at the time the option is to be performed, or

5337 2. When the option to become the owner  
5338 of the goods is granted to the lessee the price is stated to be  
5339 the fair market value of the goods determined at the time the  
5340 option is to be performed. Additional consideration is nominal if



5341 it is less than the lessee's reasonably predictable cost of  
5342 performing under the lease agreement if the option is not  
5343 exercised;

5344 (ii) "Reasonably predictable" and "remaining  
5345 economic life of the goods" are to be determined with reference to  
5346 the fact and circumstances at the time the transaction is entered  
5347 into; and

5348 (iii) "Present value" means the amount as of  
5349 a date certain of one or more sums payable in the future,  
5350 discounted to the date certain. The discount is determined by the  
5351 interest rate specified by the parties if the rate is not  
5352 manifestly unreasonable at the time the transaction is entered  
5353 into; otherwise, the discount is determined by a commercially  
5354 reasonable rate that takes into account the facts and  
5355 circumstances of each case at the time the transaction was entered  
5356 into.

5357 (38) "Send" in connection with any writing or notice  
5358 means to deposit in the mail or deliver for transmission by any  
5359 other usual means of communication with postage or cost of  
5360 transmission provided for and properly addressed and in the case  
5361 of an instrument to an address specified thereon or otherwise  
5362 agreed, or if there be none to any address reasonable under the  
5363 circumstances. The receipt of any writing or notice within the  
5364 time at which it would have arrived if properly sent has the  
5365 effect of a proper sending.

5366 (39) "Signed" includes any symbol executed or adopted  
5367 by a party with present intention to authenticate a writing.

5368 (40) "Surety" includes guarantor.

5369 (41) "Telegram" includes a message transmitted by  
5370 radio, teletype, cable, any mechanical method of transmission, or  
5371 the like.

5372 (42) "Term" means that portion of an agreement which  
5373 relates to a particular matter.



5374 (43) "Unauthorized" signature means one made without  
5375 actual, implied or apparent authority and includes a forgery.

5376 (44) "Value," except as otherwise provided with respect  
5377 to negotiable instruments and bank collections (Sections 75-3-303,  
5378 75-4-208 and 75-4-209), a person gives "value" for rights if he  
5379 acquires them:

5380 (a) In return for a binding commitment to extend  
5381 credit or for the extension of immediately available credit  
5382 whether or not drawn upon and whether or not a charge-back is  
5383 provided for in the event of difficulties in collection; or

5384 (b) As security for or in total or partial  
5385 satisfaction of a preexisting claim; or

5386 (c) By accepting delivery pursuant to a  
5387 preexisting contract for purchase; or

5388 (d) Generally, in return for any consideration  
5389 sufficient to support a simple contract.

5390 (45) "Warehouse receipt" means a receipt issued by a  
5391 person engaged in the business of storing goods for hire.

5392 (46) "Written" or "writing" includes printing,  
5393 typewriting, or any other intentional reduction to tangible form.

5394 SECTION 6. Section 75-2-103, Mississippi Code of 1972, is  
5395 amended as follows:

5396 75-2-103. (1) In this chapter unless the context otherwise  
5397 requires:

5398 (a) "Buyer" means a person who buys or contracts to buy  
5399 goods.

5400 (b) "Good faith" in the case of a merchant means  
5401 honesty in fact and the observance of reasonable commercial  
5402 standards of fair dealing in the trade.

5403 (c) "Receipt" of goods means taking physical possession  
5404 of them.

5405 (d) "Seller" means a person who sells or contracts to  
5406 sell goods.



5407 (2) Other definitions applying to this chapter or to  
5408 specified parts thereof, and the sections in which they appear  
5409 are:

5410	"Acceptance"	Section <u>75-2-606</u> .
5411	"Banker's credit"	Section <u>75-2-325</u> .
5412	"Between merchants"	Section <u>75-2-104</u> .
5413	"Cancellation"	Section <u>75-2-106(4)</u> .
5414	"Commercial unit"	Section <u>75-2-105</u> .
5415	"Confirmed credit"	Section <u>75-2-325</u> .
5416	"Conforming to contract"	Section <u>75-2-106</u> .
5417	"Contract for sale"	Section <u>75-2-106</u> .
5418	"Cover"	Section <u>75-2-712</u> .
5419	"Entrusting"	Section <u>75-2-403</u> .
5420	"Financing agency"	Section <u>75-2-104</u> .
5421	"Future goods"	Section <u>75-2-105</u> .
5422	"Goods"	Section <u>75-2-105</u> .
5423	"Identification"	Section <u>75-2-501</u> .
5424	"Installment contract"	Section <u>75-2-612</u> .
5425	"Letter of Credit"	Section <u>75-2-325</u> .
5426	"Lot"	Section <u>75-2-105</u> .
5427	"Merchant"	Section <u>75-2-104</u> .
5428	"Overseas"	Section <u>75-2-323</u> .
5429	"Person in position of seller"	Section <u>75-2-707</u> .
5430	"Present sale"	Section <u>75-2-106</u> .
5431	"Sale"	Section <u>75-2-106</u> .
5432	"Sale on approval"	Section <u>75-2-326</u> .
5433	"Sale or return"	Section <u>75-2-326</u> .
5434	"Termination"	Section <u>75-2-106</u> .

5435 (3) The following definitions in other chapters apply to  
5436 this chapter:

5437	"Check"	Section <u>75-3-104</u> .
5438	"Consignee"	Section <u>75-7-102</u> .
5439	"Consignor"	Section <u>75-7-102</u> .



5440 "Consumer goods" Section 75-9-102.  
5441 "Dishonor" Section 75-3-502.  
5442 "Draft" Section 75-3-104.

5443 (4) In addition Chapter 1 contains general definitions and  
5444 principles of construction and interpretation applicable  
5445 throughout this chapter.

5446 SECTION 7. Section 75-2-210, Mississippi Code of 1972, is  
5447 amended as follows:

5448 75-2-210. (1) A party may perform his duty through a  
5449 delegate unless otherwise agreed or unless the other party has a  
5450 substantial interest in having his original promisor perform or  
5451 control the acts required by the contract. No delegation of  
5452 performance relieves the party delegating of any duty to perform  
5453 or any liability for breach.

5454 (2) Except as otherwise provided in Section 75-9-406, unless  
5455 otherwise agreed, all rights of either seller or buyer can be  
5456 assigned except where the assignment would materially change the  
5457 duty of the other party, or increase materially the burden or risk  
5458 imposed on him by his contract, or impair materially his chance of  
5459 obtaining return performance. A right to damages for breach of  
5460 the whole contract or a right arising out of the assignor's due  
5461 performance of his entire obligation can be assigned despite  
5462 agreement otherwise.

5463 (3) The creation, attachment, perfection, or enforcement of  
5464 a security interest in the seller's interest under a contract is  
5465 not a transfer that materially changes the duty of or increases  
5466 materially the burden or risk imposed on the buyer or impairs  
5467 materially the buyer's chance of obtaining return performance  
5468 within the purview of subsection (2) unless, and then only to the  
5469 extent that, enforcement actually results in a delegation of  
5470 material performance of the seller. Even in that event, the  
5471 creation, attachment, perfection, and enforcement of the security  
5472 interest remain effective, but (i) the seller is liable to the



5473 buyer for damages caused by the delegation to the extent that the  
5474 damages could not reasonably be prevented by the buyer, and (ii) a  
5475 court having jurisdiction may grant other appropriate relief,  
5476 including cancellation of the contract for sale or an injunction  
5477 against enforcement of the security interest or consummation of  
5478 the enforcement.

5479       (4) Unless the circumstances indicate the contrary a  
5480 prohibition of assignment of "the contract" is to be construed as  
5481 barring only the delegation to the assignee of the assignor's  
5482 performance.

5483       (5) An assignment of "the contract" or of "all my rights  
5484 under the contract" or an assignment in similar general terms is  
5485 an assignment of rights and unless the language or the  
5486 circumstances (as in an assignment for security) indicate the  
5487 contrary, it is a delegation of performance of the duties of the  
5488 assignor and its acceptance by the assignee constitutes a promise  
5489 by him to perform those duties. This promise is enforceable by  
5490 either the assignor or the other party to the original contract.

5491       (6) The other party may treat any assignment which delegates  
5492 performance as creating reasonable grounds for insecurity and may  
5493 without prejudice to his rights against the assignor demand  
5494 assurances from the assignee (Section 75-2-609).

5495       SECTION 8. Section 75-2-326, Mississippi Code of 1972, is  
5496 amended as follows:

5497       75-2-326. (1) Unless otherwise agreed, if delivered goods  
5498 may be returned by the buyer even though they conform to the  
5499 contract, the transaction is

5500               (a) A "sale on approval" if the goods are delivered  
5501 primarily for use, and

5502               (b) A "sale or return" if the goods are delivered  
5503 primarily for resale.

5504       (2) \* \* \* Goods held on approval are not subject to the  
5505 claims of the buyer's creditors until acceptance; goods held on



5506 sale or return are subject to such claims while in the buyer's  
5507 possession.

5508 \* \* \*

5509 (3) Any "or return" term of a contract for sale is to be  
5510 treated as a separate contract for sale within the statute of  
5511 frauds section of this chapter (Section 75-2-201) and as  
5512 contradicting the sale aspect of the contract within the  
5513 provisions of this chapter on parol or extrinsic evidence (Section  
5514 75-2-202).

5515 SECTION 9. Section 75-2-502, Mississippi Code of 1972, is  
5516 amended as follows:

5517 75-2-502. **Buyer's right to goods on seller's repudiation,**  
5518 **failure to deliver, or insolvency.**

5519 (1) Subject to subsections (2) and (3) and even though the  
5520 goods have not been shipped a buyer who has paid a part or all of  
5521 the price of goods in which he has a special property under the  
5522 provisions of Section 75-2-501 may on making and keeping good a  
5523 tender of any unpaid portion of their price recover them from the  
5524 seller if:

5525 (a) In the case of goods bought for personal, family,  
5526 or household purposes, the seller repudiates or fails to deliver  
5527 as required by the contract; or

5528 (b) In all cases, the seller becomes insolvent within  
5529 ten (10) days after receipt of the first installment on their  
5530 price.

5531 (2) The buyer's right to recover the goods under subsection  
5532 (1)(a) vests upon acquisition of a special property, even if the  
5533 seller had not then repudiated or failed to deliver.

5534 (3) If the identification creating his special property has  
5535 been made by the buyer he acquires the right to recover the goods  
5536 only if they conform to the contract for sale.

5537 SECTION 10. Section 75-2-716, Mississippi Code of 1972, is  
5538 amended as follows:



5539           75-2-716. (1) Specific performance may be decreed where the  
5540 goods are unique or in other proper circumstances.

5541           (2) The decree for specific performance may include such  
5542 terms and conditions as to payment of the price, damages, or other  
5543 relief as the court may deem just.

5544           (3) The buyer has a right of replevin for goods identified  
5545 to the contract if after reasonable effort he is unable to effect  
5546 cover for such goods or the circumstances reasonably indicate that  
5547 such effort will be unavailing or if the goods have been shipped  
5548 under reservation and satisfaction of the security interest in  
5549 them has been made or tendered. In the case of goods bought for  
5550 personal, family, or household purposes, the buyer's right of  
5551 replevin vests upon acquisition of a special property, even if the  
5552 seller had not then repudiated or failed to deliver.

5553           SECTION 11. Section 75-2A-103, Mississippi Code of 1972, is  
5554 amended as follows:

5555           75-2A-103. (1) In this chapter unless the context otherwise  
5556 requires:

5557           (a) "Buyer in ordinary course of business" means a  
5558 person who in good faith and without knowledge that the sale to  
5559 him is in violation of the ownership rights or security interest  
5560 or leasehold interest of a third party in the goods, buys in  
5561 ordinary course from a person in the business of selling goods of  
5562 that kind but does not include a pawnbroker. "Buying" may be for  
5563 cash or by exchange of other property or on secured or unsecured  
5564 credit and includes receiving goods or documents of title under a  
5565 preexisting contract for sale but does not include a transfer in  
5566 bulk or as security for or in total or partial satisfaction of a  
5567 money debt.

5568           (b) "Cancellation" occurs when either party puts an end  
5569 to the lease contract for default by the other party.

5570           (c) "Commercial unit" means such a unit of goods as by  
5571 commercial usage is a single whole for purposes of lease and



5572 division of which materially impairs its character or value on the  
5573 market or in use. A commercial unit may be a single article, as a  
5574 machine, or a set of articles, as a suite of furniture or a line  
5575 of machinery, or a quantity, as a gross or carload, or any other  
5576 unit treated in use or in the relevant market as a single whole.

5577 (d) "Conforming" goods or performance under a lease  
5578 contract means goods or performance that are in accordance with  
5579 the obligations under the lease contract.

5580 (e) "Consumer lease" means a lease that a lessor  
5581 regularly engaged in the business of leasing or selling makes to a  
5582 lessee who is an individual and who takes under the lease  
5583 primarily for a personal, family or household purpose, if the  
5584 total payments to be made under the lease contract, excluding  
5585 payments for options to renew or buy, do not exceed Twenty-five  
5586 Thousand Dollars (\$25,000.00).

