

By: Senator(s) Carlton

To: Judiciary

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31 Article 9 repealed in Section 2 of this act: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 to
96 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 does
236 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 security
528 interest or agricultural lien is created or provided for; or

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

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

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

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

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

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

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

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

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

591	security)	Section 75-8-201.
592	"Lease"	Section 75-2A-103.
593	"Lease agreement"	Section 75-2A-103.
594	"Lease contract"	Section 75-2A-103.
595	"Leasehold interest"	Section 75-2A-103.
596	"Lessee"	Section 75-2A-103.
597	"Lessee in ordinary course	
598	of business"	Section 75-2A-103.
599	"Lessor"	Section 75-2A-103.
600	"Lessor's residual interest"	Section 75-2A-103.
601	"Letter of credit"	Section 75-5-102.
602	"Merchant"	Section 75-2-104.
603	"Negotiable instrument"	Section 75-3-104.
604	"Nominated person"	Section 75-5-102.
605	"Note"	Section 75-3-104.
606	"Proceeds of a letter of	
607	credit"	Section 75-5-114.
608	"Prove"	Section 75-3-103.
609	"Sale"	Section 75-2-106.
610	"Securities account"	Section 75-8-501.
611	"Securities intermediary"	Section 75-8-102.
612	"Security"	Section 75-8-102.
613	"Security certificate"	Section 75-8-102.
614	"Security entitlement"	Section 75-8-102.
615	"Uncertificated security"	Section 75-8-102.

616 (c) Article 1 contains general definitions and principles of
617 construction and interpretation applicable throughout this
618 article.

619 **SECTION 75-9-103. Purchase-money security interest;**
620 **application of payments; burden of establishing.**

621 (a) In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

786 (1) Specific listing;

787 (2) Category;

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

790 (4) Quantity;

791 (5) Computational or allocational formula or procedure;

792 or

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

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

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

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

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

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

808 (1) A commercial tort claim; or

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

811 SUBPART 2. APPLICABILITY OF ARTICLE

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

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

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

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

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

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

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

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

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

846 (d) This article does not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

883 (A) Liens on real property in Sections 75-9-203
884 and 75-9-308;

885 (B) Fixtures in Section 75-9-334;

886 (C) Fixture filings in Sections 75-9-501,
887 75-9-502, 75-9-512, 75-9-516 and 75-9-519; and

888 (D) Security agreements covering personal and real
889 property in Section 75-9-604;

890 (12) An assignment of a claim arising in tort, other
891 than a commercial tort claim, but Sections 75-9-315 and 75-9-322
892 apply with respect to proceeds and priorities in proceeds; or

893 (13) To a transfer by a government or governmental
894 subdivision or agency.

895 **SECTION 75-9-110. Security interests arising under Article 2**
896 **or 2A.** A security interest arising under Section 75-2-401,
897 75-2-505, 75-2-711(3) or 75-2A-508(5) is subject to this article.
898 However, until the debtor obtains possession of the goods:

899 (1) The security interest is enforceable, even if
900 Section 75-9-203(b)(3) has not been satisfied;

901 (2) Filing is not required to perfect the security
902 interest;

903 (3) The rights of the secured party after default by
904 the debtor are governed by Article 2 or 2A; and

905 (4) The security interest has priority over a
906 conflicting security interest created by the debtor.

907 **PART 2**

908 **EFFECTIVENESS OF SECURITY AGREEMENT;**

909 **ATTACHMENT OF SECURITY INTEREST;**

910 **RIGHTS OF PARTIES TO SECURITY AGREEMENT**

911 **SUBPART 1. EFFECTIVENESS AND ATTACHMENT**

912 **SECTION 75-9-201. General effectiveness of security**
913 **agreement.**

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

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

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

932 (d) This article does not:

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

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

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

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

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

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

953 (1) Value has been given;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

999 (g) The attachment of a security interest in a right to
1000 payment or performance secured by a security interest or other
1001 lien on personal or real property is also attachment of a security
1002 interest in the security interest, mortgage or other lien.

1003 (h) The attachment of a security interest in a securities
1004 account is also attachment of a security interest in the security
1005 entitlements carried in the securities account.

1006 (i) The attachment of a security interest in a commodity
1007 account is also attachment of a security interest in the commodity
1008 contracts carried in the commodity account.

1009 **SECTION 75-9-204. After-acquired property; future advances.**

1010 (a) Except as otherwise provided in subsection (b), a
1011 security agreement may create or provide for a security interest
1012 in after-acquired collateral.

1013 (b) A security interest does not attach under a term
1014 constituting an after-acquired property clause to:

1015 (1) Consumer goods, other than an accession when given
1016 as additional security, unless the debtor acquires rights in them
1017 within ten (10) days after the secured party gives value; or

1018 (2) A commercial tort claim.

1019 (c) A security agreement may provide that collateral
1020 secures, or that accounts, chattel paper, payment intangibles or
1021 promissory notes are sold in connection with, future advances or
1022 other value, whether or not the advances or value are given
1023 pursuant to commitment.

1024 **SECTION 75-9-205. Use or disposition of collateral**
1025 **permissible.**

1026 (a) A security interest is not invalid or fraudulent against
1027 creditors solely because:

1028 (1) The debtor has the right or ability to:

1029 (A) Use, commingle or dispose of all or part of
1030 the collateral, including returned or repossessed goods;

1031 (B) Collect, compromise, enforce or otherwise deal
1032 with collateral;

1033 (C) Accept the return of collateral or make
1034 repossessions; or

1035 (D) Use, commingle or dispose of proceeds; or

1036 (2) The secured party fails to require the debtor to
1037 account for proceeds or replace collateral.

1038 (b) This section does not relax the requirements of
1039 possession if attachment, perfection or enforcement of a security
1040 interest depends upon possession of the collateral by the secured
1041 party.

1042 **SECTION 75-9-206. Security interest arising in purchase or**
1043 **delivery of financial asset.**

1044 (a) A security interest in favor of a securities
1045 intermediary attaches to a person's security entitlement if:

1046 (1) The person buys a financial asset through the
1047 securities intermediary in a transaction in which the person is
1048 obligated to pay the purchase price to the securities intermediary
1049 at the time of the purchase; and

1050 (2) The securities intermediary credits the financial
1051 asset to the buyer's securities account before the buyer pays the
1052 securities intermediary.

1053 (b) The security interest described in subsection (a)
1054 secures the person's obligation to pay for the financial asset.

1055 (c) A security interest in favor of a person that delivers a
1056 certificated security or other financial asset represented by a
1057 writing attaches to the security or other financial asset if:

1058 (1) The security or other financial asset:

1059 (A) In the ordinary course of business is
1060 transferred by delivery with any necessary endorsement or
1061 assignment; and

1062 (B) Is delivered under an agreement between
1063 persons in the business of dealing with such securities or
1064 financial assets; and

1065 (2) The agreement calls for delivery against payment.

1066 (d) The security interest described in subsection (c)
1067 secures the obligation to make payment for the delivery.

1068 SUBPART 2. RIGHTS AND DUTIES

1069 **SECTION 75-9-207. Rights and duties of secured party having**
1070 **possession or control of collateral.**

1071 (a) Except as otherwise provided in subsection (d), a
1072 secured party shall use reasonable care in the custody and
1073 preservation of collateral in the secured party's possession. In
1074 the case of chattel paper or an instrument, reasonable care

1075 includes taking necessary steps to preserve rights against prior
1076 parties unless otherwise agreed.

1077 (b) Except as otherwise provided in subsection (d), if a
1078 secured party has possession of collateral:

1079 (1) Reasonable expenses, including the cost of
1080 insurance and payment of taxes or other charges, incurred in the
1081 custody, preservation, use or operation of the collateral are
1082 chargeable to the debtor and are secured by the collateral;

1083 (2) The risk of accidental loss or damage is on the
1084 debtor to the extent of a deficiency in any effective insurance
1085 coverage;

1086 (3) The secured party shall keep the collateral
1087 identifiable, but fungible collateral may be commingled; and

1088 (4) The secured party may use or operate the
1089 collateral:

1090 (A) For the purpose of preserving the collateral
1091 or its value;

1092 (B) As permitted by an order of a court having
1093 competent jurisdiction; or

1094 (C) Except in the case of consumer goods, in the
1095 manner and to the extent agreed by the debtor.

1096 (c) Except as otherwise provided in subsection (d), a
1097 secured party having possession of collateral or control of
1098 collateral under Section 75-9-104, 75-9-105, 75-9-106 or 75-9-107:

1099 (1) May hold as additional security any proceeds,
1100 except money or funds, received from the collateral;

1101 (2) Shall apply money or funds received from the
1102 collateral to reduce the secured obligation, unless remitted to
1103 the debtor; and

1104 (3) May create a security interest in the collateral.

1105 (d) If the secured party is a buyer of accounts, chattel
1106 paper, payment intangibles or promissory notes or a consignor:

1107 (1) Subsection (a) does not apply unless the secured
1108 party is entitled under an agreement:

1109 (A) To charge back uncollected collateral; or

1110 (B) Otherwise to full or limited recourse against
1111 the debtor or a secondary obligor based on the nonpayment or other
1112 default of an account debtor or other obligor on the collateral;
1113 and

1114 (2) Subsections (b) and (c) do not apply.

1115 **SECTION 75-9-208. Additional duties of secured party having**
1116 **control of collateral.**

1117 (a) This section applies to cases in which there is no
1118 outstanding secured obligation and the secured party is not
1119 committed to make advances, incur obligations or otherwise give
1120 value.