5587 (f) "Fault" means wrongful act, omission, breach or  
5588 default.

5589 (g) "Finance lease" means a lease with respect to  
5590 which:

5591 (i) The lessor does not select, manufacture, or  
5592 supply the goods;

5593 (ii) The lessor acquires the goods or the right to  
5594 possession and use of the goods in connection with the lease; and

5595 (iii) One (1) of the following occurs:

5596 (A) The lessee receives a copy of the  
5597 contract by which the lessor acquired the goods or the right to  
5598 possession and use of the goods before signing the lease contract;

5599 (B) The lessee's approval of the contract by  
5600 which the lessor acquired the goods or the right to possession and  
5601 use of the goods is a condition to effectiveness of the lease  
5602 contract;

5603 (C) The lessee, before signing the lease  
5604 contract, receives an accurate and complete statement designating



5605 the promises and warranties, and any disclaimers of warranties,  
5606 limitations or modifications of remedies, or liquidated damages,  
5607 including those of a third party, such as the manufacturer of the  
5608 goods, provided to the lessor by the person supplying the goods in  
5609 connection with or as part of the contract by which the lessor  
5610 acquired the goods or the right to possession and use of the  
5611 goods; or

5612 (D) If the lease is not a consumer lease, the  
5613 lessor, before the lessee signs the lease contract, informs the  
5614 lessee in writing (a) of the identity of the person supplying the  
5615 goods to the lessor, unless the lessee has selected that person  
5616 and directed the lessor to acquire the goods or the right to  
5617 possession and use of the goods from that person, (b) that the  
5618 lessee is entitled under this chapter to the promises and  
5619 warranties, including those of any third party, provided to the  
5620 lessor by the person supplying the goods in connection with or as  
5621 part of the contract by which the lessor acquired the goods or the  
5622 right to possession and use of the goods, and (c) that the lessee  
5623 may communicate with the person supplying the goods to the lessor  
5624 and receive an accurate and complete statement of those promises  
5625 and warranties, including any disclaimers and limitations of them  
5626 or of remedies.

5627 (h) "Goods" means all things that are movable at the  
5628 time of identification to the lease contract, or are fixtures  
5629 (Section 75-2A-309), but the term does not include money,  
5630 documents, instruments, accounts, chattel paper, general  
5631 intangibles or minerals or the like, including oil and gas, before  
5632 extraction. The term also includes the unborn young of animals.

5633 (i) "Installment lease contract" means a lease contract  
5634 that authorizes or requires the delivery of goods in separate lots  
5635 to be separately accepted, even though the lease contract contains  
5636 a clause "each delivery is a separate lease" or its equivalent.



5637           (j) "Lease" means a transfer of the right to possession  
5638 and use of goods for a term in return for consideration, but a  
5639 sale, including a sale on approval or a sale or return, or  
5640 retention or creation of a security interest is not a lease.  
5641 Unless the context clearly indicates otherwise, the term includes  
5642 a sublease.

5643           (k) "Lease agreement" means the bargain, with respect  
5644 to the lease, of the lessor and the lessee in fact as found in  
5645 their language or by implication from other circumstances  
5646 including course of dealing or usage of trade or course of  
5647 performance as provided in this chapter. Unless the context  
5648 clearly indicates otherwise, the term includes a sublease  
5649 agreement.

5650           (l) "Lease contract" means the total legal obligation  
5651 that results from the lease agreement as affected by this chapter  
5652 and any other applicable rules of law. Unless the context clearly  
5653 indicates otherwise, the term includes a sublease contract.

5654           (m) "Leasehold interest" means the interest of the  
5655 lessor or the lessee under a lease contract.

5656           (n) "Lessee" means a person who acquires the right to  
5657 possession and use of goods under a lease. Unless the context  
5658 clearly indicates otherwise, the term includes a sublease.

5659           (o) "Lessee in ordinary course of business" means a  
5660 person who in good faith and without knowledge that the lease to  
5661 him is in violation of the ownership rights or security interest  
5662 or leasehold interest of a third party in the goods leases in  
5663 ordinary course from a person in the business of selling or  
5664 leasing goods of that kind but does not include a pawnbroker.  
5665 "Leasing" may be for cash or by exchange of other property or on  
5666 secured or unsecured credit and includes receiving goods or  
5667 documents of title under a preexisting lease contract but does not  
5668 include a transfer in bulk or as security for or in total or  
5669 partial satisfaction of a money debt.



5670           (p) "Lessor" means a person who transfers the right to  
5671 possession and use of goods under a lease. Unless the context  
5672 clearly indicates otherwise, the term includes a sublessor.

5673           (q) "Lessor's residual interest" means the lessor's  
5674 interest in the goods after expiration, termination or  
5675 cancellation of the lease contract.

5676           (r) "Lien" means a charge against or interest in goods  
5677 to secure payment of a debt or performance of an obligation, but  
5678 the term does not include a security interest.

5679           (s) "Lot" means a parcel or a single article that is  
5680 the subject matter of a separate lease or delivery, whether or not  
5681 it is sufficient to perform the lease contract.

5682           (t) "Merchant lessee" means a lessee that is a merchant  
5683 with respect to goods of the kind subject to the lease.

5684           (u) "Present value" means the amount as of a date  
5685 certain of one or more sums payable in the future, discounted to  
5686 the date certain. The discount is determined by the interest rate  
5687 specified by the parties if the rate was not manifestly  
5688 unreasonable at the time the transaction was entered into;  
5689 otherwise, the discount is determined by a commercially reasonable  
5690 rate that takes into account the facts and circumstances of each  
5691 case at the time the transaction was entered into.

5692           (v) "Purchase" includes taking by sale, lease,  
5693 mortgage, security interest, pledge, gift or any other voluntary  
5694 transaction creating an interest in goods.

5695           (w) "Sublease" means a lease of goods the right to  
5696 possession and use of which was acquired by the lessor as a lessee  
5697 under an existing lease.

5698           (x) "Supplier" means a person from whom a lessor buys  
5699 or leases goods to be leased under a finance lease.

5700           (y) "Supply contract" means a contract under which a  
5701 lessor buys or leases goods to be leased.



5702 (z) "Termination" occurs when either party pursuant to  
5703 a power created by agreement or law puts an end to the lease  
5704 contract otherwise than for default.

5705 (2) Other definitions applying to this chapter and the  
5706 sections in which they appear are:

5707	"Accessions."	Section 75-2A-310(1).
5708	"Construction mortgage."	Section 75-2A-309(1)(d).
5709	"Encumbrance."	Section 75-2A-309(1)(e).
5710	"Fixtures."	Section 75-2A-309(1)(a).
5711	"Fixture filing."	Section 75-2A-309(1)(b).
5712	"Purchase money lease."	Section 75-2A-309(1)(c).

5713 (3) The following definitions in other chapters apply to  
5714 this chapter:

5715	"Account"	Section <u>75-9-102(a)(2)</u> .
5716	"Between merchants"	Section 75-2-104(3).
5717	"Buyer"	Section 75-2-103(1)(a).
5718	"Chattel paper"	Section <u>75-9-102(a)(11)</u> .
5719	"Consumer goods"	Section <u>75-9-102(a)(23)</u> .
5720	"Document"	Section <u>75-9-102(a)(30)</u> .
5721	"Entrusting"	Section 75-2-403(3).
5722	"General <u>intangible</u> "	Section <u>75-9-102(a)(42)</u> .
5723	"Good faith"	Section 75-2-103(1)(b).
5724	"Instrument"	Section <u>75-9-102(a)(47)</u> .
5725	"Merchant"	Section 75-2-104(1).
5726	"Mortgage"	Section <u>75-9-102(a)(55)</u> .
5727	"Pursuant to commitment"	Section <u>75-9-102(a)(68)</u> .
5728	"Receipt"	Section 75-2-103(1)(c).
5729	"Sale"	Section 75-2-106(1).
5730	"Sale on approval"	Section 75-2-326.
5731	"Sale or return"	Section 75-2-326.
5732	"Seller"	Section 75-2-103(1)(d).



5733 (4) In addition, Chapter 1 contains general definitions and  
5734 principles of construction and interpretation applicable  
5735 throughout this chapter.

5736 SECTION 12. Section 75-2A-303, Mississippi Code of 1972, is  
5737 amended as follows:

5738 75-2A-303. (1) As used in this section, "creation of a  
5739 security interest" includes the sale of a lease contract that is  
5740 subject to Chapter 9, Secured Transactions, by reason of Section  
5741 75-9-109(a)(3).

5742 (2) Except as provided in subsection (3) of Section  
5743 75-9-705, a provision in a lease agreement which (i) prohibits the  
5744 voluntary or involuntary transfer, including a transfer by sale,  
5745 sublease, creation or enforcement of a security interest, or  
5746 attachment, levy, or other judicial process, of an interest of a  
5747 party under the lease contract or of the lessor's residual  
5748 interest in the goods, or (ii) makes such a transfer an event of  
5749 default, gives rise to the rights and remedies provided in  
5750 subsection (4), but a transfer that is prohibited or is an event  
5751 of default under the lease agreement is otherwise effective.

5752 \* \* \*

5753 (3) A provision in a lease agreement which (i) prohibits a  
5754 transfer of a right to damages for default with respect to the  
5755 whole lease contract or of a right to payment arising out of the  
5756 transferor's due performance of the transferor's entire  
5757 obligation, or (ii) makes such a transfer an event of default, is  
5758 not enforceable, and such a transfer is not a transfer that  
5759 materially impairs the prospect of obtaining return performance  
5760 by, materially changes the duty of, or materially increases the  
5761 burden or risk imposed on, the other party to the lease contract  
5762 within the purview of subsection (4).

5763 (4) Subject to subsections (3) and Section 75-9-407:

5764 (a) If a transfer is made which is made an event of  
5765 default under a lease agreement, the party to the lease contract



5766 not making the transfer, unless that party waives the default or  
5767 otherwise agrees, has the rights and remedies described in Section  
5768 75-2A-501(2);

5769 (b) If paragraph (a) is not applicable and if a  
5770 transfer is made that (i) is prohibited under a lease agreement or  
5771 (ii) materially impairs the prospect of obtaining return  
5772 performance by, materially changes the duty of, or materially  
5773 increases the burden or risk imposed on, the other party to the  
5774 lease contract, unless the party not making the transfer agrees at  
5775 any time to the transfer in the lease contract or otherwise, then,  
5776 except as limited by contract, (i) the transferor is liable to the  
5777 party not making the transfer for damages caused by the transfer  
5778 to the extent that the damages could not reasonably be prevented  
5779 by the party not making the transfer and (ii) a court having  
5780 jurisdiction may grant other appropriate relief, including  
5781 cancellation of the lease contract or an injunction against the  
5782 transfer.

5783 (5) A transfer of "the lease" or of "all my rights under the  
5784 lease," or a transfer in similar general terms, is a transfer of  
5785 rights and, unless the language or the circumstances, as in a  
5786 transfer for security, indicate the contrary, the transfer is a  
5787 delegation of duties by the transferor to the transferee.  
5788 Acceptance by the transferee constitutes a promise by the  
5789 transferee to perform those duties. The promise is enforceable by  
5790 either the transferor or the other party to the lease contract.

5791 (6) Unless otherwise agreed by the lessor and the lessee, a  
5792 delegation of performance does not relieve the transferor as  
5793 against the other party of any duty to perform or of any liability  
5794 for default.

5795 (7) In a consumer lease, to prohibit the transfer of an  
5796 interest of a party under the lease contract or to make a transfer  
5797 an event of default, the language must be specific, by a writing,  
5798 and conspicuous.



5799 SECTION 13. Section 75-2A-307, Mississippi Code of 1972, is  
5800 amended as follows:

5801 75-2A-307. (1) Except as otherwise provided in Section  
5802 75-2A-306, a creditor of a lessee takes subject to the lease  
5803 contract.

5804 (2) Except as otherwise provided in subsection (3), \* \* \*  
5805 and in Sections 75-2A-306 and 75-2A-308, a creditor of a lessor  
5806 takes subject to the lease contract unless \* \* \* the creditor  
5807 holds a lien that attached to the goods before the lease contract  
5808 became enforceable.

5809 \* \* \*

5810 (3) Except as otherwise provided in Section 75-9-317,  
5811 75-9-321 and 75-9-323, a lessee takes a leasehold interest subject  
5812 to a security interest held by a creditor of the lessor.

5813 \* \* \*

5814 SECTION 14. Section 75-2A-309, Mississippi Code of 1972, is  
5815 amended as follows:

5816 75-2A-309. (1) In this section:

5817 (a) Goods are "fixtures" when they become so related to  
5818 particular real estate that an interest in them arises under real  
5819 estate law;

5820 (b) A "fixture filing" is the filing, in the office  
5821 where a record of a mortgage on the real estate would be filed or  
5822 recorded, of a financing statement covering goods that are or are  
5823 to become fixtures and conforming to the requirements of Section  
5824 75-9-502(a) and (b);

5825 (c) A lease is a "purchase money lease" unless the  
5826 lessee has possession or use of the goods or the right to  
5827 possession or use of the goods before the lease agreement is  
5828 enforceable;

5829 (d) A mortgage is a "construction mortgage" to the  
5830 extent it secures an obligation incurred for the construction of



5831 an improvement on land including the acquisition cost of the land,  
5832 if the recorded writing so indicates; and

5833 (e) "Encumbrance" includes real estate mortgages and  
5834 other liens on real estate and all other rights in real estate  
5835 that are not ownership interests.