1121 (b) Within ten (10) days after receiving an authenticated
1122 demand by the debtor:

1123 (1) A secured party having control of a deposit account
1124 under Section 75-9-104(a)(2) shall send to the bank with which the
1125 deposit account is maintained an authenticated statement that
1126 releases the bank from any further obligation to comply with
1127 instructions originated by the secured party;

1128 (2) A secured party having control of a deposit account
1129 under Section 75-9-104(a)(3) shall:

1130 (A) Pay the debtor the balance on deposit in the
1131 deposit account; or

1132 (B) Transfer the balance on deposit into a deposit
1133 account in the debtor's name;

1134 (3) A secured party, other than a buyer, having control
1135 of electronic chattel paper under Section 75-9-105 shall:

1136 (A) Communicate the authoritative copy of the
1137 electronic chattel paper to the debtor or its designated
1138 custodian;

1139 (B) If the debtor designates a custodian that is
1140 the designated custodian with which the authoritative copy of the
1141 electronic chattel paper is maintained for the secured party,
1142 communicate to the custodian an authenticated record releasing the
1143 designated custodian from any further obligation to comply with
1144 instructions originated by the secured party and instructing the
1145 custodian to comply with instructions originated by the debtor;
1146 and

1147 (C) Take appropriate action to enable the debtor
1148 or its designated custodian to make copies of or revisions to the
1149 authoritative copy which add or change an identified assignee of
1150 the authoritative copy without the consent of the secured party;

1151 (4) A secured party having control of investment
1152 property under Section 75-8-106(d)(2) or 75-9-106(b) shall send to
1153 the securities intermediary or commodity intermediary with which
1154 the security entitlement or commodity contract is maintained an
1155 authenticated record that releases the securities intermediary or
1156 commodity intermediary from any further obligation to comply with
1157 entitlement orders or directions originated by the secured party;
1158 and

1159 (5) A secured party having control of a
1160 letter-of-credit right under Section 75-9-107 shall send to each
1161 person having an unfulfilled obligation to pay or deliver proceeds
1162 of the letter of credit to the secured party an authenticated
1163 release from any further obligation to pay or deliver proceeds of
1164 the letter of credit to the secured party.

1165 **SECTION 75-9-209. Duties of secured party if account debtor**
1166 **has been notified of assignment.**

1167 (a) Except as otherwise provided in subsection (c), this
1168 section applies if:

- 1169 (1) There is no outstanding secured obligation; and
1170 (2) The secured party is not committed to make
1171 advances, incur obligations or otherwise give value.

1172 (b) Within ten (10) days after receiving an authenticated
1173 demand by the debtor, a secured party shall send to an account
1174 debtor that has received notification of an assignment to the
1175 secured party as assignee under Section 75-9-406(a) an
1176 authenticated record that releases the account debtor from any
1177 further obligation to the secured party.

1178 (c) This section does not apply to an assignment
1179 constituting the sale of an account, chattel paper or payment
1180 intangible.

1181 **SECTION 75-9-210. Request for accounting; request regarding**
1182 **list of collateral or statement of account.**

1183 (a) In this section:

1184 (1) "Request" means a record of a type described in
1185 paragraph (2), (3) or (4).

1186 (2) "Request for an accounting" means a record
1187 authenticated by a debtor requesting that the recipient provide an
1188 accounting of the unpaid obligations secured by collateral and
1189 reasonably identifying the transaction or relationship that is the
1190 subject of the request.

1191 (3) "Request regarding a list of collateral" means a
1192 record authenticated by a debtor requesting that the recipient
1193 approve or correct a list of what the debtor believes to be the
1194 collateral securing an obligation and reasonably identifying the
1195 transaction or relationship that is the subject of the request.

1196 (4) "Request regarding a statement of account" means a
1197 record authenticated by a debtor requesting that the recipient
1198 approve or correct a statement indicating what the debtor believes
1199 to be the aggregate amount of unpaid obligations secured by
1200 collateral as of a specified date and reasonably identifying the
1201 transaction or relationship that is the subject of the request.

1202 (b) Subject to subsections (c), (d), (e) and (f), a secured
1203 party, other than a buyer of accounts, chattel paper, payment

1204 intangibles or promissory notes or a consignor, shall comply with
1205 a request within fourteen (14) days after receipt:

1206 (1) In the case of a request for an accounting, by
1207 authenticating and sending to the debtor an accounting; and

1208 (2) In the case of a request regarding a list of
1209 collateral or a request regarding a statement of account, by
1210 authenticating and sending to the debtor an approval or
1211 correction.

1212 (c) A secured party that claims a security interest in all
1213 of a particular type of collateral owned by the debtor may comply
1214 with a request regarding a list of collateral by sending to the
1215 debtor an authenticated record including a statement to that
1216 effect within fourteen (14) days after receipt.

1217 (d) A person that receives a request regarding a list of
1218 collateral, claims no interest in the collateral when it receives
1219 the request, and claimed an interest in the collateral at an
1220 earlier time shall comply with the request within fourteen (14)
1221 days after receipt by sending to the debtor an authenticated
1222 record:

1223 (1) Disclaiming any interest in the collateral; and

1224 (2) If known to the recipient, providing the name and
1225 mailing address of any assignee of or successor to the recipient's
1226 interest in the collateral.

1227 (e) A person that receives a request for an accounting or a
1228 request regarding a statement of account, claims no interest in
1229 the obligations when it receives the request, and claimed an
1230 interest in the obligations at an earlier time shall comply with
1231 the request within fourteen (14) days after receipt by sending to
1232 the debtor an authenticated record:

1233 (1) Disclaiming any interest in the obligations; and

1234 (2) If known to the recipient, providing the name and
1235 mailing address of any assignee of or successor to the recipient's
1236 interest in the obligations.

1237 (f) A debtor is entitled without charge to one (1) response
1238 to a request under this section during any six-month period. The
1239 secured party may require payment of a charge not exceeding
1240 Twenty-five Dollars (\$25.00) for each additional response.

1241 **PART 3**

1242 **PERFECTION AND PRIORITY**

1243 **SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY**

1244 **SECTION 75-9-301. Law governing perfection and priority of**
1245 **security interests.** Except as otherwise provided in Sections
1246 75-9-303 through 75-9-306, the following rules determine the law
1247 governing perfection, the effect of perfection or nonperfection,
1248 and the priority of a security interest in collateral:

1249 (1) Except as otherwise provided in this section, while
1250 a debtor is located in a jurisdiction, the local law of that
1251 jurisdiction governs perfection, the effect of perfection or
1252 nonperfection, and the priority of a security interest in
1253 collateral.

1254 (2) While collateral is located in a jurisdiction, the
1255 local law of that jurisdiction governs perfection, the effect of
1256 perfection or nonperfection, and the priority of a possessory
1257 security interest in that collateral.

1258 (3) Except as otherwise provided in paragraph (4),
1259 while negotiable documents, goods, instruments, money or tangible
1260 chattel paper is located in a jurisdiction, the local law of that
1261 jurisdiction governs:

1262 (A) Perfection of a security interest in the goods
1263 by filing a fixture filing;

1264 (B) Perfection of a security interest in timber to
1265 be cut; and

1266 (C) The effect of perfection or nonperfection and
1267 the priority of a nonpossessory security interest in the
1268 collateral.

1269 (4) The local law of the jurisdiction in which the
1270 wellhead or minehead is located governs perfection, the effect of
1271 perfection or nonperfection, and the priority of a security
1272 interest in as-extracted collateral.

1273 **SECTION 75-9-302. Law governing perfection and priority of**
1274 **agricultural liens.** While farm products are located in a
1275 jurisdiction, the local law of that jurisdiction governs
1276 perfection, the effect of perfection or nonperfection, and the
1277 priority of an agricultural lien on the farm products.

1278 **SECTION 75-9-303. Law governing perfection and priority of**
1279 **security interests in goods covered by a certificate of title.**

1280 (a) This section applies to goods covered by a certificate
1281 of title, even if there is no other relationship between the
1282 jurisdiction under whose certificate of title the goods are
1283 covered and the goods or the debtor.

1284 (b) Goods become covered by a certificate of title when a
1285 valid application for the certificate of title and the applicable
1286 fee are delivered to the appropriate authority. Goods cease to be
1287 covered by a certificate of title at the earlier of the time the
1288 certificate of title ceases to be effective under the law of the
1289 issuing jurisdiction or the time the goods become covered
1290 subsequently by a certificate of title issued by another
1291 jurisdiction.

1292 (c) The local law of the jurisdiction under whose
1293 certificate of title the goods are covered governs perfection, the
1294 effect of perfection or nonperfection, and the priority of a
1295 security interest in goods covered by a certificate of title from
1296 the time the goods become covered by the certificate of title
1297 until the goods cease to be covered by the certificate of title.

1298 **SECTION 75-9-304. Law governing perfection and priority of**
1299 **security interests in deposit accounts.**

1300 (a) The local law of a bank's jurisdiction governs
1301 perfection, the effect of perfection or nonperfection, and the

1302 priority of a security interest in a deposit account maintained
1303 with that bank.

1304 (b) The following rules determine a bank's jurisdiction for
1305 purposes of this part:

1306 (1) If an agreement between the bank and the debtor
1307 governing the deposit account expressly provides that a particular
1308 jurisdiction is the bank's jurisdiction for purposes of this part,
1309 this article, or the Uniform Commercial Code, that jurisdiction is
1310 the bank's jurisdiction.