5836 (2) Under this chapter a lease may be of goods that are  
5837 fixtures or may continue in goods that become fixtures, but no  
5838 lease exists under this chapter of ordinary building materials  
5839 incorporated into an improvement on land.

5840 (3) This chapter does not prevent creation of a lease of  
5841 fixtures pursuant to real estate law.

5842 (4) The perfected interest of a lessor of fixtures has  
5843 priority over a conflicting interest of an encumbrancer or owner  
5844 of the real estate if:

5845 (a) The lease is a purchase money lease, the  
5846 conflicting interest of the encumbrancer or owner arises before  
5847 the goods become fixtures, the interest of the lessor is perfected  
5848 by a fixture filing before the goods become fixtures or within ten  
5849 (10) days thereafter, and the lessee has an interest of record in  
5850 the real estate or is in possession of the real estate; or

5851 (b) The interest of the lessor is perfected by a  
5852 fixture filing before the interest of the encumbrancer or owner is  
5853 of record, the lessor's interest has priority over any conflicting  
5854 interest of a predecessor in title of the encumbrancer or owner,  
5855 and the lessee has an interest of record in the real estate or is  
5856 in possession of the real estate.

5857 (5) The interest of a lessor of fixtures, whether or not  
5858 perfected, has priority over the conflicting interest of an  
5859 encumbrancer or owner of the real estate if:

5860 (a) The fixtures are readily removable factory or  
5861 office machines, readily removable equipment that is not primarily  
5862 used or leased for use in the operation of the real estate, or  
5863 readily removable replacements of domestic appliances that are



5864 goods subject to a consumer lease, and before the goods become  
5865 fixtures the lease contract is enforceable; or

5866 (b) The conflicting interest is a lien on the real  
5867 estate obtained by legal or equitable proceedings after the lease  
5868 contract is enforceable; or

5869 (c) The encumbrancer or owner has consented in writing  
5870 to the lease or has disclaimed an interest in the goods as  
5871 fixtures; or

5872 (d) The lessee has a right to remove the goods as  
5873 against the encumbrancer or owner. If the lessee's right to  
5874 remove terminates, the priority of the interest of the lessor  
5875 continues for a reasonable time.

5876 (6) Notwithstanding subsection (4)(a) but otherwise subject  
5877 to subsections (4) and (5), the interest of a lessor of fixtures,  
5878 including the lessor's residual interest, is subordinate to the  
5879 conflicting interest of an encumbrancer of the real estate under a  
5880 construction mortgage recorded before the goods become fixtures if  
5881 the goods become fixtures before the completion of the  
5882 construction. To the extent given to refinance a construction  
5883 mortgage, the conflicting interest of an encumbrancer of the real  
5884 estate under a mortgage has this priority to the same extent as  
5885 the encumbrancer of the real estate under the construction  
5886 mortgage.

5887 (7) In cases not within the preceding subsections, priority  
5888 between the interest of a lessor of fixtures, including the  
5889 lessor's residual interest, and the conflicting interest of an  
5890 encumbrancer or owner of the real estate who is not the lessee is  
5891 determined by the priority rules governing conflicting interests  
5892 in real estate.

5893 (8) If the interest of a lessor of fixtures, including the  
5894 lessor's residual interest, has priority over all conflicting  
5895 interests of all owners and encumbrancers of the real estate, the  
5896 lessor or the lessee may (i) on default, expiration, termination



5897 or cancellation of the lease agreement but subject to the lease  
5898 agreement and this chapter, or (ii) if necessary to enforce other  
5899 rights and remedies of the lessor or lessee under this chapter,  
5900 remove the goods from the real estate, free and clear of all  
5901 conflicting interests of all owners and encumbrancers of the real  
5902 estate, but the lessor or lessee must reimburse any encumbrancer  
5903 or owner of the real estate who is not the lessee and who has not  
5904 otherwise agreed for the cost of repair of any physical injury,  
5905 but not for any diminution in value of the real estate caused by  
5906 the absence of the goods removed or by any necessity of replacing  
5907 them. A person entitled to reimbursement may refuse permission to  
5908 remove until the party seeking removal gives adequate security for  
5909 the performance of this obligation.

5910 (9) Even though the lease agreement does not create a  
5911 security interest, the interest of a lessor of fixtures, including  
5912 the lessor's residual interest, is perfected by filing a financing  
5913 statement as a fixture filing for leased goods that are or are to  
5914 become fixtures in accordance with the relevant provisions of the  
5915 Chapter on Secured Transactions (Chapter 9).

5916 SECTION 15. Section 75-4-210, Mississippi Code of 1972, is  
5917 amended as follows:

5918 75-4-210. (a) A collecting bank has a security interest in  
5919 an item and any accompanying documents or the proceeds of either:

5920 (1) In case of an item deposited in an account, to the  
5921 extent to which credit given for the item has been withdrawn or  
5922 applied;

5923 (2) In case of an item for which it has given credit  
5924 available for withdrawal as of right, to the extent of the credit  
5925 given, whether or not the credit is drawn upon or there is a right  
5926 of charge-back; or

5927 (3) If it makes an advance on or against the item.

5928 (b) If credit given for several items received at one time  
5929 or pursuant to a single agreement is withdrawn or applied in part,



5930 the security interest remains upon all the items, any accompanying  
5931 documents or the proceeds of either. For the purpose of this  
5932 section, credits first given are first withdrawn.

5933 (c) Receipt by a collecting bank of a final settlement for  
5934 an item is a realization on its security interest in the item,  
5935 accompanying documents, and proceeds. So long as the bank does  
5936 not receive final settlement for the item or give up possession of  
5937 the item or accompanying documents for purposes other than  
5938 collection, the security interest continues to that extent and is  
5939 subject to Chapter 9, but:

5940 (1) No security agreement is necessary to make the  
5941 security interest enforceable (Section 75-9-203(b)(3)(A));

5942 (2) No filing is required to perfect the security  
5943 interest; and

5944 (3) The security interest has priority over conflicting  
5945 perfected security interests in the item, accompanying documents,  
5946 or proceeds.

5947 SECTION 16. Section 75-7-503, Mississippi Code of 1972, is  
5948 amended as follows:

5949 75-7-503. (1) A document of title confers no right in goods  
5950 against a person who before issuance of the document had a legal  
5951 interest or a perfected security interest in them and who neither

5952 (a) Delivered or entrusted them or any document of  
5953 title covering them to the bailor or his nominee with actual or  
5954 apparent authority to ship, store or sell or with power to obtain  
5955 delivery under this chapter (Section 75-7-403) or with power of  
5956 disposition under this code (Sections 75-2-403 and 75-9-320) or  
5957 other statute or rule of law; nor

5958 (b) Acquiesced in the procurement by the bailor or his  
5959 nominee of any document of title.

5960 (2) Title to goods based upon an unaccepted delivery order  
5961 is subject to the rights of anyone to whom a negotiable warehouse  
5962 receipt or bill of lading covering the goods has been duly



5963 negotiated. Such a title may be defeated under the next section  
5964 to the same extent as the rights of the issuer or a transferee  
5965 from the issuer.

5966 (3) Title to goods based upon a bill of lading issued to a  
5967 freight forwarder is subject to the rights of anyone to whom a  
5968 bill issued by the freight forwarder is duly negotiated; but  
5969 delivery by the carrier in accordance with Part 4 of this chapter  
5970 pursuant to its own bill of lading discharges the carrier's  
5971 obligation to deliver.

5972 SECTION 17. Section 75-8-103, Mississippi Code of 1972, is  
5973 amended as follows:

5974 75-8-103. (a) A share or similar equity interest issued by  
5975 a corporation, business trust, joint stock company, or similar  
5976 entity is a security.

5977 (b) An "investment company security" is a security.  
5978 "Investment company security" means a share or similar equity  
5979 interest issued by an entity that is registered as an investment  
5980 company under the federal investment company laws, an interest in  
5981 a unit investment trust that is so registered, or a face-amount  
5982 certificate issued by a face-amount certificate company that is so  
5983 registered. Investment company security does not include an  
5984 insurance policy or endowment policy or annuity contract issued by  
5985 an insurance company.

5986 (c) An interest in a partnership or limited liability  
5987 company is not a security unless it is dealt in or traded on  
5988 securities exchanges or in securities markets, its terms expressly  
5989 provide that it is a security governed by this chapter, or it is  
5990 an investment company security. However, an interest in a  
5991 partnership or limited liability company is a financial asset if  
5992 it is held in a securities account.

5993 (d) A writing that is a security certificate is governed by  
5994 this chapter and not by Chapter 3, even though it also meets the  
5995 requirements of that chapter. However, a negotiable instrument



5996 governed by Chapter 3 is a financial asset if it is held in a  
5997 securities account.

5998 (e) An option or similar obligation issued by a clearing  
5999 corporation to its participants is not a security, but is a  
6000 financial asset.

6001 (f) A commodity contract, as defined in Section  
6002 75-9-102(a)(15), is not a security or a financial asset.

6003 SECTION 18. Section 75-8-106, Mississippi Code of 1972, is  
6004 amended as follows:

6005 75-8-106. (a) A purchaser has "control" of a certificated  
6006 security in bearer form if the certificated security is delivered  
6007 to the purchaser.

6008 (b) A purchaser has "control" of a certificated security in  
6009 registered form if the certificated security is delivered to the  
6010 purchaser, and:

6011 (1) The certificate is endorsed to the purchaser or in  
6012 blank by an effective endorsement; or

6013 (2) The certificate is registered in the name of the  
6014 purchaser, upon original issue or registration of transfer by the  
6015 issuer.

6016 (c) A purchaser has "control" of an uncertificated security  
6017 if:

6018 (1) The uncertificated security is delivered to the  
6019 purchaser; or

6020 (2) The issuer has agreed that it will comply with  
6021 instructions originated by the purchaser without further consent  
6022 by the registered owner.

6023 (d) A purchaser has "control" of a security entitlement if:

6024 (1) The purchaser becomes the entitlement holder; \* \* \*

6025 (2) The securities intermediary has agreed that it will  
6026 comply with entitlement orders originated by the purchaser without  
6027 further consent by the entitlement holder; or



6028           (3) Another person has control of the security  
6029 entitlement on behalf of the purchaser or, having previously  
6030 acquired control of the security entitlement, acknowledges that it  
6031 has control on behalf of the purchaser.

6032           (e) If an interest in a security entitlement is granted by  
6033 the entitlement holder to the entitlement holder's own securities  
6034 intermediary, the securities intermediary has control.

6035           (f) A purchaser who has satisfied the requirements of  
6036 subsection (c) \* \* \* or (d) \* \* \* has control, even if the  
6037 registered owner in the case of subsection (c) \* \* \* or the  
6038 entitlement holder in the case of subsection (d) \* \* \* retains the  
6039 right to make substitutions for the uncertificated security or  
6040 security entitlement, to originate instructions or entitlement  
6041 orders to the issuer or securities intermediary, or otherwise to  
6042 deal with the uncertificated security or security entitlement.

6043           (g) An issuer or a securities intermediary may not enter  
6044 into an agreement of the kind described in subsection (c)(2) or  
6045 (d)(2) without the consent of the registered owner or entitlement  
6046 holder, but an issuer or a securities intermediary is not required  
6047 to enter into such an agreement even though the registered owner  
6048 or entitlement holder so directs. An issuer or securities  
6049 intermediary that has entered into such an agreement is not  
6050 required to confirm the existence of the agreement to another  
6051 party unless requested to do so by the registered owner or  
6052 entitlement holder.

6053           SECTION 19. Section 75-8-110, Mississippi Code of 1972, is  
6054 amended as follows:

6055           75-8-110. (a) The local law of the issuer's jurisdiction,  
6056 as specified in subsection (d), governs:

6057                   (1) The validity of a security;

6058                   (2) The rights and duties of the issuer with respect to  
6059 registration of transfer;



6060           (3) The effectiveness of registration of transfer by  
6061 the issuer;

6062           (4) Whether the issuer owes any duties to an adverse  
6063 claimant to a security; and

6064           (5) Whether an adverse claim can be asserted against a  
6065 person to whom transfer of a certificated or uncertificated  
6066 security is registered or a person who obtains control of an  
6067 uncertificated security.

6068           (b) The local law of the securities intermediary's  
6069 jurisdiction, as specified in subsection (e), governs:

6070           (1) Acquisition of a security entitlement from the  
6071 securities intermediary;

6072           (2) The rights and duties of the securities  
6073 intermediary and entitlement holder arising out of a security  
6074 entitlement;

6075           (3) Whether the securities intermediary owes any duties  
6076 to an adverse claimant to a security entitlement; and

6077           (4) Whether an adverse claim can be asserted against a  
6078 person who acquires a security entitlement from the securities  
6079 intermediary or a person who purchases a security entitlement or  
6080 interest therein from an entitlement holder.

6081           (c) The local law of the jurisdiction in which a security  
6082 certificate is located at the time of delivery governs whether an  
6083 adverse claim can be asserted against a person to whom the  
6084 security certificate is delivered.

6085           (d) "Issuer's jurisdiction" means the jurisdiction under  
6086 which the issuer of the security is organized or, if permitted by  
6087 the law of that jurisdiction, the law of another jurisdiction  
6088 specified by the issuer. An issuer organized under the law of  
6089 this state may specify the law of another jurisdiction as the law  
6090 governing the matters specified in subsection (a)(2) through (5).

6091           (e) The following rules determine a "securities  
6092 intermediary's jurisdiction" for purposes of this section:



6093           (1) If an agreement between the securities intermediary  
6094 and its entitlement holder governing the securities account  
6095 expressly provides that a particular jurisdiction is the  
6096 securities intermediary's jurisdiction for the purposes of this  
6097 part, this article or the Uniform Commercial Code, that  
6098 jurisdiction is the securities intermediary's jurisdiction.

6099           (2) If paragraph (1) does not apply and an agreement  
6100 between the securities intermediary and its entitlement holder  
6101 governing the securities account expressly provides that the  
6102 agreement is governed by the law of a particular jurisdiction,  
6103 that jurisdiction is the securities intermediary's jurisdiction.

6104           (3) If neither paragraph (1) nor paragraph (2) applies  
6105 and an agreement between the securities intermediary and its  
6106 entitlement holder \* \* \* expressly provides that the securities  
6107 account is maintained at an office in a particular jurisdiction,  
6108 that jurisdiction is the securities intermediary's jurisdiction.

6109           (4) If none of the preceding paragraphs of this  
6110 subsection apply, the securities intermediary's jurisdiction is  
6111 the jurisdiction in which \* \* \* the office identified in an  
6112 account statement as the office serving the entitlement holder's  
6113 account is located.

6114           (5) If none of the preceding paragraphs of this  
6115 subsection apply, the securities intermediary's jurisdiction is  
6116 the jurisdiction in which \* \* \* the chief executive office of the  
6117 securities intermediary is located.

6118           (f) A securities intermediary's jurisdiction is not  
6119 determined by the physical location of certificates representing  
6120 financial assets, or by the jurisdiction in which is organized the  
6121 issuer of the financial asset with respect to which an entitlement  
6122 holder has a security entitlement, or by the location of  
6123 facilities for data processing or other record keeping concerning  
6124 the account.



6125 SECTION 20. Section 75-8-301, Mississippi Code of 1972, is  
6126 amended as follows:

6127 75-8-301. (a) Delivery of a certificated security to a  
6128 purchaser occurs when:

6129 (1) The purchaser acquires possession of the security  
6130 certificate;

6131 (2) Another person, other than a securities  
6132 intermediary, either acquires possession of the security  
6133 certificate on behalf of the purchaser or, having previously  
6134 acquired possession of the certificate, acknowledges that it holds  
6135 for the purchaser; or

6136 (3) A securities intermediary acting on behalf of the  
6137 purchaser acquires possession of the security certificate, only if  
6138 the certificate is in registered form and is (i) registered in the  
6139 name of the purchaser, (ii) payable to the order of the purchaser,  
6140 or (iii) specially endorsed to the purchaser by an effective  
6141 endorsement and has not been endorsed to the securities  
6142 intermediary or in blank.

6143 (b) Delivery of an uncertificated security to a purchaser  
6144 occurs when:

6145 (1) The issuer registers the purchaser as the  
6146 registered owner, upon original issue or registration of transfer;  
6147 or

6148 (2) Another person, other than a securities  
6149 intermediary, either becomes the registered owner of the  
6150 uncertificated security on behalf of the purchaser or, having  
6151 previously become the registered owner, acknowledges that it holds  
6152 for the purchaser.

6153 SECTION 21. Section 75-8-302, Mississippi Code of 1972, is  
6154 amended as follows:

6155 75-8-302. (a) Except as otherwise provided in subsections  
6156 (b) and (c), \* \* \* a purchaser of a certificated or uncertificated



6157 security acquires all rights in the security that the transferor  
6158 had or had power to transfer.

6159 (b) A purchaser of a limited interest acquires rights only  
6160 to the extent of the interest purchased.

6161 (c) A purchaser of a certificated security who as a previous  
6162 holder had notice of an adverse claim does not improve its  
6163 position by taking from a protected purchaser.

6164 SECTION 22. Section 75-8-510, Mississippi Code of 1972, is  
6165 amended as follows:

6166 75-8-510. (a) In a case not covered by the priority rules  
6167 in Article 9 or the rules stated in subsection (c), an action  
6168 based on an adverse claim to a financial asset or security  
6169 entitlement, whether framed in conversion, replevin, constructive  
6170 trust, equitable lien, or other theory, may not be asserted  
6171 against a person who purchases a security entitlement, or an  
6172 interest therein, from an entitlement holder if the purchaser  
6173 gives value, does not have notice of the adverse claim, and  
6174 obtains control.

6175 (b) If an adverse claim could not have been asserted against  
6176 an entitlement holder under Section 75-8-502, the adverse claim  
6177 cannot be asserted against a person who purchases a security  
6178 entitlement, or an interest therein, from the entitlement holder.

6179 (c) In a case not covered by the priority rules in Chapter  
6180 9, a purchaser for value of a security entitlement, or an interest  
6181 therein, who obtains control has priority over a purchaser of a  
6182 security entitlement, or an interest therein, who does not obtain  
6183 control. Except as otherwise provided in subsection (d),  
6184 purchasers who have control rank according to priority in time of:

6185 (1) The purchaser's becoming the person for whom the  
6186 securities account, in which the security entitlement is carried,  
6187 is maintained, if the purchaser obtained control under Section  
6188 75-8-106(d)(1);



6189           (2) The securities intermediary's agreement to comply  
6190 with the purchaser's entitlement orders with respect to security  
6191 entitlements carried or to be carried in the securities account in  
6192 which the security entitlement is carried, if the purchaser  
6193 obtained control under Section 75-8-106(d) (2); or

6194           (3) If the purchaser obtained control through another  
6195 person under Section 75-8-106(d) (3), the time on which priority  
6196 would be based under this subsection if the other person were the  
6197 secured party.

6198           (d) A securities intermediary as purchaser has priority over  
6199 a conflicting purchaser who has control unless otherwise agreed by  
6200 the securities intermediary.

6201           SECTION 23. Section 71-3-43, Mississippi Code of 1972, is  
6202 amended as follows:

6203           71-3-43. No assignment, release, or commutation of  
6204 compensation or benefits due or payable under this chapter, except  
6205 as provided by this chapter, shall be valid; and such compensation  
6206 and benefits shall be exempt from all claims of creditors and from  
6207 levy, execution, and attachment or other remedy for recovery or  
6208 collection of a debt, which exemption may be waived. This section  
6209 prevails over Sections 75-9-406 and 75-9-408 of Article 9 of the  
6210 Uniform Commercial Code to the extent, if any, that these sections  
6211 may otherwise be applicable.

6212           SECTION 24. Section 41-29-177, Mississippi Code of 1972, is  
6213 amended as follows:

6214           41-29-177. (1) Except as otherwise provided in Section  
6215 41-29-176, Mississippi Code of 1972, when any property, other than  
6216 a controlled substance, raw material or paraphernalia, is seized  
6217 under the Uniform Controlled Substances Law, proceedings under  
6218 this section shall be instituted within thirty (30) days from the  
6219 date of seizure or the subject property shall be immediately  
6220 returned to the party from whom seized.



6221           (2) A petition for forfeiture shall be filed in the name of  
6222 the State of Mississippi, the county or the municipality and may  
6223 be filed in the county in which the seizure is made, the county in  
6224 which the criminal prosecution is brought or the county in which  
6225 the owner of the seized property is found. Forfeiture proceedings  
6226 may be brought in the circuit court or the county court if a  
6227 county court exists in the county and the value of the seized  
6228 property is within the jurisdictional limits of the county court  
6229 as set forth in Section 9-9-21, Mississippi Code of 1972. A copy  
6230 of such petition shall be served upon the following persons by  
6231 service of process in the same manner as in civil cases:

6232           (a) The owner of the property, if address is known;

6233           (b) Any secured party who has registered his lien or  
6234 filed a financing statement as provided by law, if the identity of  
6235 such secured party can be ascertained by the Bureau of Narcotics  
6236 or the local law enforcement agency by making a good faith effort  
6237 to ascertain the identity of such secured party as described in  
6238 subsections (3), (4), (5), (6) and (7) of this section;

6239           (c) Any other bona fide lienholder or secured party or  
6240 other person holding an interest in the property in the nature of  
6241 a security interest of whom the Mississippi Bureau of Narcotics or  
6242 the local law enforcement agency has actual knowledge;

6243           (d) Any holder of a mortgage, deed of trust, lien or  
6244 encumbrance of record, if the property is real estate, by making a  
6245 good faith inquiry as described in subsection (8) of this section;  
6246 and

6247           (e) Any person in possession of property subject to  
6248 forfeiture at the time that it was seized.

6249           (3) If the property is a motor vehicle susceptible of  
6250 titling under the Mississippi Motor Vehicle Title Law and if there  
6251 is any reasonable cause to believe that the vehicle has been  
6252 titled, the Bureau of Narcotics or the local law enforcement  
6253 agency shall make inquiry of the State Tax Commission as to what



6254 the records of the State Tax Commission show as to who is the  
6255 record owner of the vehicle and who, if anyone, holds any lien or  
6256 security interest which affects the vehicle.

6257 (4) If the property is a motor vehicle and is not titled in  
6258 the State of Mississippi, then the Bureau of Narcotics or the  
6259 local law enforcement agency shall attempt to ascertain the name  
6260 and address of the person in whose name the vehicle is licensed,  
6261 and if the vehicle is licensed in a state which has in effect a  
6262 certificate of title law, the bureau or the local law enforcement  
6263 agency shall make inquiry of the appropriate agency of that state  
6264 as to what the records of the agency show as to who is the record  
6265 owner of the vehicle and who, if anyone, holds any lien, security  
6266 interest or other instrument in the nature of a security device  
6267 which affects the vehicle.

6268 (5) If the property is of a nature that a financing  
6269 statement is required by the laws of this state to be filed to  
6270 perfect a security interest affecting the property and if there is  
6271 any reasonable cause to believe that a financing statement  
6272 covering the security interest has been filed under the laws of  
6273 this state, the Bureau of Narcotics or the local law enforcement  
6274 agency shall make inquiry of the appropriate office designated in  
6275 Section 75-9-501, Mississippi Code of 1972, as to what the records  
6276 show as to who is the record owner of the property and who, if  
6277 anyone, has filed a financing statement affecting the property.

6278 (6) If the property is an aircraft or part thereof and if  
6279 there is any reasonable cause to believe that an instrument in the  
6280 nature of a security device affects the property, then the Bureau  
6281 of Narcotics or the local law enforcement agency shall make  
6282 inquiry of the Mississippi Department of Transportation as to what  
6283 the records of the Federal Aviation Administration show as to who  
6284 is the record owner of the property and who, if anyone, holds an  
6285 instrument in the nature of a security device which affects the  
6286 property.



6287           (7) In the case of all other personal property subject to  
6288 forfeiture, if there is any reasonable cause to believe that an  
6289 instrument in the nature of a security device affects the  
6290 property, then the Bureau of Narcotics or the local law  
6291 enforcement agency shall make a good faith inquiry to identify the  
6292 holder of any such instrument.

6293           (8) If the property is real estate, the Bureau of Narcotics  
6294 or the local law enforcement agency shall make inquiry of the  
6295 chancery clerk of the county wherein the property is located to  
6296 determine who is the owner of record and who, if anyone, is a  
6297 holder of a bona fide mortgage, deed of trust, lien or  
6298 encumbrance.

6299           (9) In the event the answer to an inquiry states that the  
6300 record owner of the property is any person other than the person  
6301 who was in possession of it when it was seized, or states that any  
6302 person holds any lien, encumbrance, security interest, other  
6303 interest in the nature of a security interest, mortgage or deed of  
6304 trust which affects the property, the Bureau of Narcotics or the  
6305 local law enforcement agency shall cause any record owner and also  
6306 any lienholder, secured party, other person who holds an interest  
6307 in the property in the nature of a security interest, or holder of  
6308 an encumbrance, mortgage or deed of trust which affects the  
6309 property to be named in the petition of forfeiture and to be  
6310 served with process in the same manner as in civil cases.

6311           (10) If the owner of the property cannot be found and served  
6312 with a copy of the petition of forfeiture, or if no person was in  
6313 possession of the property subject to forfeiture at the time that  
6314 it was seized and the owner of the property is unknown, the Bureau  
6315 of Narcotics or the local law enforcement agency shall file with  
6316 the clerk of the court in which the proceeding is pending an  
6317 affidavit to such effect, whereupon the clerk of the court shall  
6318 publish notice of the hearing addressed to "the Unknown Owner of  
6319 \_\_\_\_\_," filling in the blank space with a reasonably



6320 detailed description of the property subject to forfeiture.  
6321 Service by publication shall contain the other requisites  
6322 prescribed in Section 11-33-41, and shall be served as provided in  
6323 Section 11-33-37, Mississippi Code of 1972, for publication of  
6324 notice for attachments at law.