1311 (2) If paragraph (1) does not apply and an agreement
1312 between the bank and its customer governing the deposit account
1313 expressly provides that the agreement is governed by the law of a
1314 particular jurisdiction, that jurisdiction is the bank's
1315 jurisdiction.

1316 (3) If neither paragraph (1) nor paragraph (2) applies
1317 and an agreement between the bank and its customer governing the
1318 deposit account expressly provides that the deposit account is
1319 maintained at an office in a particular jurisdiction, that
1320 jurisdiction is the bank's jurisdiction.

1321 (4) If none of the preceding paragraphs applies, the
1322 bank's jurisdiction is the jurisdiction in which the office
1323 identified in an account statement as the office serving the
1324 customer's account is located.

1325 (5) If none of the preceding paragraphs applies, the
1326 bank's jurisdiction is the jurisdiction in which the chief
1327 executive office of the bank is located.

1328 **SECTION 75-9-305. Law governing perfection and priority of**
1329 **security interests in investment property.**

1330 (a) Except as otherwise provided in subsection (c), the
1331 following rules apply:

1332 (1) While a security certificate is located in a
1333 jurisdiction, the local law of that jurisdiction governs
1334 perfection, the effect of perfection or nonperfection, and the

1335 priority of a security interest in the certificated security
1336 represented thereby.

1337 (2) The local law of the issuer's jurisdiction as
1338 specified in Section 75-8-110(d) governs perfection, the effect of
1339 perfection or nonperfection, and the priority of a security
1340 interest in an uncertificated security.

1341 (3) The local law of the securities intermediary's
1342 jurisdiction as specified in Section 75-8-110(e) governs
1343 perfection, the effect of perfection or nonperfection, and the
1344 priority of a security interest in a security entitlement or
1345 securities account.

1346 (4) The local law of the commodity intermediary's
1347 jurisdiction governs perfection, the effect of perfection or
1348 nonperfection, and the priority of a security interest in a
1349 commodity contract or commodity account.

1350 (b) The following rules determine a commodity intermediary's
1351 jurisdiction for purposes of this part:

1352 (1) If an agreement between the commodity intermediary
1353 and commodity customer governing the commodity account expressly
1354 provides that a particular jurisdiction is the commodity
1355 intermediary's jurisdiction for purposes of this part, this
1356 article, or the Uniform Commercial Code, that jurisdiction is the
1357 commodity intermediary's jurisdiction.

1358 (2) If paragraph (1) does not apply and an agreement
1359 between the commodity intermediary and commodity customer
1360 governing the commodity account expressly provides that the
1361 agreement is governed by the law of a particular jurisdiction,
1362 that jurisdiction is the commodity intermediary's jurisdiction.

1363 (3) If neither paragraph (1) nor paragraph (2) applies
1364 and an agreement between the commodity intermediary and commodity
1365 customer governing the commodity account expressly provides that
1366 the commodity account is maintained at an office in a particular

1367 jurisdiction, that jurisdiction is the commodity intermediary's
1368 jurisdiction.

1369 (4) If none of the preceding paragraphs applies, the
1370 commodity intermediary's jurisdiction is the jurisdiction in which
1371 the office identified in an account statement as the office
1372 serving the commodity customer's account is located.

1373 (5) If none of the preceding paragraphs applies, the
1374 commodity intermediary's jurisdiction is the jurisdiction in which
1375 the chief executive office of the commodity intermediary is
1376 located.

1377 (c) The local law of the jurisdiction in which the debtor is
1378 located governs:

1379 (1) Perfection of a security interest in investment
1380 property by filing;

1381 (2) Automatic perfection of a security interest in
1382 investment property created by a broker or securities
1383 intermediary; and

1384 (3) Automatic perfection of a security interest in a
1385 commodity contract or commodity account created by a commodity
1386 intermediary.

1387 **SECTION 75-9-306. Law governing perfection and priority of**
1388 **security interests in letter-of-credit rights.**

1389 (a) Subject to subsection (c), the local law of the issuer's
1390 jurisdiction or a nominated person's jurisdiction governs
1391 perfection, the effect of perfection or nonperfection, and the
1392 priority of a security interest in a letter-of-credit right if the
1393 issuer's jurisdiction or nominated person's jurisdiction is a
1394 state.

1395 (b) For purposes of this part, an issuer's jurisdiction or
1396 nominated person's jurisdiction is the jurisdiction whose law
1397 governs the liability of the issuer or nominated person with
1398 respect to the letter-of-credit right as provided in Section
1399 75-5-116.

1400 (c) This section does not apply to a security interest that
1401 is perfected only under Section 75-9-308(d).

1402 **SECTION 75-9-307. Location of debtor.**

1403 (a) In this section, "place of business" means a place where
1404 a debtor conducts its affairs.

1405 (b) Except as otherwise provided in this section, the
1406 following rules determine a debtor's location:

1407 (1) A debtor who is an individual is located at the
1408 individual's principal residence.

1409 (2) A debtor that is an organization and has only one
1410 (1) place of business is located at its place of business.

1411 (3) A debtor that is an organization and has more than
1412 one (1) place of business is located at its chief executive
1413 office.

1414 (c) Subsection (b) applies only if a debtor's residence,
1415 place of business, or chief executive office, as applicable, is
1416 located in a jurisdiction whose law generally requires information
1417 concerning the existence of a nonpossessory security interest to
1418 be made generally available in a filing, recording or registration
1419 system as a condition or result of the security interest's
1420 obtaining priority over the rights of a lien creditor with respect
1421 to the collateral. If subsection (b) does not apply, the debtor
1422 is located in the District of Columbia.

1423 (d) A person that ceases to exist, have a residence, or have
1424 a place of business continues to be located in the jurisdiction
1425 specified by subsections (b) and (c).

1426 (e) A registered organization that is organized under the
1427 law of a state is located in that state.

1428 (f) Except as otherwise provided in subsection (i), a
1429 registered organization that is organized under the law of the
1430 United States and a branch or agency of a bank that is not
1431 organized under the law of the United States or a state are
1432 located:

1433 (1) In the state that the law of the United States
1434 designates, if the law designates a state of location;

1435 (2) In the state that the registered organization,
1436 branch or agency designates, if the law of the United States
1437 authorizes the registered organization, branch or agency to
1438 designate its state of location; or

1439 (3) In the District of Columbia, if neither paragraph
1440 (1) nor paragraph (2) applies.

1441 (g) A registered organization continues to be located in the
1442 jurisdiction specified by subsection (e) or (f) notwithstanding:

1443 (1) The suspension, revocation, forfeiture or lapse of
1444 the registered organization's status as such in its jurisdiction
1445 of organization; or

1446 (2) The dissolution, winding up or cancellation of the
1447 existence of the registered organization.

1448 (h) The United States is located in the District of
1449 Columbia.

1450 (i) A branch or agency of a bank that is not organized under
1451 the law of the United States or a state is located in the state in
1452 which the branch or agency is licensed, if all branches and
1453 agencies of the bank are licensed in only one (1) state.

1454 (j) A foreign air carrier under the Federal Aviation Act of
1455 1958, as amended, is located at the designated office of the agent
1456 upon which service of process may be made on behalf of the
1457 carrier.

1458 (k) This section applies only for purposes of this part.

1459 SUBPART 2. PERFECTION

1460 **SECTION 75-9-308. When security interest or agricultural**
1461 **lien is perfected; continuity of perfection.**

1462 (a) Except as otherwise provided in this section and Section
1463 75-9-309, a security interest is perfected if it has attached and
1464 all of the applicable requirements for perfection in Sections
1465 75-9-310 through 75-9-316 have been satisfied. A security

1466 interest is perfected when it attaches if the applicable
1467 requirements are satisfied before the security interest attaches.

1468 (b) An agricultural lien is perfected if it has become
1469 effective and all of the applicable requirements for perfection in
1470 Section 75-9-310 have been satisfied. An agricultural lien is
1471 perfected when it becomes effective if the applicable requirements
1472 are satisfied before the agricultural lien becomes effective.

1473 (c) A security interest or agricultural lien is perfected
1474 continuously if it is originally perfected by one method under
1475 this article and is later perfected by another method under this
1476 article, without an intermediate period when it was unperfected.

1477 (d) Perfection of a security interest in collateral also
1478 perfects a security interest in a supporting obligation for the
1479 collateral.

1480 (e) Perfection of a security interest in a right to payment
1481 or performance also perfects a security interest in a security
1482 interest, mortgage or other lien on personal or real property
1483 securing the right.

1484 (f) Perfection of a security interest in a securities
1485 account also perfects a security interest in the security
1486 entitlements carried in the securities account.

1487 (g) Perfection of a security interest in a commodity account
1488 also perfects a security interest in the commodity contracts
1489 carried in the commodity account.

1490 **SECTION 75-9-309. Security interest perfected upon**

1491 **attachment.** The following security interests are perfected when
1492 they attach:

1493 (1) A purchase-money security interest in consumer
1494 goods, except as otherwise provided in Section 75-9-311(b) with
1495 respect to consumer goods that are subject to a statute or treaty
1496 described in Section 75-9-311(a);

1497 (2) An assignment of accounts or payment intangibles
1498 which does not by itself or in conjunction with other assignments

1499 to the same assignee transfer a significant part of the assignor's
1500 outstanding accounts or payment intangibles;

1501 (3) A sale of a payment intangible;

1502 (4) A sale of a promissory note;

1503 (5) A security interest created by the assignment of a
1504 health-care-insurance receivable to the provider of the
1505 health-care goods or services;

1506 (6) A security interest arising under Section 75-2-401,
1507 75-2-505, 75-2-711(3) or 75-2A-508(5), until the debtor obtains
1508 possession of the collateral;

1509 (7) A security interest of a collecting bank arising
1510 under Section 75-4-210;

1511 (8) A security interest of an issuer or nominated
1512 person arising under Section 75-5-118;

1513 (9) A security interest arising in the delivery of a
1514 financial asset under Section 75-9-206(c);

1515 (10) A security interest in investment property created
1516 by a broker or securities intermediary;

1517 (11) A security interest in a commodity contract or a
1518 commodity account created by a commodity intermediary;

1519 (12) An assignment for the benefit of all creditors of
1520 the transferor and subsequent transfers by the assignee
1521 thereunder; and

1522 (13) A security interest created by an assignment of a
1523 beneficial interest in a decedent's estate.