6325 (11) No proceedings instituted pursuant to the provisions of  
6326 this article shall proceed to hearing unless the judge conducting  
6327 the hearing is satisfied that this section has been complied with.  
6328 Any answer received from an inquiry required by subsections (3)  
6329 through (8) of this section shall be introduced into evidence at  
6330 the hearing.

6331 SECTION 25. Section 49-7-251, Mississippi Code of 1972, is  
6332 amended as follows:

6333 49-7-251. (1) Except as otherwise provided in Section  
6334 49-7-257, when any property is seized pursuant to Section  
6335 49-7-103, 49-15-21(2) or 59-21-33, Mississippi Code of 1972,  
6336 proceedings under this section shall be instituted promptly.  
6337 Provided, however, that the seizing law enforcement agency may, in  
6338 the sound exercise of discretion, decide not to bring a forfeiture  
6339 action if the interests of bona fide lienholders or secured  
6340 creditors equal or exceed the value of the seized property, or if  
6341 other factors would produce a negative economic result. Provided  
6342 further, that no property shall be subject to forfeiture which has  
6343 been stolen from its owner if the owner can be identified and  
6344 prosecution for the theft has been initiated.

6345 (2) A petition for forfeiture shall be filed promptly in the  
6346 name of the State of Mississippi, the county or the municipality  
6347 and may be filed in the county in which the seizure is made, the  
6348 county in which the criminal prosecution is brought or the county  
6349 in which the owner of the seized property is found. Forfeiture  
6350 proceedings may be brought in the circuit court or the county  
6351 court if a county court exists in the county and the value of the  
6352 seized property is within the jurisdictional limits of the county



6353 court as set forth in Section 9-9-21, Mississippi Code of 1972. A  
6354 copy of such petition shall be served upon the following persons  
6355 by service of process in the same manner as in civil cases:

6356 (a) The owner of the property, if address is known;

6357 (b) Any secured party who has registered his lien or  
6358 filed a financing statement as provided by law, if the identity of  
6359 such secured party can be ascertained by the Department of  
6360 Wildlife Conservation or the local law enforcement agency by  
6361 making a good faith effort to ascertain the identity of such  
6362 secured party as described in subsections (3), (4), (5), (6) and  
6363 (7) of this section;

6364 (c) Any other bona fide lienholder or secured party or  
6365 other person holding an interest in the property in the nature of  
6366 a security interest of whom the Department of Wildlife  
6367 Conservation or the local law enforcement agency has actual  
6368 knowledge; and

6369 (d) Any person in possession of property subject to  
6370 forfeiture at the time that it was seized.

6371 (3) If the property is a motor vehicle susceptible of  
6372 titling under the Mississippi Motor Vehicle Title Law and if there  
6373 is any reasonable cause to believe that the vehicle has been  
6374 titled, the Department of Wildlife Conservation or the local law  
6375 enforcement agency shall make inquiry of the State Tax Commission  
6376 as to what the records of the State Tax Commission show as to who  
6377 is the record owner of the vehicle and who, if anyone, holds any  
6378 lien or security interest which affects the vehicle.

6379 (4) If the property is a motor vehicle and is not titled in  
6380 the State of Mississippi, then the Department of Wildlife  
6381 Conservation or the local law enforcement agency shall attempt to  
6382 ascertain the name and address of the person in whose name the  
6383 vehicle is licensed, and if the vehicle is licensed in a state  
6384 which has in effect a certificate of title law, the Department of  
6385 Wildlife Conservation or the local law enforcement agency shall



6386 make inquiry of the appropriate agency of that state as to what  
6387 the records of the agency show as to who is the record owner of  
6388 the vehicle and who, if anyone, holds any lien, security interest  
6389 or other instrument in the nature of a security device which  
6390 affects the vehicle.

6391 (5) If the property is of a nature that a financing  
6392 statement is required by the laws of this state to be filed to  
6393 perfect a security interest affecting the property and if there is  
6394 any reasonable cause to believe that a financing statement  
6395 covering the security interest has been filed under the laws of  
6396 this state, the Department of Wildlife Conservation or the local  
6397 law enforcement agency shall make inquiry of the appropriate  
6398 office designated in Section 75-9-501, Mississippi Code of 1972,  
6399 as to what the records show as to who is the record owner of the  
6400 property and who, if anyone, has filed a financing statement  
6401 affecting the property.

6402 (6) If the property is an aircraft or part thereof and if  
6403 there is any reasonable cause to believe that an instrument in the  
6404 nature of a security device affects the property, then the  
6405 Department of Wildlife Conservation or the local law enforcement  
6406 agency shall make inquiry of the Administrator of the Mississippi  
6407 Aeronautics Commission as to what the records of the Federal  
6408 Aviation Administration show as to who is the record owner of the  
6409 property and who, if anyone, holds an instrument in the nature of  
6410 a security device which affects the property.

6411 (7) In the case of all other personal property subject to  
6412 forfeiture, if there is any reasonable cause to believe that an  
6413 instrument in the nature of a security device affects the  
6414 property, then the Department of Wildlife Conservation or the  
6415 local law enforcement agency shall make a good faith inquiry to  
6416 identify the holder of any such instrument.

6417 (8) In the event the answer to an inquiry states that the  
6418 record owner of the property is any person other than the person



6419 who was in possession of it when it was seized, or states that any  
6420 person holds any lien, encumbrance, security interest, other  
6421 interest in the nature of a security interest, mortgage or deed of  
6422 trust which affects the property, the Department of Wildlife  
6423 Conservation or the local law enforcement agency shall cause any  
6424 record owner and also any lienholder, secured party, other person  
6425 who holds an interest in the property in the nature of a security  
6426 interest which affects the property to be named in the petition of  
6427 forfeiture and to be served with process in the same manner as in  
6428 civil cases.

6429 (9) If the owner of the property cannot be found and served  
6430 with a copy of the petition of forfeiture, or if no person was in  
6431 possession of the property subject to forfeiture at the time that  
6432 it was seized and the owner of the property is unknown, the  
6433 Department of Wildlife Conservation or the local law enforcement  
6434 agency shall file with the clerk of the court in which the  
6435 proceeding is pending an affidavit to such effect, whereupon the  
6436 clerk of the court shall publish notice of the hearing addressed  
6437 to "the Unknown Owner of \_\_\_\_\_," filling in the blank  
6438 space with a reasonably detailed description of the property  
6439 subject to forfeiture. Service by publication shall contain the  
6440 other requisites prescribed in Section 11-33-41, Mississippi Code  
6441 of 1972, and shall be served as provided in Section 11-33-37,  
6442 Mississippi Code of 1972, for publication of notice for  
6443 attachments at law.

6444 (10) No proceedings instituted pursuant to the provisions of  
6445 this section shall proceed to hearing unless the judge conducting  
6446 the hearing is satisfied that this section has been complied with.  
6447 Any answer received from an inquiry required by subsections (3)  
6448 through (7) of this section shall be introduced into evidence at  
6449 the hearing.

6450 SECTION 26. Section 67-1-93, Mississippi Code of 1972, is  
6451 amended as follows:



6452           67-1-93. (1) Except as otherwise provided in Section  
6453 67-1-99, when any property, other than an alcoholic beverage or  
6454 raw material, is seized under this chapter or Chapter 31 of Title  
6455 97, Mississippi Code of 1972, proceedings under this section shall  
6456 be instituted promptly.

6457           (2) A petition for forfeiture shall be filed promptly in the  
6458 name of the State of Mississippi with the clerk of the circuit or  
6459 county court of the county in which the seizure is made. A copy  
6460 of such petition shall be served upon the following persons by  
6461 service of process in the same manner as in civil cases:

6462                   (a) The owner of the property, if address is known;

6463                   (b) Any secured party who has registered his lien or  
6464 filed a financing statement as provided by law, if the identity of  
6465 such secured party can be ascertained by the agent or agency which  
6466 seized the property making a good faith effort to ascertain the  
6467 identity of such secured party as described in subsections (3),  
6468 (4), (5), (6) and (7) of this section;

6469                   (c) Any other bona fide lienholder or secured party or  
6470 other person holding an interest in the property in the nature of  
6471 a security interest of whom the agent or agency has actual  
6472 knowledge; and

6473                   (d) Any person in possession of property subject to  
6474 forfeiture at the time that it was seized.

6475           (3) If the property is a motor vehicle susceptible of  
6476 titling under the Mississippi Motor Vehicle Title Law and if there  
6477 is any reasonable cause to believe that the vehicle has been  
6478 titled, the agent or agency shall make inquiry of the State Tax  
6479 Commission as to what the records of the State Tax Commission show  
6480 as to who is the record owner of the vehicle and who, if anyone,  
6481 holds any lien or security interest which affects the vehicle.

6482           (4) If the property is a motor vehicle and is not titled in  
6483 the State of Mississippi then the agent or agency shall attempt to  
6484 ascertain the name and address of the person in whose name the



6485 vehicle is licensed, and if the vehicle is licensed in a state  
6486 which has in effect a certificate of title law, the agent or  
6487 agency shall make inquiry of the appropriate agency of that state  
6488 to determine through such agency's records the name of the record  
6489 owner of the vehicle and who, if anyone, holds any lien, security  
6490 interest or other instrument in the nature of a security device  
6491 which affects the vehicle.

6492 (5) If the property is of a nature that a financing  
6493 statement is required by the laws of this state to be filed to  
6494 perfect a security interest affecting the property and if there is  
6495 any reasonable cause to believe that a financing statement  
6496 covering the security interest has been filed under the laws of  
6497 this state, the agent or agency shall make inquiry of the  
6498 appropriate office designated in Section 75-9-501 to determine  
6499 through the records of such office the name of the record owner of  
6500 the property and who, if anyone, has filed a financing statement  
6501 affecting the property.

6502 (6) If the property is an aircraft or part thereof and if  
6503 there is any reasonable cause to believe that an instrument in the  
6504 nature of a security device affects the property, then the agent  
6505 or agency shall make inquiry of the Administrator of the Federal  
6506 Aviation Administration to determine through records of the  
6507 administrator the name of the record owner of the property and  
6508 who, if anyone, holds an instrument in the name of a security  
6509 device which affects the property.

6510 (7) In the case of all other property other than an  
6511 alcoholic beverage or raw material subject to forfeiture, if there  
6512 is any reasonable cause to believe that an instrument in the  
6513 nature of a security device affects the property, then the agent  
6514 or agency shall make a good faith inquiry to identify the holder  
6515 of any such instrument.

6516 (8) In the event the answer to an inquiry states that the  
6517 record owner of the property is any person other than the person



6518 who was in possession of it when it was seized, or states that any  
6519 person holds any lien, security interest or other interest in the  
6520 nature of a security interest which affects the property, the  
6521 agent or agency shall cause any record owner and also any  
6522 lienholder, secured party or other person who holds an interest in  
6523 the property in the nature of a security interest which affects  
6524 the property to be named in the petition of forfeiture and to be  
6525 served with process in the same manner as in civil cases.

6526 (9) If the owner of the property cannot be found and served  
6527 with a copy of the petition of forfeiture, or if no person was in  
6528 possession of the property subject to forfeiture at the time that  
6529 it was seized and the owner of the property is unknown, the agent  
6530 or agency shall file with the clerk of the court in which the  
6531 proceeding is pending an affidavit to such effect, whereupon the  
6532 clerk of the court shall publish notice of the hearing addressed  
6533 to "the Unknown Owner of \_\_\_\_\_," filling in the blank  
6534 space with a reasonably detailed description of the property  
6535 subject to forfeiture. Service by publication shall be made in  
6536 accordance with the Mississippi Rules of Civil Procedure.

6537 (10) No proceedings instituted pursuant to the provisions of  
6538 this chapter shall proceed to hearing unless the judge conducting  
6539 the hearing is satisfied that this section has been complied with.  
6540 Any answer received from an inquiry required by subsections (3)  
6541 through (7) of this section shall be introduced into evidence at  
6542 the hearing.

6543 SECTION 27. Section 97-17-4, Mississippi Code of 1972, is  
6544 amended as follows:

6545 97-17-4. (1) All property, real or personal, including  
6546 money, used in the course of, intended for use in the course of,  
6547 derived from, or realized through, conduct in violation of a  
6548 provision of Section 97-17-1 or 97-17-3 is subject to civil  
6549 forfeiture to the state pursuant to the provisions of this  
6550 section; provided, however, that a forfeiture of personal property



6551 encumbered by a bona fide security interest or real property  
6552 encumbered by a bona fide mortgage, deed of trust, lien or  
6553 encumbrance of record shall be subject to the interest of the  
6554 secured party or subject to the interest of the holder of the  
6555 mortgage deed of trust, lien of encumbrance of record if such  
6556 secured party or holder neither had knowledge of or consented to  
6557 the act or omission.

6558 (2) Property subject to forfeiture may be seized by law  
6559 enforcement officers upon process issued by any appropriate court  
6560 having jurisdiction over the property. Seizure without process  
6561 may be made if:

6562 (a) The seizure is incident to an arrest or a search  
6563 under a search warrant or an inspection under a lawful  
6564 administrative inspection;

6565 (b) The property subject to seizure has been the  
6566 subject of a prior judgment in favor of the state in a criminal  
6567 injunction or forfeiture proceeding based upon this section.

6568 (3) When any property is seized pursuant to this section,  
6569 proceedings under this section shall be instituted promptly.

6570 (4) (a) A petition for forfeiture shall be filed promptly  
6571 in the name of the State of Mississippi with the clerk of the  
6572 circuit court of the county in which the seizure is made. A copy  
6573 of such petition shall be served upon the following persons by  
6574 service of process in the same manner as in civil cases:

6575 (i) The owner of the property, if address is  
6576 known;

6577 (ii) Any secured party who has registered his lien  
6578 or filed a financing statement as provided by law, if the identity  
6579 of such secured party can be ascertained by the state by making a  
6580 good faith effort to ascertain the identity of such secured party  
6581 as described in paragraphs (b), (c), (d), (e) and (f) of this  
6582 subsection;



6583 (iii) Any other bona fide lienholder or secured  
6584 party or other person holding an interest in the property in the  
6585 nature of a security interest of whom the state has actual  
6586 knowledge;

6587 (iv) A holder of a mortgage, deed of trust, lien  
6588 or encumbrance of record, if the property is real estate by making  
6589 a good faith inquiry as described in paragraph (g) of this  
6590 section; and

6591 (v) Any person in possession of property subject  
6592 to forfeiture at the time that it was seized.

6593 (b) If the property is a motor vehicle susceptible of  
6594 titling under the Mississippi Motor Vehicle Title Law and if there  
6595 is any reasonable cause to believe that the vehicle has been  
6596 titled, the state shall make inquiry of the State Tax Commission  
6597 as to what the records of the State Tax Commission show as to who  
6598 is the record owner of the vehicle and who, if anyone, holds any  
6599 lien or security interest which affects the vehicle.

6600 (c) If the property is a motor vehicle and is not  
6601 titled in the State of Mississippi, then the state shall attempt  
6602 to ascertain the name and address of the person in whose name the  
6603 vehicle is licensed, and if the vehicle is licensed in a state  
6604 which has in effect a certificate of title law, the state shall  
6605 make inquiry of the appropriate agency of that state as to what  
6606 the records of the agency show as to who is the record owner of  
6607 the vehicle and who, if anyone, holds any lien, security interest,  
6608 or other instrument in the nature of a security device which  
6609 affects the vehicle.

6610 (d) If the property is of a nature that a financing  
6611 statement is required by the laws of this state to be filed to  
6612 perfect a security interest affecting the property and if there is  
6613 any reasonable cause to believe that a financing statement  
6614 covering the security interest has been filed under the laws of  
6615 this state, the state shall make inquiry of the appropriate office



6616 designated in Section 75-9-501 as to what the records show as to  
6617 who is the record owner of the property and who, if anyone, has  
6618 filed a financing statement affecting the property.

6619 (e) If the property is an aircraft or part thereof and  
6620 if there is any reasonable cause to believe that an instrument in  
6621 the nature of a security device affects the property, then the  
6622 state shall make inquiry of the administrator of the Federal  
6623 Aviation Administration as to what the records of the  
6624 administrator show as to who is the record owner of the property  
6625 and who, if anyone, holds an instrument in the nature of a  
6626 security device which affects the property.

6627 (f) In the case of all other personal property subject  
6628 to forfeiture, if there is any reasonable cause to believe that an  
6629 instrument in the nature of a security device affects the  
6630 property, then the state shall make a good faith inquiry to  
6631 identify the holder of any such instrument.

6632 (g) If the property is real estate, the state shall  
6633 make inquiry at the appropriate places to determine who is the  
6634 owner of record and who, if anyone is a holder of a bona fide  
6635 mortgage, deed of trust, lien or encumbrance.

6636 (h) In the event the answer to an inquiry states that  
6637 the record owner of the property is any person other than the  
6638 person who was in possession of it when it was seized, or states  
6639 that any person holds any lien, encumbrance, security interest,  
6640 other interest in the nature of a security interest, mortgage or  
6641 deed of trust which affects the property, the state shall cause  
6642 any record owner and also any lienholder, secured party, other  
6643 person who holds an interest in the property in the nature of a  
6644 security interest, or holder of an encumbrance, mortgage or deed  
6645 of trust which affects the property to be named in the petition of  
6646 forfeiture and to be served with process in the same manner as in  
6647 civil cases.



6648 (i) If the owner of the property cannot be found and  
6649 served with a copy of the petition of forfeiture, or if no person  
6650 was in possession of the property subject to forfeiture at the  
6651 time that it was seized and the owner of the property is unknown,  
6652 the state shall file with the clerk of the court in which the  
6653 proceeding is pending an affidavit to such effect, whereupon the  
6654 clerk of the court shall publish notice of the hearing addressed  
6655 to "the Unknown Owner of \_\_\_\_\_," filling in the blank  
6656 space with a reasonably detailed description of the property  
6657 subject to forfeiture. Service by publication shall contain the  
6658 other requisites prescribed in Section 11-33-41, and shall be  
6659 served as provided in Section 11-33-37 for publication of notice  
6660 for attachments at law.

6661 (j) No proceedings instituted pursuant to the  
6662 provisions of this article shall proceed to hearing unless the  
6663 judge conducting the hearing is satisfied that this section has  
6664 been complied with. Any answer received from an inquiry required  
6665 by paragraphs (b) through (g) of this section shall be introduced  
6666 into evidence at the hearing.

6667 (5) (a) An owner of property that has been seized shall  
6668 file a verified answer within twenty (20) days after the  
6669 completion of service of process. If no answer is filed, the  
6670 court shall hear evidence that the property is subject to  
6671 forfeiture and forfeit the property to the state. If an answer is  
6672 filed, a time for hearing on forfeiture shall be set within thirty  
6673 (30) days of filing the answer or at the succeeding term of court  
6674 if court would not be in progress within thirty (30) days after  
6675 filing the answer. Provided, however, that upon request by the  
6676 state or the owner of the property, the court may postpone said  
6677 forfeiture hearing to a date past the time any criminal action is  
6678 pending against said owner.

6679 (b) If the owner of the property has filed a verified  
6680 answer denying that the property is subject to forfeiture, then



6681 the burden is on the state to prove that the property is subject  
6682 to forfeiture. The burden of proof placed upon the state shall be  
6683 clear and convincing proof. However, if no answer has been filed  
6684 by the owner of the property, the petition for forfeiture may be  
6685 introduced into evidence and is prima facie evidence that the  
6686 property is subject to forfeiture.

6687 (c) At the hearing any claimant of any right, title, or  
6688 interest in the property may prove his lien, encumbrance, security  
6689 interest, other interest in the nature of a security interest,  
6690 mortgage or deed of trust to be bona fide and created without  
6691 knowledge or consent that the property was to be used so as to  
6692 cause the property to be subject to forfeiture.

6693 (d) If it is found that the property is subject to  
6694 forfeiture, then the judge shall forfeit the property to the  
6695 state. However, if proof at the hearing discloses that the  
6696 interest of any bona fide lienholder, secured party, other person  
6697 holding an interest in the property in the nature of a security  
6698 interest or any holder of a bona fide encumbrance, mortgage or  
6699 deed of trust is greater than or equal to the present value of the  
6700 property, the court shall order the property released to him. If  
6701 such interest is less than the present value of the property and  
6702 if the proof shows that the property is subject to forfeiture, the  
6703 court shall order the property forfeited to the state.

6704 (6) (a) All personal property, including money, which is  
6705 forfeited to the state and is not capable of being sold at public  
6706 auction shall be liquidated and the proceeds, after deduction of  
6707 all storage and court costs, shall be forwarded to the State  
6708 Treasurer and deposited in the General Fund of the state.

6709 (b) All real estate which is forfeited to the state  
6710 shall be sold to the highest bidder at a public auction to be  
6711 conducted by the state at such place, on such notice and in  
6712 accordance with the same procedure, as far as practicable, as is  
6713 required in the case of sales of land under execution of law. The



6714 proceeds of such sale shall first be applied to the cost and  
6715 expense in administering and conducting such sale, then to the  
6716 satisfaction of all mortgages, deeds of trusts, liens and  
6717 encumbrances of record on such property. All proceeds in excess  
6718 of the amount necessary for the cost of the sale of such land and  
6719 the satisfaction of any liens thereon shall be deposited in the  
6720 General Fund of the State Treasury.

6721 (c) All other property that has been seized by the  
6722 state and that has been forfeited shall, except as otherwise  
6723 provided, be sold at a public auction for cash by the state to the  
6724 highest and best bidder after advertising the sale for at least  
6725 once each week for three (3) consecutive weeks, the last notice to  
6726 appear not more than ten (10) days nor less than five (5) days  
6727 prior to such sale, in a newspaper having a general circulation  
6728 throughout the State of Mississippi. Such notices shall contain a  
6729 description of the property to be sold and a statement of the time  
6730 and place of sale. It shall not be necessary to the validity of  
6731 such sale either to have the property present at the place of sale  
6732 or to have the name of the owner thereof stated in such notice.  
6733 The proceeds of the sale shall be delivered to the circuit clerk  
6734 and shall be disposed of as follows:

6735 (i) To any bona fide lienholder, secured party, or  
6736 other party holding an interest in the property in the nature of a  
6737 security interest, to the extent of his interest; and

6738 (ii) The balance, if any, after deduction of all  
6739 storage and court costs, shall be forwarded to the State Treasurer  
6740 and deposited with and used as general funds of the state.

6741 (d) The State Tax Commission shall issue a certificate  
6742 of title to any person who purchases property under the provisions  
6743 of this section when a certificate of title is required under the  
6744 laws of this state.

6745 SECTION 28. Section 97-43-11, Mississippi Code of 1972, is  
6746 amended as follows:



6747           97-43-11. (1) When any property is seized pursuant to  
6748 Section 97-43-9, proceedings under this section shall be  
6749 instituted promptly.

6750           (2) (a) A petition for forfeiture shall be filed promptly  
6751 in the name of the State of Mississippi with the clerk of the  
6752 circuit court of the county in which the seizure is made. A copy  
6753 of such petition shall be served upon the following persons by  
6754 service of process in the same manner as in civil cases:

6755                   (i) The owner of the property, if address is  
6756 known;

6757                   (ii) Any secured party who has registered his lien  
6758 or filed a financing statement as provided by law, if the identity  
6759 of such secured party can be ascertained by the state by making a  
6760 good faith effort to ascertain the identity of such secured party  
6761 as described in paragraphs (b), (c), (d), (e) and (f) of this  
6762 subsection;

6763                   (iii) Any other bona fide lienholder or secured  
6764 party or other person holding an interest in the property in the  
6765 nature of a security interest of whom the state has actual  
6766 knowledge;

6767                   (iv) A holder of a mortgage, deed of trust, lien  
6768 or encumbrance of record, if the property is real estate by making  
6769 a good faith inquiry as described in paragraph (g) of this  
6770 section; and

6771                   (v) Any person in possession of property subject  
6772 to forfeiture at the time that it was seized.

6773           (b) If the property is a motor vehicle susceptible of  
6774 titling under the Mississippi Motor Vehicle Title Law and if there  
6775 is any reasonable cause to believe that the vehicle has been  
6776 titled, the state shall make inquiry of the State Tax Commission  
6777 as to what the records of the State Tax Commission show as to who  
6778 is the record owner of the vehicle and who, if anyone, holds any  
6779 lien or security interest which affects the vehicle.



6780           (c) If the property is a motor vehicle and is not  
6781 titled in the State of Mississippi, then the state shall attempt  
6782 to ascertain the name and address of the person in whose name the  
6783 vehicle is licensed, and if the vehicle is licensed in a state  
6784 which has in effect a certificate of title law, the state shall  
6785 make inquiry of the appropriate agency of that state as to what  
6786 the records of the agency show as to who is the record owner of  
6787 the vehicle and who, if anyone, holds any lien, security interest,  
6788 or other instrument in the nature of a security device which  
6789 affects the vehicle.

6790           (d) If the property is of a nature that a financing  
6791 statement is required by the laws of this state to be filed to  
6792 perfect a security interest affecting the property and if there is  
6793 any reasonable cause to believe that a financing statement  
6794 covering the security interest has been filed under the laws of  
6795 this state, the state shall make inquiry of the appropriate office  
6796 designated in Section 75-9-501 as to what the records show as to  
6797 who is the record owner of the property and who, if anyone, has  
6798 filed a financing statement affecting the property.

6799           (e) If the property is an aircraft or part thereof and  
6800 if there is any reasonable cause to believe that an instrument in  
6801 the nature of a security device affects the property, then the  
6802 state shall make inquiry of the administrator of the Federal  
6803 Aviation Administration as to what the records of the  
6804 administrator show as to who is the record owner of the property  
6805 and who, if anyone, holds an instrument in the nature of a  
6806 security device which affects the property.