1524 **SECTION 75-9-310. When filing required to perfect security**
1525 **interest or agricultural lien; security interests and agricultural**
1526 **liens to which filing provisions do not apply.**

1527 (a) Except as otherwise provided in subsection (b) and
1528 Section 75-9-312(b), a financing statement must be filed to
1529 perfect all security interests and agricultural liens.

1530 (b) The filing of a financing statement is not necessary to
1531 perfect a security interest:

1532 (1) That is perfected under Section 75-9-308(d), (e),
1533 (f) or (g);

1534 (2) That is perfected under Section 75-9-309 when it
1535 attaches;

1536 (3) In property subject to a statute, regulation or
1537 treaty described in Section 75-9-311(a);

1538 (4) In goods in possession of a bailee which is
1539 perfected under Section 75-9-312(d)(1) or (2);

1540 (5) In certificated securities, documents, goods or
1541 instruments which is perfected without filing or possession under
1542 Section 75-9-312(e), (f) or (g);

1543 (6) In collateral in the secured party's possession
1544 under Section 75-9-313;

1545 (7) In a certificated security which is perfected by
1546 delivery of the security certificate to the secured party under
1547 Section 75-9-313;

1548 (8) In deposit accounts, electronic chattel paper,
1549 investment property or letter-of-credit rights which is perfected
1550 by control under Section 75-9-314;

1551 (9) In proceeds which is perfected under Section
1552 75-9-315; or

1553 (10) That is perfected under Section 75-9-316.

1554 (c) If a secured party assigns a perfected security interest
1555 or agricultural lien, a filing under this article is not required
1556 to continue the perfected status of the security interest against
1557 creditors of and transferees from the original debtor.

1558 **SECTION 75-9-311. Perfection of security interests in**
1559 **property subject to certain statutes, regulations and treaties.**

1560 (a) Except as otherwise provided in subsection (d), the
1561 filing of a financing statement is not necessary or effective to
1562 perfect a security interest in property subject to:

1563 (1) A statute, regulation or treaty of the United
1564 States whose requirements for a security interest's obtaining

1565 priority over the rights of a lien creditor with respect to the
1566 property preempt Section 75-9-310(a);

1567 (2) Sections 63-21-1 through 63-21-77 (the Mississippi
1568 Motor Vehicle and Manufactured Housing Title Law) or a certificate
1569 of title issued pursuant to Sections 59-25-1 through 59-25-17
1570 (Certificates of Title for Boats and Other Vessels); or

1571 (3) A certificate-of-title statute of another
1572 jurisdiction which provides for a security interest to be
1573 indicated on the certificate as a condition or result of the
1574 security interest's obtaining priority over the rights of a lien
1575 creditor with respect to the property.

1576 (b) Compliance with the requirements of a statute,
1577 regulation or treaty described in subsection (a) for obtaining
1578 priority over the rights of a lien creditor is equivalent to the
1579 filing of a financing statement under this article. Except as
1580 otherwise provided in subsection (d) and Sections 75-9-313 and
1581 75-9-316(d) and (e) for goods covered by a certificate of title, a
1582 security interest in property subject to a statute, regulation or
1583 treaty described in subsection (a) may be perfected only by
1584 compliance with those requirements, and a security interest so
1585 perfected remains perfected notwithstanding a change in the use or
1586 transfer of possession of the collateral.

1587 (c) Except as otherwise provided in subsection (d) and
1588 Section 75-9-316(d) and (e), duration and renewal of perfection of
1589 a security interest perfected by compliance with the requirements
1590 prescribed by a statute, regulation or treaty described in
1591 subsection (a) are governed by the statute, regulation or treaty.
1592 In other respects, the security interest is subject to this
1593 article.

1594 (d) During any period in which collateral subject to a
1595 statute specified in subsection (a)(2) is inventory held for sale
1596 or lease by a person or leased by that person as lessor and that
1597 person is in the business of selling goods of that kind, this

1598 section does not apply to a security interest in that collateral
1599 created by that person.

1600 **SECTION 75-9-312. Perfection of security interests in**
1601 **chattel paper, deposit accounts, documents, goods covered by**
1602 **documents, instruments, investment property, letter-of-credit**
1603 **rights and money; perfection by permissive filing; temporary**
1604 **perfection without filing or transfer of possession.**

1605 (a) A security interest in chattel paper, negotiable
1606 documents, instruments or investment property may be perfected by
1607 filing.

1608 (b) Except as otherwise provided in Section 75-9-315(c) and
1609 (d) for proceeds:

1610 (1) A security interest in a deposit account may be
1611 perfected only by control under Section 75-9-314;

1612 (2) And except as otherwise provided in Section
1613 75-9-308(d), a security interest in a letter-of-credit right may
1614 be perfected only by control under Section 75-9-314; and

1615 (3) A security interest in money may be perfected only
1616 by the secured party's taking possession under Section 75-9-313.

1617 (c) While goods are in the possession of a bailee that has
1618 issued a negotiable document covering the goods:

1619 (1) A security interest in the goods may be perfected
1620 by perfecting a security interest in the document; and

1621 (2) A security interest perfected in the document has
1622 priority over any security interest that becomes perfected in the
1623 goods by another method during that time.

1624 (d) While goods are in the possession of a bailee that has
1625 issued a nonnegotiable document covering the goods, a security
1626 interest in the goods may be perfected by:

1627 (1) Issuance of a document in the name of the secured
1628 party;

1629 (2) The bailee's receipt of notification of the secured
1630 party's interest; or

1631 (3) Filing as to the goods.

1632 (e) A security interest in certificated securities,
1633 negotiable documents or instruments is perfected without filing or
1634 the taking of possession for a period of twenty (20) days from the
1635 time it attaches to the extent that it arises for new value given
1636 under an authenticated security agreement.

1637 (f) A perfected security interest in a negotiable document
1638 or goods in possession of a bailee, other than one that has issued
1639 a negotiable document for the goods, remains perfected for twenty
1640 (20) days without filing if the secured party makes available to
1641 the debtor the goods or documents representing the goods for the
1642 purpose of:

1643 (1) Ultimate sale or exchange; or

1644 (2) Loading, unloading, storing, shipping,
1645 transshipping, manufacturing, processing or otherwise dealing with
1646 them in a manner preliminary to their sale or exchange.

1647 (g) A perfected security interest in a certificated security
1648 or instrument remains perfected for twenty (20) days without
1649 filing if the secured party delivers the security certificate or
1650 instrument to the debtor for the purpose of:

1651 (1) Ultimate sale or exchange; or

1652 (2) Presentation, collection, enforcement, renewal or
1653 registration of transfer.

1654 (h) After the twenty-day period specified in subsection (e),
1655 (f) or (g) expires, perfection depends upon compliance with this
1656 article.

1657 **SECTION 75-9-313. When possession by or delivery to secured**
1658 **party perfects security interest without filing.**

1659 (a) Except as otherwise provided in subsection (b), a
1660 secured party may perfect a security interest in negotiable
1661 documents, goods, instruments, money or tangible chattel paper by
1662 taking possession of the collateral. A secured party may perfect

1663 a security interest in certificated securities by taking delivery
1664 of the certificated securities under Section 75-8-301.

1665 (b) With respect to goods covered by a certificate of title
1666 issued by this state, a secured party may perfect a security
1667 interest in the goods by taking possession of the goods only in
1668 the circumstances described in Section 75-9-316(d).

1669 (c) With respect to collateral other than certificated
1670 securities and goods covered by a document, a secured party takes
1671 possession of collateral in the possession of a person other than
1672 the debtor, the secured party, or a lessee of the collateral from
1673 the debtor in the ordinary course of the debtor's business, when:

1674 (1) The person in possession authenticates a record
1675 acknowledging that it holds possession of the collateral for the
1676 secured party's benefit; or

1677 (2) The person takes possession of the collateral after
1678 having authenticated a record acknowledging that it will hold
1679 possession of collateral for the secured party's benefit.

1680 (d) If perfection of a security interest depends upon
1681 possession of the collateral by a secured party, perfection occurs
1682 no earlier than the time the secured party takes possession and
1683 continues only while the secured party retains possession.

1684 (e) A security interest in a certificated security in
1685 registered form is perfected by delivery when delivery of the
1686 certificated security occurs under Section 75-8-301 and remains
1687 perfected by delivery until the debtor obtains possession of the
1688 security certificate.

1689 (f) A person in possession of collateral is not required to
1690 acknowledge that it holds possession for a secured party's
1691 benefit.

1692 (g) If a person acknowledges that it holds possession for
1693 the secured party's benefit:

1694 (1) The acknowledgment is effective under subsection
1695 (c) or Section 75-8-301(a), even if the acknowledgment violates
1696 the rights of a debtor; and

1697 (2) Unless the person otherwise agrees or law other
1698 than this article otherwise provides, the person does not owe any
1699 duty to the secured party and is not required to confirm the
1700 acknowledgment to another person.