6807           (f) In the case of all other personal property subject  
6808 to forfeiture, if there is any reasonable cause to believe that an  
6809 instrument in the nature of a security device affects the  
6810 property, then the state shall make a good faith inquiry to  
6811 identify the holder of any such instrument.



6812 (g) If the property is real estate, the state shall  
6813 make inquiry at the appropriate places to determine who is the  
6814 owner of record and who, if anyone is a holder of a bona fide  
6815 mortgage, deed of trust, lien or encumbrance.

6816 (h) In the event the answer to an inquiry states that  
6817 the record owner of the property is any person other than the  
6818 person who was in possession of it when it was seized, or states  
6819 that any person holds any lien, encumbrance, security interest,  
6820 other interest in the nature of a security interest, mortgage or  
6821 deed of trust which affects the property, the state shall cause  
6822 any record owner and also any lienholder, secured party, other  
6823 person who holds an interest in the property in the nature of a  
6824 security interest, or holder of an encumbrance, mortgage or deed  
6825 of trust which affects the property to be named in the petition of  
6826 forfeiture and to be served with process in the same manner as in  
6827 civil cases.

6828 (i) If the owner of the property cannot be found and  
6829 served with a copy of the petition of forfeiture, or if no person  
6830 was in possession of the property subject to forfeiture at the  
6831 time that it was seized and the owner of the property is unknown,  
6832 the state shall file with the clerk of the court in which the  
6833 proceeding is pending an affidavit to such effect, whereupon the  
6834 clerk of the court shall publish notice of the hearing addressed  
6835 to "the Unknown Owner of \_\_\_\_\_," filling in the blank  
6836 space with a reasonably detailed description of the property  
6837 subject to forfeiture. Service by publication shall contain the  
6838 other requisites prescribed in Section 11-33-41, and shall be  
6839 served as provided in Section 11-33-37 for publication of notice  
6840 for attachments at law.

6841 (j) No proceedings instituted pursuant to the  
6842 provisions of this article shall proceed to hearing unless the  
6843 judge conducting the hearing is satisfied that this section has  
6844 been complied with. Any answer received from an inquiry required



6845 by paragraphs (b) through (g) of this section shall be introduced  
6846 into evidence at the hearing.

6847           (3) (a) An owner of property that has been seized shall  
6848 file a verified answer within twenty (20) days after the  
6849 completion of service of process. If no answer is filed, the  
6850 court shall hear evidence that the property is subject to  
6851 forfeiture and forfeit the property to the state. If an answer is  
6852 filed, a time for hearing on forfeiture shall be set within thirty  
6853 (30) days of filing the answer or at the succeeding term of court  
6854 if court would not be in progress within thirty (30) days after  
6855 filing the answer. Provided, however, that upon request by the  
6856 state or the owner of the property, the court may postpone said  
6857 forfeiture hearing to a date past the time any criminal action is  
6858 pending against said owner.

6859           (b) If the owner of the property has filed a verified  
6860 answer denying that the property is subject to forfeiture, then  
6861 the burden is on the state to prove that the property is subject  
6862 to forfeiture. The burden of proof placed upon the state shall be  
6863 clear and convincing proof. However, if no answer has been filed  
6864 by the owner of the property, the petition for forfeiture may be  
6865 introduced into evidence and is prima facie evidence that the  
6866 property is subject to forfeiture.

6867           (c) At the hearing any claimant of any right, title, or  
6868 interest in the property may prove his lien, encumbrance, security  
6869 interest, other interest in the nature of a security interest,  
6870 mortgage or deed of trust to be bona fide and created without  
6871 knowledge or consent that the property was to be used so as to  
6872 cause the property to be subject to forfeiture.

6873           (d) If it is found that the property is subject to  
6874 forfeiture, then the judge shall forfeit the property to the  
6875 state. However, if proof at the hearing discloses that the  
6876 interest of any bona fide lienholder, secured party, other person  
6877 holding an interest in the property in the nature of a security



6878 interest or any holder of a bona fide encumbrance, mortgage or  
6879 deed of trust is greater than or equal to the present value of the  
6880 property, the court shall order the property released to him. If  
6881 such interest is less than the present value of the property and  
6882 if the proof shows that the property is subject to forfeiture, the  
6883 court shall order the property forfeited to the state.

6884 (4) (a) All personal property, including money, which is  
6885 forfeited to the state and is not capable of being sold at public  
6886 auction shall be liquidated and the proceeds, after deduction of  
6887 all storage and court costs, shall be forwarded to the State  
6888 Treasurer and deposited in the General Fund of the state.

6889 (b) All real estate which is forfeited to the state  
6890 shall be sold to the highest bidder at a public auction to be  
6891 conducted by the state at such place, on such notice and in  
6892 accordance with the same procedure, as far as practicable, as is  
6893 required in the case of sales of land under execution of law. The  
6894 proceeds of such sale shall first be applied to the cost and  
6895 expense in administering and conducting such sale, then to the  
6896 satisfaction of all mortgages, deeds of trusts, liens and  
6897 encumbrances of record on such property. All proceeds in excess  
6898 of the amount necessary for the cost of the sale of such land and  
6899 the satisfaction of any liens thereon shall be deposited in the  
6900 General Fund of the State Treasury.

6901 (c) All other property that has been seized by the  
6902 state and that has been forfeited shall, except as otherwise  
6903 provided, be sold at a public auction for cash by the state to the  
6904 highest and best bidder after advertising the sale for at least  
6905 once each week for three (3) consecutive weeks, the last notice to  
6906 appear not more than ten (10) days nor less than five (5) days  
6907 prior to such sale, in a newspaper having a general circulation  
6908 throughout the State of Mississippi. Such notices shall contain a  
6909 description of the property to be sold and a statement of the time  
6910 and place of sale. It shall not be necessary to the validity of



6911 such sale either to have the property present at the place of sale  
6912 or to have the name of the owner thereof stated in such notice.  
6913 The proceeds of the sale shall be delivered to the circuit clerk  
6914 and shall be disposed of as follows:

6915 (i) To any bona fide lienholder, secured party, or  
6916 other party holding an interest in the property in the nature of a  
6917 security interest, to the extent of his interest; and

6918 (ii) The balance, if any, after deduction of all  
6919 storage and court costs, shall be forwarded to the State Treasurer  
6920 and deposited with and used as general funds of the state.

6921 (d) The State Tax Commission shall issue a certificate  
6922 of title to any person who purchases property under the provisions  
6923 of this section when a certificate of title is required under the  
6924 laws of this state.

6925 SECTION 29. Section 53-3-41, Mississippi Code of 1972, is  
6926 amended as follows:

6927 53-3-41. (1) For the purposes of this section, the  
6928 following terms shall have the meanings ascribed herein:

6929 (a) "Oil and gas production" means any oil, natural  
6930 gas, condensate of either, natural gas liquids, other gaseous,  
6931 liquid or dissolved hydrocarbons, sulfur or helium, or other  
6932 substance produced as a by-product or adjunct to their production,  
6933 or any combination of these, which is severed, extracted or  
6934 produced from the ground, the seabed or other submerged lands  
6935 within the jurisdiction of the State of Mississippi. Any such  
6936 substance, including recoverable or recovered natural gas liquids,  
6937 which is transported to or in a natural gas pipeline or natural  
6938 gas gathering system, or otherwise transported or sold for use as  
6939 natural gas, or is transported or sold for the extraction of  
6940 helium or natural gas liquids is gas production. Any such  
6941 substance which is transported or sold to persons and for purposes  
6942 not included in the foregoing natural gas definition is oil  
6943 production.



6944 (b) "Interest owner" means a person owning an entire or  
6945 fractional interest of any kind or nature in oil or gas production  
6946 at the time of severance, or a person who has an express, implied  
6947 or constructive right to receive a monetary payment determined by  
6948 the value of oil or gas production or by the amount of production.

6949 (c) "Royalty owner" means any person who possesses an  
6950 interest in the production, but who is not an owner as defined in  
6951 Section 53-1-3(g).

6952 (d) "Disbursing agent" shall mean that person who,  
6953 pursuant to an oil and gas lease, operating agreement, purchase  
6954 contract, or otherwise, assumes the responsibility of paying  
6955 royalty proceeds derived from a well's oil and gas production to  
6956 the royalty owner or owners legally entitled thereto. A first  
6957 purchaser shall not be deemed to be the disbursing agent unless  
6958 the first purchaser expressly assumes such responsibility in the  
6959 purchase contract.

6960 (e) "First purchaser" means the first person who  
6961 purchases oil or gas production from the interest owners after the  
6962 production is severed and may include the operator if the operator  
6963 acts as a purchaser of production attributable to other interest  
6964 owners.

6965 (f) An "operator" is a person engaged in the business  
6966 of severing oil or gas production from the ground, whether for  
6967 himself alone, for other persons alone or for himself and others.

6968 (2) Whenever a disbursing agent has not disbursed the  
6969 royalty proceeds derived from the well's production to the royalty  
6970 owner within one hundred twenty (120) days following the date of  
6971 first sale of oil or gas in the event the disbursing agent is a  
6972 first purchaser of oil or gas, or within one hundred twenty (120)  
6973 days following the date the disbursing agent receives the proceeds  
6974 from such production if the disbursing agent is not the first  
6975 purchaser, such royalty owner shall have a lien to secure the  
6976 payment of the royalty proceeds. The lien shall attach to the



6977 proceeds from such production received by the disbursing agent  
6978 attributable to the royalty owner's interest.

6979 (3) The lien provided by this section shall be effective  
6980 against a third party only from the time a financing statement  
6981 evidencing such lien is filed in the same manner as financing  
6982 statements evidencing security interests in minerals are filed in  
6983 accordance with the provisions of Section 75-9-501.

6984 (4) The lien provided by this section shall expire one (1)  
6985 year after it becomes effective against a third party, unless  
6986 judicial proceedings have been commenced to assert it or unless  
6987 insolvency proceedings have been commenced by or against the  
6988 disbursing agent, in which event the lien shall remain effective  
6989 until termination of the insolvency proceedings or until  
6990 expiration of the one-year period, whichever occurs later.

6991 (5) Whenever there is a conflict between a lien under this  
6992 section and a security interest under Title 75, Chapter 9, the  
6993 lien or security interest first to be filed has priority. Liens  
6994 provided for in this section shall have priorities among  
6995 themselves according to priority in time of filing of such liens.

6996 (6) The filing required by this section shall be a financing  
6997 statement as provided for in Section 75-9-310 and shall be subject  
6998 to the provisions of Part 5 of Article 9 of the Uniform Commercial  
6999 Code, except that in order for the filing to be sufficient, it  
7000 shall not be necessary for the debtor to sign the financing  
7001 statement, and the filing shall be effective for a period of only  
7002 one (1) year from the date of filing.

7003 (7) This section does not impair an operator's right to set  
7004 off or withhold funds from other interest owners as security for  
7005 or in satisfaction of any debt or security interest. This section  
7006 does not impair a disbursing agent's right to withhold funds in  
7007 the event a question is raised concerning the title or ownership  
7008 of, or right to sell, the oil or gas production. In case of a  
7009 dispute between interest owners, a good-faith tender by the



7010 disbursing agent of funds to the person the interest owners shall  
7011 agree on, or to a court of competent jurisdiction in the event of  
7012 litigation or bankruptcy, shall operate as a tender of the funds  
7013 to both.

7014 (8) Nothing in this section shall be construed to enlarge or  
7015 diminish the rights and obligations provided to or imposed on  
7016 interest owners, royalty owners, disbursing agents, first  
7017 purchasers, or operators by contract or otherwise by law. The  
7018 sole purpose of this section is to provide royalty owners a lien  
7019 under the conditions provided herein.

7020 SECTION 30. Section 75-11-106, Mississippi Code of 1972, is  
7021 amended as follows:

7022 75-11-106. (1) If a security interest is perfected or has  
7023 priority on April 1, 1978, as to all persons or as to certain  
7024 persons without any filing or recording, and if the filing of a  
7025 financing statement would be required for the perfection or  
7026 priority of the security interest against those persons under the  
7027 revised Uniform Commercial Code, the perfection and priority  
7028 rights of the security interest shall continue until three (3)  
7029 years after April 1, 1978. The perfection will then lapse unless  
7030 a financing statement is filed as provided in Section 75-11-104 or  
7031 unless the security interests is perfected otherwise than by  
7032 filing.

7033 (2) A financing statement may be filed within six (6) months  
7034 before the perfection of a security interest would otherwise  
7035 lapse. Any such financing statement may be signed by either the  
7036 debtor or the secured party. It must identify the security  
7037 agreement, statement or notice (however denominated in any statute  
7038 or other law repealed or modified by Chapter 452, Laws of 1977),  
7039 state the office where and the date when the last filing, refiling  
7040 or recording, if any, was made with respect thereto, and the  
7041 filing number, if any, or book and page, if any, of recording and  
7042 further state that the security agreement, statement or notice,



7043 however denominated, in another filing office under the old  
7044 Uniform Commercial Code or under any statute or other law repealed  
7045 or modified by Chapter 452, Laws of 1977, is still effective.  
7046 Section 75-9-501 \* \* \* determines the proper place to file such a  
7047 financing statement. Except as specified in this subsection, the  
7048 provisions of Section 75-9-510 for continuation statements apply  
7049 to such a financing statement.