1701 (h) A secured party having possession of collateral does not
1702 relinquish possession by delivering the collateral to a person
1703 other than the debtor or a lessee of the collateral from the
1704 debtor in the ordinary course of the debtor's business if the
1705 person was instructed before the delivery or is instructed
1706 contemporaneously with the delivery:

1707 (1) To hold possession of the collateral for the
1708 secured party's benefit; or

1709 (2) A secured party does not relinquish possession,
1710 even if a delivery under subsection (h) violates the rights of a
1711 debtor. A person to which collateral is delivered under
1712 subsection (h) does not owe any duty to the secured party and is
1713 not required to confirm the delivery to another person unless the
1714 person otherwise agrees or law other than this article otherwise
1715 provides.

1716 **SECTION 75-9-314. Perfection by control.**

1717 (a) A security interest in investment property, deposit
1718 accounts, letter-of-credit rights, or electronic chattel paper may
1719 be perfected by control of the collateral under Section 75-9-104,
1720 75-9-105, 75-9-106 or 75-9-107.

1721 (b) A security interest in deposit accounts, electronic
1722 chattel paper or letter-of-credit rights is perfected by control
1723 under Section 75-9-104, 75-9-105 or 75-9-107 when the secured
1724 party obtains control and remains perfected by control only while
1725 the secured party retains control.

1726 (c) A security interest in investment property is perfected
1727 by control under Section 75-9-106 from the time the secured party
1728 obtains control and remains perfected by control until:

1729 (1) The secured party does not have control; and

1730 (2) One (1) of the following occurs:

1731 (A) If the collateral is a certificated security,
1732 the debtor has or acquires possession of the security certificate;

1733 (B) If the collateral is an uncertificated
1734 security, the issuer has registered or registers the debtor as the
1735 registered owner; or

1736 (C) If the collateral is a security entitlement,
1737 the debtor is or becomes the entitlement holder.

1738 **SECTION 75-9-315. Secured party's rights on disposition of**
1739 **collateral and in proceeds.**

1740 (a) Except as otherwise provided in this article and in
1741 Section 75-2-403(2):

1742 (1) A security interest or agricultural lien continues
1743 in collateral notwithstanding sale, lease, license, exchange or
1744 other disposition thereof unless the secured party authorized the
1745 disposition free of the security interest or agricultural lien;
1746 and

1747 (2) A security interest attaches to any identifiable
1748 proceeds of collateral.

1749 (b) Proceeds that are commingled with other property are
1750 identifiable proceeds:

1751 (1) If the proceeds are goods, to the extent provided
1752 by Section 75-9-336; and

1753 (2) If the proceeds are not goods, to the extent that
1754 the secured party identifies the proceeds by a method of tracing,
1755 including application of equitable principles, that is permitted
1756 under law other than this article with respect to commingled
1757 property of the type involved.

1758 (c) A security interest in proceeds is a perfected security
1759 interest if the security interest in the original collateral was
1760 perfected.

1761 (d) A perfected security interest in proceeds becomes
1762 unperfected on the twenty-first day after the security interest
1763 attaches to the proceeds unless:

1764 (1) The following conditions are satisfied:

1765 (A) A filed financing statement covers the
1766 original collateral;

1767 (B) The proceeds are collateral in which a
1768 security interest may be perfected by filing in the office in
1769 which the financing statement has been filed; and

1770 (C) The proceeds are not acquired with cash
1771 proceeds;

1772 (2) The proceeds are identifiable cash proceeds; or

1773 (3) The security interest in the proceeds is perfected
1774 other than under subsection (c) when the security interest
1775 attaches to the proceeds or within twenty (20) days thereafter.

1776 (e) If a filed financing statement covers the original
1777 collateral, a security interest in proceeds which remains
1778 perfected under subsection (d)(1) becomes unperfected at the later
1779 of:

1780 (1) When the effectiveness of the filed financing
1781 statement lapses under Section 75-9-515 or is terminated under
1782 Section 75-9-513; or

1783 (2) The twenty-first day after the security interest
1784 attaches to the proceeds.

1785 **SECTION 75-9-316. Continued perfection of security interest**
1786 **following change in governing law.**

1787 (a) A security interest perfected pursuant to the law of the
1788 jurisdiction designated in Section 75-9-301(1) or 75-9-305(c)
1789 remains perfected until the earliest of:

1790 (1) The time perfection would have ceased under the law
1791 of that jurisdiction;

1792 (2) The expiration of four (4) months after a change of
1793 the debtor's location to another jurisdiction; or

1794 (3) The expiration of one (1) year after a transfer of
1795 collateral to a person that thereby becomes a debtor and is
1796 located in another jurisdiction.

1797 (b) If a security interest described in subsection (a)
1798 becomes perfected under the law of the other jurisdiction before
1799 the earliest time or event described in that subsection, it
1800 remains perfected thereafter. If the security interest does not
1801 become perfected under the law of the other jurisdiction before
1802 the earliest time or event, it becomes unperfected and is deemed
1803 never to have been perfected as against a purchaser of the
1804 collateral for value.

1805 (c) A possessory security interest in collateral, other than
1806 goods covered by a certificate of title and as-extracted
1807 collateral consisting of goods, remains continuously perfected if:

1808 (1) The collateral is located in one (1) jurisdiction
1809 and subject to a security interest perfected under the law of that
1810 jurisdiction;

1811 (2) Thereafter the collateral is brought into another
1812 jurisdiction; and

1813 (3) Upon entry into the other jurisdiction, the
1814 security interest is perfected under the law of the other
1815 jurisdiction.

1816 (d) Except as otherwise provided in subsection (e), a
1817 security interest in goods covered by a certificate of title which
1818 is perfected by any method under the law of another jurisdiction
1819 when the goods become covered by a certificate of title from this
1820 state remains perfected until the security interest would have
1821 become unperfected under the law of the other jurisdiction had the
1822 goods not become so covered.

1823 (e) A security interest described in subsection (d) becomes
1824 unperfected as against a purchaser of the goods for value and is
1825 deemed never to have been perfected as against a purchaser of the
1826 goods for value if the applicable requirements for perfection
1827 under Section 75-9-311(b) or 75-9-313 are not satisfied before the
1828 earlier of:

1829 (1) The time the security interest would have become
1830 unperfected under the law of the other jurisdiction had the goods
1831 not become covered by a certificate of title from this state; or

1832 (2) The expiration of four (4) months after the goods
1833 had become so covered.

1834 (f) A security interest in deposit accounts,
1835 letter-of-credit rights, or investment property which is perfected
1836 under the law of the bank's jurisdiction, the issuer's
1837 jurisdiction, a nominated person's jurisdiction, the securities
1838 intermediary's jurisdiction, or the commodity intermediary's
1839 jurisdiction, as applicable, remains perfected until the earlier
1840 of:

1841 (1) The time the security interest would have become
1842 unperfected under the law of that jurisdiction; or

1843 (2) The expiration of four (4) months after a change of
1844 the applicable jurisdiction to another jurisdiction.

1845 (g) If a security interest described in subsection (f)
1846 becomes perfected under the law of the other jurisdiction before
1847 the earlier of the time or the end of the period described in that
1848 subsection, it remains perfected thereafter. If the security
1849 interest does not become perfected under the law of the other
1850 jurisdiction before the earlier of that time or the end of that
1851 period, it becomes unperfected and is deemed never to have been
1852 perfected as against a purchaser of the collateral for value.

1853 SUBPART 3. PRIORITY

1854 **SECTION 75-9-317. Interests that take priority over or take**
1855 **free of security interest or agricultural lien.**

1856 (a) A security interest or agricultural lien is subordinate
1857 to the rights of:

1858 (1) A person entitled to priority under Section
1859 75-9-322; and

1860 (2) Except as otherwise provided in subsection (e), a
1861 person that becomes a lien creditor before the earlier of the
1862 time:

1863 (A) The security interest or agricultural lien is
1864 perfected; or

1865 (B) One (1) of the conditions specified in Section
1866 75-9-203(b)(3) is met and a financing statement covering the
1867 collateral is filed.

1868 (b) Except as otherwise provided in subsection (e), a buyer,
1869 other than a secured party, of tangible chattel paper, documents,
1870 goods, instruments or a security certificate takes free of a
1871 security interest or agricultural lien if the buyer gives value
1872 and receives delivery of the collateral without knowledge of the
1873 security interest or agricultural lien and before it is perfected.

1874 (c) Except as otherwise provided in subsection (e), a lessee
1875 of goods takes free of a security interest or agricultural lien if
1876 the lessee gives value and receives delivery of the collateral
1877 without knowledge of the security interest or agricultural lien
1878 and before it is perfected.

1879 (d) A licensee of a general intangible or a buyer, other
1880 than a secured party, of accounts, electronic chattel paper,
1881 general intangibles or investment property other than a
1882 certificated security takes free of a security interest if the
1883 licensee or buyer gives value without knowledge of the security
1884 interest and before it is perfected.

1885 (e) Except as otherwise provided in Sections 75-9-320 and
1886 75-9-321, if a person files a financing statement with respect to
1887 a purchase-money security interest before or within twenty (20)
1888 days after the debtor receives delivery of the collateral, the

1889 security interest takes priority over the rights of a buyer,
1890 lessee or lien creditor which arise between the time the security
1891 interest attaches and the time of filing.

1892 **SECTION 75-9-318. No interest retained in right to payment**
1893 **that is sold; rights and title of seller of account or chattel**
1894 **paper with respect to creditors and purchasers.**

1895 (a) A debtor that has sold an account, chattel paper,
1896 payment intangible or promissory note does not retain a legal or
1897 equitable interest in the collateral sold.

1898 (b) For purposes of determining the rights of creditors of,
1899 and purchasers for value of an account or chattel paper from, a
1900 debtor that has sold an account or chattel paper, while the
1901 buyer's security interest is unperfected, the debtor is deemed to
1902 have rights and title to the account or chattel paper identical to
1903 those the debtor sold.

1904 **SECTION 75-9-319. Rights and title of consignee with respect**
1905 **to creditors and purchasers.**

1906 (a) Except as otherwise provided in subsection (b), for
1907 purposes of determining the rights of creditors of, and purchasers
1908 for value of goods from, a consignee, while the goods are in the
1909 possession of the consignee, the consignee is deemed to have
1910 rights and title to the goods identical to those the consignor had
1911 or had power to transfer.

1912 (b) For purposes of determining the rights of a creditor of
1913 a consignee, law other than this article determines the rights and
1914 title of a consignee while goods are in the consignee's possession
1915 if, under this part, a perfected security interest held by the
1916 consignor would have priority over the rights of the creditor.

1917 **SECTION 75-9-320. Buyer of goods.**

1918 (a) Except as otherwise provided in subsection (e), a buyer
1919 in ordinary course of business, other than a person buying farm
1920 products from a person engaged in farming operations, takes free
1921 of a security interest created by the buyer's seller, even if the

1922 security interest is perfected and the buyer knows of its
1923 existence.

1924 (b) Except as otherwise provided in subsection (e), a buyer
1925 of goods from a person who used or bought the goods for use
1926 primarily for personal, family or household purposes takes free of
1927 a security interest, even if perfected, if the buyer buys:

1928 (1) Without knowledge of the security interest;

1929 (2) For value;

1930 (3) Primarily for the buyer's personal, family or
1931 household purposes; and

1932 (4) Before the filing of a financing statement covering
1933 the goods.

1934 (c) To the extent that it affects the priority of a security
1935 interest over a buyer of goods under subsection (b), the period of
1936 effectiveness of a filing made in the jurisdiction in which the
1937 seller is located is governed by Section 75-9-316(a) and (b).

1938 (d) A buyer in ordinary course of business buying oil, gas
1939 or other minerals at the wellhead or minehead or after extraction
1940 takes free of an interest arising out of an encumbrance.

1941 (e) Subsections (a) and (b) do not affect a security
1942 interest in goods in the possession of the secured party under
1943 Section 75-9-313.

1944 (f) Notwithstanding subsection (a), a secured party may not
1945 enforce a security interest in farm products against a buyer,
1946 commission merchant or selling agent who purchases or sells farm
1947 products in the ordinary course of business from or for a person
1948 engaged in farming operations unless the secured party has
1949 complied with the regulations issued by the Secretary of state
1950 under subsection (g) or unless the buyer, commission merchant or
1951 selling agent has received from the secured party or seller
1952 written notice of the security interest which complies with the
1953 requirements of Section 1324 of the Food Security Act of 1985, as
1954 now enacted or as hereafter may be amended.

1955 (g) The Secretary of State shall issue regulations
1956 implementing a central filing system relating to farm products
1957 which conforms with the requirements of Section 1324 of the Food
1958 Security Act of 1985, as now enacted or as hereafter may be
1959 amended. The Secretary of State is authorized to set reasonable
1960 fees to defray the costs of the central filing system established
1961 pursuant to this section. At least thirty (30) days prior to the
1962 promulgation of such regulations or any amendments thereto, the
1963 Secretary of State shall give notice of such regulations and/or
1964 amendments to all licensed attorneys in the State of Mississippi.

1965 **SECTION 75-9-321. Licensee of general intangible and lessee**
1966 **of goods in ordinary course of business.**

1967 (a) In this section, "licensee in ordinary course of
1968 business" means a person that becomes a licensee of a general
1969 intangible in good faith, without knowledge that the license
1970 violates the rights of another person in the general intangible,
1971 and in the ordinary course from a person in the business of
1972 licensing general intangibles of that kind. A person becomes a
1973 licensee in the ordinary course if the license to the person
1974 comports with the usual or customary practices in the kind of
1975 business in which the licensor is engaged or with the licensor's
1976 own usual or customary practices.

1977 (b) A licensee in ordinary course of business takes its
1978 rights under a nonexclusive license free of a security interest in
1979 the general intangible created by the licensor, even if the
1980 security interest is perfected and the licensee knows of its
1981 existence.

1982 (c) A lessee in ordinary course of business takes its
1983 leasehold interest free of a security interest in the goods
1984 created by the lessor, even if the security interest is perfected
1985 and the lessee knows of its existence.

1986 **SECTION 75-9-322. Priorities among conflicting security**
1987 **interests in and agricultural liens on same collateral.**

1988 (a) Except as otherwise provided in this section, priority
1989 among conflicting security interests and agricultural liens in the
1990 same collateral is determined according to the following rules:

1991 (1) Conflicting perfected security interests and
1992 agricultural liens rank according to priority in time of filing or
1993 perfection. Priority dates from the earlier of the time a filing
1994 covering the collateral is first made or the security interest or
1995 agricultural lien is first perfected, if there is no period
1996 thereafter when there is neither filing nor perfection.

1997 (2) A perfected security interest or agricultural lien
1998 has priority over a conflicting unperfected security interest or
1999 agricultural lien.

2000 (3) The first security interest or agricultural lien to
2001 attach or become effective has priority if conflicting security
2002 interests and agricultural liens are unperfected.

2003 (b) For the purposes of subsection (a)(1):

2004 (1) The time of filing or perfection as to a security
2005 interest in collateral is also the time of filing or perfection as
2006 to a security interest in proceeds; and

2007 (2) The time of filing or perfection as to a security
2008 interest in collateral supported by a supporting obligation is
2009 also the time of filing or perfection as to a security interest in
2010 the supporting obligation.

2011 (c) Except as otherwise provided in subsection (f), a
2012 security interest in collateral which qualifies for priority over
2013 a conflicting security interest under Section 75-9-327, 75-9-328,
2014 75-9-329, 75-9-330 or 75-9-331 also has priority over a
2015 conflicting security interest in:

2016 (1) Any supporting obligation for the collateral; and

2017 (2) Proceeds of the collateral if:

2018 (A) The security interest in proceeds is
2019 perfected;

2020 (B) The proceeds are cash proceeds or of the same
2021 type as the collateral; and

2022 (C) In the case of proceeds that are proceeds of
2023 proceeds, all intervening proceeds are cash proceeds, proceeds of
2024 the same type as the collateral, or an account relating to the
2025 collateral.

2026 (d) Subject to subsection (e) and except as otherwise
2027 provided in subsection (f), if a security interest in chattel
2028 paper, deposit accounts, negotiable documents, instruments,
2029 investment property or letter-of-credit rights is perfected by a
2030 method other than filing, conflicting perfected security interests
2031 in proceeds of the collateral rank according to priority in time
2032 of filing.

2033 (e) Subsection (d) applies only if the proceeds of the
2034 collateral are not cash proceeds, chattel paper, negotiable
2035 documents, instruments, investment property or letter-of-credit
2036 rights.

2037 (f) Subsections (a) through (e) are subject to:

2038 (1) Subsection (g) and the other provisions of this
2039 part;

2040 (2) Section 75-4-210 with respect to a security
2041 interest of a collecting bank;

2042 (3) Section 75-5-118 with respect to a security
2043 interest of an issuer or nominated person; and

2044 (4) Section 75-9-110 with respect to a security
2045 interest arising under Article 2 or 2A.

2046 (g) A perfected agricultural lien on collateral has priority
2047 over a conflicting security interest in or agricultural lien on
2048 the same collateral if the statute creating the agricultural lien
2049 so provides.

2050 **SECTION 75-9-323. Future advances.**

2051 (a) Except as otherwise provided in subsection (c), for
2052 purposes of determining the priority of a perfected security

2053 interest under Section 75-9-322(a)(1), perfection of the security
2054 interest dates from the time an advance is made to the extent that
2055 the security interest secures an advance that:

2056 (1) Is made while the security interest is perfected
2057 only:

2058 (A) Under Section 75-9-309 when it attaches; or

2059 (B) Temporarily under Section 75-9-312(e), (f), or
2060 (g); and

2061 (2) Is not made pursuant to a commitment entered into
2062 before or while the security interest is perfected by a method
2063 other than under Section 75-9-309 or 75-9-312(e), (f) or (g).

2064 (b) Except as otherwise provided in subsection (c), a
2065 security interest is subordinate to the rights of a person that
2066 becomes a lien creditor to the extent that the security interest
2067 secures an advance made more than forty-five (45) days after the
2068 person becomes a lien creditor unless the advance is made:

2069 (1) Without knowledge of the lien; or

2070 (2) Pursuant to a commitment entered into without
2071 knowledge of the lien.

2072 (c) Subsections (a) and (b) do not apply to a security
2073 interest held by a secured party that is a buyer of accounts,
2074 chattel paper, payment intangibles or promissory notes or a
2075 consignor.

2076 (d) Except as otherwise provided in subsection (e), a buyer
2077 of goods other than a buyer in ordinary course of business takes
2078 free of a security interest to the extent that it secures advances
2079 made after the earlier of:

2080 (1) The time the secured party acquires knowledge of
2081 the buyer's purchase; or

2082 (2) Forty-five (45) days after the purchase.