7050 SECTION 31. Section 85-8-9, Mississippi Code of 1972, is  
7051 amended as follows:

7052 85-8-9. (1) If a notice of federal lien, a refiling of a  
7053 notice of federal lien, or a notice of revocation of any  
7054 certificate described in subsection (2) of this section is  
7055 presented to the filing officer who is:

7056 (a) The Secretary of State, he shall cause the notice  
7057 to be marked, held and indexed in accordance with the provisions  
7058 of subsection (4) of Section 75-9-501, Mississippi Code of 1972,  
7059 of the Uniform Commercial Code as if the notice were a financing  
7060 statement within the meaning of that code; or

7061 (b) Chancery clerk, he shall endorse thereon his  
7062 identification and the date and time of receipt and forthwith file  
7063 it alphabetically or enter it in an alphabetical index showing the  
7064 name and address of the person named in the notice, the date and  
7065 time of receipt, the title and address of the official party  
7066 certifying the lien, and the total amount appearing on the notice  
7067 of lien.

7068 (2) If a certificate of release, nonattachment, discharge or  
7069 subordination of any lien is presented to the Secretary of State  
7070 for filing he shall:

7071 (a) Cause a certificate of release or nonattachment to  
7072 be marked, held and indexed as if the certificate were a  
7073 termination statement within the meaning of the Uniform Commercial  
7074 Code, but the notice of lien to which the certificate relates may  
7075 not be removed from the files; and



7076                   (b) Cause a certificate of discharge or subordination  
7077 to be held, marked and indexed as if the certificate were a  
7078 release of collateral within the meaning of the Uniform Commercial  
7079 Code.

7080                   (3) If a refiled notice of federal lien referred to in  
7081 subsection (1) of this section or any of the certificates or  
7082 notices referred to in subsection (2) of this section is presented  
7083 for filing with the chancery clerk, he shall permanently attach  
7084 the refiled notice or the certificate to the original notice of  
7085 lien and enter the refiled notice of the certificate with the date  
7086 of filing in any alphabetical lien index on the line where the  
7087 original notice of lien is entered.

7088                   (4) Upon request of any person, the filing officer shall  
7089 issue his certificate showing whether there is on file, on the  
7090 date and hour stated therein, any notice of lien or certificate or  
7091 notice affecting any lien, filed under this act, naming a  
7092 particular person, and if a notice or certificate is on file,  
7093 giving the date and hour of its filing. The fee for a certificate  
7094 is Five Dollars (\$5.00). Upon request the filing officer shall  
7095 furnish a copy of any notice of federal lien or notice or  
7096 certificate affecting a federal lien for a fee of Two Dollars  
7097 (\$2.00) per page.

7098                   SECTION 32. Section 99-41-23, Mississippi Code of 1972, is  
7099 amended as follows:

7100                   99-41-23. (1) Compensation for work loss may not  
7101 exceed Four Hundred Fifty Dollars (\$450.00) per week, not to  
7102 exceed fifty-two (52) weeks; the total amount of the award may not  
7103 exceed the aggregate limitation of this section.

7104                   (2) Compensation for economic loss of a dependent may not  
7105 exceed Four Hundred Fifty Dollars (\$450.00) per week not to exceed  
7106 fifty-two (52) weeks; provided, however, if there is more than one  
7107 (1) dependent per victim the amount of compensation awarded shall



7108 be prorated among the dependents and the total amount of the award  
7109 may not exceed the aggregate limitation of this section.

7110 (3) In the event of the victim's death, compensation for  
7111 work loss of claimant may not exceed Four Hundred Fifty Dollars  
7112 (\$450.00) per week not to exceed one (1) week; provided, however,  
7113 if there is more than one (1) claimant per victim, the amount of  
7114 compensation awarded shall be prorated among the claimants and the  
7115 total amount of the award may not exceed Four Hundred Fifty  
7116 Dollars (\$450.00).

7117 (4) Compensation payable to a victim and to all other  
7118 claimants sustaining economic loss because of injury to or death  
7119 of that victim may not exceed Ten Thousand Dollars (\$10,000.00) in  
7120 the aggregate.

7121 (5) A determination that compensation shall be awarded may  
7122 provide for payment to a claimant in a lump sum or in  
7123 installments. All medical bills may be paid directly to affected  
7124 health care providers. At the request of the claimant, the  
7125 director may convert future economic loss, other than allowable  
7126 expense, to a lump sum, but only upon a finding of either of the  
7127 following:

7128 (a) That the award in a lump sum will promote the  
7129 interests of the claimant; or

7130 (b) That the present value of all future economic loss,  
7131 other than allowable expense, does not exceed One Thousand Dollars  
7132 (\$1,000.00).

7133 (6) An award payable in installments for future economic  
7134 loss may be made only for a period as to which the future economic  
7135 loss can reasonably be determined. An award payable in  
7136 installments for future economic loss may be modified upon  
7137 findings that a material and substantial change of circumstances  
7138 has occurred.

7139 (7) An award shall not be subject to execution, attachment,  
7140 garnishment or other process, except that an award shall not be



7141 exempt from orders for the withholding of support for minor  
7142 children, and except that an award for allowable expense shall not  
7143 be exempt from a claim of a creditor to the extent that such  
7144 creditor has provided products, services or accommodations, the  
7145 costs of which are included in the award.

7146 (8) An assignment by the claimant to any future award under  
7147 the provisions of this chapter is unenforceable, except:

7148 (a) An assignment of any award for work loss to assure  
7149 payment of court-ordered alimony, maintenance or child support; or

7150 (b) An assignment for any award for allowable expense  
7151 to the extent that the benefits are for the cost of products,  
7152 services or accommodations necessitated by the injury or death on  
7153 which the claim is based and which are provided or are to be  
7154 provided by the assignee.

7155 (9) Subsections (7) and (8) of this section prevail over  
7156 Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform  
7157 Commercial Code to the extent, if any, that Sections 75-9-406 and  
7158 75-9-408 may otherwise be applicable.

7159 SECTION 33. Section 85-7-1, Mississippi Code of 1972, is  
7160 amended as follows:

7161 85-7-1. (1) Every employer shall have a lien on the share  
7162 or interest of his employee in any crop made under such  
7163 employment, for all advances of money, and for the fair market  
7164 value of other things advanced by him, or anyone at his request,  
7165 for supplies for himself, his family and business during the  
7166 existence of such employment, which lien the employer may offset,  
7167 recoup, or otherwise assert and maintain.

7168 (2) Every employee, laborer, cropper, part owner, overseer  
7169 or manager, or other person who may aid by his labor to make,  
7170 gather, or prepare for sale or market any crop, shall have a lien  
7171 on the interest of the person who contracts with him for such  
7172 labor for his wages, share or interest in such crop, whatever may  
7173 be the kind of wages or the nature of the interest, which lien



7174 such employee, laborer, cropper, part owner, overseer or manager,  
7175 or other person may offset, recoup or otherwise assert and  
7176 maintain.

7177 (3) Except as provided in subsection (4) of this section,  
7178 any lien arising under the provisions of this section shall be  
7179 paramount to all liens and encumbrances or rights of any kind  
7180 created by or against the person so contracting for such  
7181 assistance when perfected in accordance with Uniform Commercial  
7182 Code Article 9 - Secured Transactions (Section 75-9-101 et seq.),  
7183 except the lien of the lessor of the land on which the crop is  
7184 made, for rent and supplies furnished, as provided in the chapter  
7185 on "Landlord and Tenant," appearing as Chapter 7 of Title 89,  
7186 Mississippi Code of 1972.

7187 (4) Any lien arising under the provisions of subsection (2)  
7188 of this section in favor of any person other than an employee,  
7189 laborer, cropper, part owner, overseer or manager as to crops or  
7190 the proceeds thereof shall be effective against a third party only  
7191 for a period of twenty-one (21) days from and after the time the  
7192 labor is completed, unless within such period of time \* \* \* the  
7193 lien is perfected in accordance with \* \* \* Uniform Commercial Code  
7194 Article 9 - Secured Transactions (Section 75-9-101 et seq.). Any  
7195 such lien in favor of any person other than an employee, laborer,  
7196 cropper, overseer or manager \* \* \* which \* \* \* has not been  
7197 perfected within the twenty-one-day period as herein provided  
7198 shall, upon \* \* \* subsequent perfection of such lien, have the  
7199 priority as against a third party to which a perfected security  
7200 interest may be entitled under Uniform Commercial Code Article 9 -  
7201 Secured Transactions (Section 75-9-101 et seq.).

7202 SECTION 34. Section 89-7-51, Mississippi Code of 1972, is  
7203 amended as follows:

7204 89-7-51. (1) Every lessor of land shall have a lien on the  
7205 agricultural products of the leased premises, however and by  
7206 whomsoever produced, to secure the payment of the rent and of



7207 money advanced to the tenant, and the fair market value of all  
7208 advances made by him to his tenant for supplies for the tenant and  
7209 others for whom he may contract, and for his business carried on  
7210 upon the leased premises. This lien shall be paramount to all  
7211 other liens, claims, or demands upon such products when perfected  
7212 in accordance with Uniform Commercial Code Article 9 - Secured  
7213 Transactions (Section 75-9-101, et seq.). The claim of the lessor  
7214 for supplies furnished may be enforced in the same manner and  
7215 under the same circumstances as his claim for rent may be; and all  
7216 the provisions of law as to attachment for rent and proceedings  
7217 under it shall be applicable to a claim for supplies furnished,  
7218 and such attachment may be levied on any goods and chattels liable  
7219 for rent, as well as on the agricultural products.

7220 (2) All articles of personal property, except a stock of  
7221 merchandise sold in the normal course of business, owned by the  
7222 lessee of real property and situated on the leased premises shall  
7223 be subject to a lien in favor of the lessor to secure the payment  
7224 of rent for such premises as has been contracted to be paid,  
7225 whether or not then due. Such lien shall be subject to all prior  
7226 liens or other security interests perfected according to law. No  
7227 such articles of personal property may be removed from the leased  
7228 premises until such rent is paid except with the written consent  
7229 of the lessor. All of the provisions of law as to attachment for  
7230 rent and proceedings thereunder shall be applicable with reference  
7231 to the lessor's lien under this subsection.

7232 SECTION 35. Section 89-7-53, Mississippi Code of 1972, is  
7233 amended as follows:

7234 89-7-53. A landlord shall have, for one (1) year, a lien for  
7235 the reasonable value of all live stock, farming tools, implements  
7236 and vehicles furnished by him to his tenant, upon the property so  
7237 furnished and, as an additional security therefor, upon all the  
7238 agricultural products raised upon the leased premises. The said  
7239 property so furnished shall be considered as supplies and the lien



7240 therefor may be enforced accordingly. Such lien shall be a  
7241 superior and first lien when perfected in accordance with Uniform  
7242 Commercial Code Article 9 - Secured Transactions (Section 75-9-101  
7243 et seq.), and need not otherwise be evidenced by writing \* \* \*.

7244 SECTION 36. The following provision shall be codified as  
7245 Section 7-3-59, Mississippi Code of 1972:

7246 7-3-59. (1) All fees collected by the office of the  
7247 Secretary of State under Section 75-9-525 shall be deposited in a  
7248 special fund which is hereby created in the State Treasury to be  
7249 designated as the UCC Article 9 Fund. Money in this fund shall be  
7250 used to operate the activities of the office of the Secretary of  
7251 State as necessary to administer the filing and research  
7252 provisions of Revised Article 9 of the Uniform Commercial Code and  
7253 to pay to each chancery clerk such amounts as that clerk shall be  
7254 owed under subsection (2) of this section. The expenditure of the  
7255 funds deposited in this fund shall be paid by the State Treasurer  
7256 upon requisition signed by the office of the Secretary of State.

7257 (2) For each filing and indexing of a financing statement  
7258 under Part 5 (Filing) of Title 75, Chapter 9 (Uniform Commercial  
7259 Code Revised Article 9 - Secured Transactions), the Secretary of  
7260 State shall remit the following fee to the chancery clerk of the  
7261 Mississippi county, if any, indicated on the face of the financing  
7262 statement by county code or county name as the domicile of the  
7263 debtor, or, if no county is so indicated, the Mississippi county  
7264 of the address of the debtor stated on the financing statement.

7265 (a) Five Dollars (\$5.00), when the financing statement  
7266 is communicated in writing, either in the standard form prescribed  
7267 by the Secretary of State or not in the standard form so  
7268 prescribed, plus Two Dollars (\$2.00) for each additional debtor  
7269 name more than one (1) required to be indexed.

7270 (b) Five Dollars (\$5.00) if the financing statement is  
7271 communicated by another medium authorized by filing-office rule.



7272           (3) The Secretary of State shall remit to each chancery  
7273 clerk not less than monthly the amount owed under subsection (2)  
7274 of this section. Each payment shall be accompanied by a detailed  
7275 accounting of the transactions represented by that payment.

7276           SECTION 37. This act shall take effect and be in force from  
7277 and after July 1, 2001.