2083 (e) Subsection (d) does not apply if the advance is made
2084 pursuant to a commitment entered into without knowledge of the

2085 buyer's purchase and before the expiration of the forty-five-day
2086 period.

2087 (f) Except as otherwise provided in subsection (g), a lessee
2088 of goods, other than a lessee in ordinary course of business,
2089 takes the leasehold interest free of a security interest to the
2090 extent that it secures advances made after the earlier of:

2091 (1) The time the secured party acquires knowledge of
2092 the lease; or

2093 (2) Forty-five (45) days after the lease contract
2094 becomes enforceable.

2095 (g) Subsection (f) does not apply if the advance is made
2096 pursuant to a commitment entered into without knowledge of the
2097 lease and before the expiration of the forty-five-day period.

2098 **SECTION 75-9-324. Priority of purchase-money security**
2099 **interests.**

2100 (a) Except as otherwise provided in subsection (g), a
2101 perfected purchase-money security interest in goods other than
2102 inventory or livestock has priority over a conflicting security
2103 interest in the same goods, and, except as otherwise provided in
2104 Section 75-9-327, a perfected security interest in its
2105 identifiable proceeds also has priority, if the purchase-money
2106 security interest is perfected when the debtor receives possession
2107 of the collateral or within twenty (20) days thereafter.

2108 (b) Subject to subsection (c) and except as otherwise
2109 provided in subsection (g), a perfected purchase-money security
2110 interest in inventory has priority over a conflicting security
2111 interest in the same inventory, has priority over a conflicting
2112 security interest in chattel paper or an instrument constituting
2113 proceeds of the inventory and in proceeds of the chattel paper, if
2114 so provided in Section 75-9-330, and, except as otherwise provided
2115 in Section 75-9-327, also has priority in identifiable cash
2116 proceeds of the inventory to the extent the identifiable cash

2117 proceeds are received on or before the delivery of the inventory
2118 to a buyer, if:

2119 (1) The purchase-money security interest is perfected
2120 when the debtor receives possession of the inventory;

2121 (2) The purchase-money secured party sends an
2122 authenticated notification to the holder of the conflicting
2123 security interest;

2124 (3) The holder of the conflicting security interest
2125 receives the notification within five (5) years before the debtor
2126 receives possession of the inventory; and

2127 (4) The notification states that the person sending the
2128 notification has or expects to acquire a purchase-money security
2129 interest in inventory of the debtor and describes the inventory.

2130 (c) Subsections (b)(2) through (4) apply only if the holder
2131 of the conflicting security interest had filed a financing
2132 statement covering the same types of inventory:

2133 (1) If the purchase-money security interest is
2134 perfected by filing, before the date of the filing; or

2135 (2) If the purchase-money security interest is
2136 temporarily perfected without filing or possession under Section
2137 75-9-312(f), before the beginning of the twenty-day period
2138 thereunder.

2139 (d) Subject to subsection (e) and except as otherwise
2140 provided in subsection (g), a perfected purchase-money security
2141 interest in livestock that are farm products has priority over a
2142 conflicting security interest in the same livestock, and, except
2143 as otherwise provided in Section 75-9-327, a perfected security
2144 interest in their identifiable proceeds and identifiable products
2145 in their unmanufactured states also has priority, if:

2146 (1) The purchase-money security interest is perfected
2147 when the debtor receives possession of the livestock;

2148 (2) The purchase-money secured party sends an
2149 authenticated notification to the holder of the conflicting
2150 security interest;

2151 (3) The holder of the conflicting security interest
2152 receives the notification within six (6) months before the debtor
2153 receives possession of the livestock; and

2154 (4) The notification states that the person sending the
2155 notification has or expects to acquire a purchase-money security
2156 interest in livestock of the debtor and describes the livestock.

2157 (e) Subsections (d)(2) through (4) apply only if the holder
2158 of the conflicting security interest had filed a financing
2159 statement covering the same types of livestock:

2160 (1) If the purchase-money security interest is
2161 perfected by filing, before the date of the filing; or

2162 (2) If the purchase-money security interest is
2163 temporarily perfected without filing or possession under Section
2164 75-9-312(f), before the beginning of the twenty-day period
2165 thereunder.

2166 (f) Except as otherwise provided in subsection (g), a
2167 perfected purchase-money security interest in software has
2168 priority over a conflicting security interest in the same
2169 collateral, and, except as otherwise provided in Section 75-9-327,
2170 a perfected security interest in its identifiable proceeds also
2171 has priority, to the extent that the purchase-money security
2172 interest in the goods in which the software was acquired for use
2173 has priority in the goods and proceeds of the goods under this
2174 section.

2175 (g) If more than one (1) security interest qualifies for
2176 priority in the same collateral under subsection (a), (b), (d) or
2177 (f):

2178 (1) A security interest securing an obligation incurred
2179 as all or part of the price of the collateral has priority over a
2180 security interest securing an obligation incurred for value given

2181 to enable the debtor to acquire rights in or the use of
2182 collateral; and

2183 (2) In all other cases, Section 75-9-322(a) applies to
2184 the qualifying security interests.

2185 **SECTION 75-9-324A. Priority of production-money security**
2186 **interests and agricultural liens.**

2187 (a) Except as otherwise provided in subsections (c), (d) and
2188 (e), if the requirements of subsection (b) are satisfied, a
2189 perfected production-money security interest in production-money
2190 crops has priority over a conflicting security interest in the
2191 same crops and, except as otherwise provided in Section 75-9-327,
2192 also has priority in their identifiable proceeds.

2193 (b) A production-money security interest has priority under
2194 subsection (a) if:

2195 (1) The production-money security interest is perfected
2196 by filing when the production-money secured party first gives new
2197 value to enable the debtor to produce the crops;

2198 (2) The production-money secured party sends an
2199 authenticated notification to the holder of the conflicting
2200 security interest not less than ten (10) or more than thirty (30)
2201 days before the production-money secured party first gives new
2202 value to enable the debtor to produce the crops if the holder had
2203 filed a financing statement covering the crops before the date of
2204 the filing made by the production-money secured party; and

2205 (3) The notification states that the production-money
2206 secured party has or expects to acquire a production-money
2207 security interest in the debtor's crops and provides a description
2208 of the crops.

2209 (c) Except as otherwise provided in subsection (d) or (e),
2210 if more than one (1) security interest qualifies for priority in
2211 the same collateral under subsection (a), the security interests
2212 rank according to priority in time of filing under Section
2213 75-9-322(a).

2214 (d) To the extent that a person holding a perfected security
2215 interest in production-money crops that are the subject of a
2216 production-money security interest gives new value to enable the
2217 debtor to produce the production-money crops and the value is in
2218 fact used for the production of the production-money crops, the
2219 security interests rank according to priority in time of filing
2220 under Section 75-9-322(a).

2221 (e) To the extent that a person holds both an agricultural
2222 lien and a production-money security interest in the same
2223 collateral securing the same obligations, the rules of priority
2224 applicable to agricultural liens govern priority.

2225 **SECTION 75-9-325. Priority of security interests in**
2226 **transferred collateral.**

2227 (a) Except as otherwise provided in subsection (b), a
2228 security interest created by a debtor is subordinate to a security
2229 interest in the same collateral created by another person if:

2230 (1) The debtor acquired the collateral subject to the
2231 security interest created by the other person;

2232 (2) The security interest created by the other person
2233 was perfected when the debtor acquired the collateral; and

2234 (3) There is no period thereafter when the security
2235 interest is unperfected.

2236 (b) Subsection (a) subordinates a security interest only if
2237 the security interest:

2238 (1) Otherwise would have priority solely under Section
2239 75-9-322(a) or 75-9-324; or

2240 (2) Arose solely under Section 75-2-711(3) or
2241 75-2A-508(5).

2242 **SECTION 75-9-326. Priority of security interests created by**
2243 **new debtor.**

2244 (a) Subject to subsection (b), a security interest created
2245 by a new debtor which is perfected by a filed financing statement
2246 that is effective solely under Section 75-9-508 in collateral in

2247 which a new debtor has or acquires rights is subordinate to a
2248 security interest in the same collateral which is perfected other
2249 than by a filed financing statement that is effective solely under
2250 Section 75-9-508.

2251 (b) The other provisions of this part determine the priority
2252 among conflicting security interests in the same collateral
2253 perfected by filed financing statements that are effective solely
2254 under Section 75-9-508. However, if the security agreements to
2255 which a new debtor became bound as debtor were not entered into by
2256 the same original debtor, the conflicting security interests rank
2257 according to priority in time of the new debtor's having become
2258 bound.

2259 **SECTION 75-9-327. Priority of security interests in deposit**
2260 **account.** The following rules govern priority among conflicting
2261 security interests in the same deposit account:

2262 (1) A security interest held by a secured party having
2263 control of the deposit account under Section 75-9-104 has priority
2264 over a conflicting security interest held by a secured party that
2265 does not have control.

2266 (2) Except as otherwise provided in paragraphs (3) and
2267 (4), security interests perfected by control under Section
2268 75-9-314 rank according to priority in time of obtaining control.

2269 (3) Except as otherwise provided in paragraph (4), a
2270 security interest held by the bank with which the deposit account
2271 is maintained has priority over a conflicting security interest
2272 held by another secured party.

2273 (4) A security interest perfected by control under
2274 Section 75-9-104(a)(3) has priority over a security interest held
2275 by the bank with which the deposit account is maintained.

2276 **SECTION 75-9-328. Priority of security interests in**
2277 **investment property.** The following rules govern priority among
2278 conflicting security interests in the same investment property:

2279 (1) A security interest held by a secured party having
2280 control of investment property under Section 75-9-106 has priority
2281 over a security interest held by a secured party that does not
2282 have control of the investment property.

2283 (2) Except as otherwise provided in paragraphs (3) and
2284 (4), conflicting security interests held by secured parties each
2285 of which has control under Section 75-9-106 rank according to
2286 priority in time of:

2287 (A) If the collateral is a security, obtaining
2288 control;

2289 (B) If the collateral is a security entitlement
2290 carried in a securities account and:

2291 (i) If the secured party obtained control
2292 under Section 75-8-106(d)(1), the secured party's becoming the
2293 person for which the securities account is maintained;

2294 (ii) If the secured party obtained control
2295 under Section 75-8-106(d)(2), the securities intermediary's
2296 agreement to comply with the secured party's entitlement orders
2297 with respect to security entitlements carried or to be carried in
2298 the securities account; or

2299 (iii) If the secured party obtained control
2300 through another person under Section 75-8-106(d)(3), the time on
2301 which priority would be based under this paragraph if the other
2302 person were the secured party; or

2303 (C) If the collateral is a commodity contract
2304 carried with a commodity intermediary, the satisfaction of the
2305 requirement for control specified in Section 75-9-106(b)(2) with
2306 respect to commodity contracts carried or to be carried with the
2307 commodity intermediary.

2308 (3) A security interest held by a securities
2309 intermediary in a security entitlement or a securities account
2310 maintained with the securities intermediary has priority over a
2311 conflicting security interest held by another secured party.

2312 (4) A security interest held by a commodity
2313 intermediary in a commodity contract or a commodity account
2314 maintained with the commodity intermediary has priority over a
2315 conflicting security interest held by another secured party.

2316 (5) A security interest in a certificated security in
2317 registered form which is perfected by taking delivery under
2318 Section 75-9-313(a) and not by control under Section 75-9-314 has
2319 priority over a conflicting security interest perfected by a
2320 method other than control.

2321 (6) Conflicting security interests created by a broker,
2322 securities intermediary or commodity intermediary which are
2323 perfected without control under Section 75-9-106 rank equally.

2324 (7) In all other cases, priority among conflicting
2325 security interests in investment property is governed by Sections
2326 75-9-322 and 75-9-323.

2327 **SECTION 75-9-329. Priority of security interests in**
2328 **letter-of-credit right.** The following rules govern priority among
2329 conflicting security interests in the same letter-of-credit right:

2330 (1) A security interest held by a secured party having
2331 control of the letter-of-credit right under Section 75-9-107 has
2332 priority to the extent of its control over a conflicting security
2333 interest held by a secured party that does not have control.

2334 (2) Security interests perfected by control under
2335 Section 75-9-314 rank according to priority in time of obtaining
2336 control.

2337 **SECTION 75-9-330. Priority of purchaser of chattel paper or**
2338 **instrument.**

2339 (a) A purchaser of chattel paper has priority over a
2340 security interest in the chattel paper which is claimed merely as
2341 proceeds of inventory subject to a security interest if:

2342 (1) In good faith and in the ordinary course of the
2343 purchaser's business, the purchaser gives new value and takes

2344 possession of the chattel paper or obtains control of the chattel
2345 paper under Section 75-9-105; and

2346 (2) The chattel paper does not indicate that it has
2347 been assigned to an identified assignee other than the purchaser.

2348 (b) A purchaser of chattel paper has priority over a
2349 security interest in the chattel paper which is claimed other than
2350 merely as proceeds of inventory subject to a security interest if
2351 the purchaser gives new value and takes possession of the chattel
2352 paper or obtains control of the chattel paper under Section
2353 75-9-105 in good faith, in the ordinary course of the purchaser's
2354 business, and without knowledge that the purchase violates the
2355 rights of the secured party.

2356 (c) Except as otherwise provided in Section 75-9-327, a
2357 purchaser having priority in chattel paper under subsection (a) or
2358 (b) also has priority in proceeds of the chattel paper to the
2359 extent that:

2360 (1) Section 75-9-322 provides for priority in the
2361 proceeds; or

2362 (2) The proceeds consist of the specific goods covered
2363 by the chattel paper or cash proceeds of the specific goods, even
2364 if the purchaser's security interest in the proceeds is
2365 unperfected.

2366 (d) Except as otherwise provided in Section 75-9-331(a), a
2367 purchaser of an instrument has priority over a security interest
2368 in the instrument perfected by a method other than possession if
2369 the purchaser gives value and takes possession of the instrument
2370 in good faith and without knowledge that the purchase violates the
2371 rights of the secured party.

2372 (e) For purposes of subsections (a) and (b), the holder of a
2373 purchase-money security interest in inventory gives new value for
2374 chattel paper constituting proceeds of the inventory.

2375 (f) For purposes of subsections (b) and (d), if chattel
2376 paper or an instrument indicates that it has been assigned to an

2377 identified secured party other than the purchaser, a purchaser of
2378 the chattel paper or instrument has knowledge that the purchase
2379 violates the rights of the secured party.

2380 **SECTION 75-9-331. Priority of rights of purchasers of**
2381 **instruments, documents and securities under other articles;**
2382 **priority of interests in financial assets and security**
2383 **entitlements under Article 8.**

2384 (a) This article does not limit the rights of a holder in
2385 due course of a negotiable instrument, a holder to which a
2386 negotiable document of title has been duly negotiated, or a
2387 protected purchaser of a security. These holders or purchasers
2388 take priority over an earlier security interest, even if
2389 perfected, to the extent provided in Articles 3, 7 and 8.

2390 (b) This article does not limit the rights of or impose
2391 liability on a person to the extent that the person is protected
2392 against the assertion of a claim under Article 8.

2393 (c) Filing under this article does not constitute notice of
2394 a claim or defense to the holders, or purchasers, or persons
2395 described in subsections (a) and (b).

2396 **SECTION 75-9-332. Transfer of money; transfer of funds from**
2397 **deposit account.**

2398 (a) A transferee of money takes the money free of a security
2399 interest unless the transferee acts in collusion with the debtor
2400 in violating the rights of the secured party.

2401 (b) A transferee of funds from a deposit account takes the
2402 funds free of a security interest in the deposit account unless
2403 the transferee acts in collusion with the debtor in violating the
2404 rights of the secured party.

2405 **SECTION 75-9-333. Priority of certain liens arising by**
2406 **operation of law.**

2407 (a) In this section, "possessory lien" means an interest,
2408 other than a security interest or an agricultural lien:

2409 (1) Which secures payment or performance of an
2410 obligation for services or materials furnished with respect to
2411 goods by a person in the ordinary course of the person's business;

2412 (2) Which is created by statute or rule of law in favor
2413 of the person; and

2414 (3) Whose effectiveness depends on the person's
2415 possession of the goods.

2416 (b) A possessory lien on goods has priority over a security
2417 interest in the goods unless the lien is created by a statute that
2418 expressly provides otherwise.

2419 **SECTION 75-9-334. Priority of security interests in fixtures**
2420 **and crops.**

2421 (a) A security interest under this article may be created in
2422 goods that are fixtures or may continue in goods that become
2423 fixtures. A security interest does not exist under this article
2424 in ordinary building materials incorporated into an improvement on
2425 land.

2426 (b) This article does not prevent creation of an encumbrance
2427 upon fixtures under real property law.

2428 (c) In cases not governed by subsections (d) through (h), a
2429 security interest in fixtures is subordinate to a conflicting
2430 interest of an encumbrancer or owner of the related real property
2431 other than the debtor.

2432 (d) Except as otherwise provided in subsection (h), a
2433 perfected security interest in fixtures has priority over a
2434 conflicting interest of an encumbrancer or owner of the real
2435 property if the debtor has an interest of record in or is in
2436 possession of the real property and:

2437 (1) The security interest is a purchase-money security
2438 interest;

2439 (2) The interest of the encumbrancer or owner arises
2440 before the goods become fixtures; and

2441 (3) The security interest is perfected by a fixture
2442 filing before the goods become fixtures or within twenty (20) days
2443 thereafter.

2444 (e) A perfected security interest in fixtures has priority
2445 over a conflicting interest of an encumbrancer or owner of the
2446 real property if:

2447 (1) The debtor has an interest of record in the real
2448 property or is in possession of the real property and the security
2449 interest:

2450 (A) Is perfected by a fixture filing before the
2451 interest of the encumbrancer or owner is of record; and

2452 (B) Has priority over any conflicting interest of
2453 a predecessor in title of the encumbrancer or owner;

2454 (2) Before the goods become fixtures, the security
2455 interest is perfected by any method permitted by this article and
2456 the fixtures are readily removable:

2457 (A) Factory or office machines;

2458 (B) Equipment that is not primarily used or leased
2459 for use in the operation of the real property; or

2460 (C) Replacements of domestic appliances that are
2461 consumer goods;

2462 (3) The conflicting interest is a lien on the real
2463 property obtained by legal or equitable proceedings after the
2464 security interest was perfected by any method permitted by this
2465 article; or

2466 (4) The security interest is:

2467 (A) Created in a manufactured home in a
2468 manufactured-home transaction; and

2469 (B) Perfected pursuant to a statute described in
2470 Section 75-9-311(a)(2).

2471 (f) A security interest in fixtures, whether or not
2472 perfected, has priority over a conflicting interest of an
2473 encumbrancer or owner of the real property if:

2474 (1) The encumbrancer or owner has, in an authenticated
2475 record, consented to the security interest or disclaimed an
2476 interest in the goods as fixtures; or

2477 (2) The debtor has a right to remove the goods as
2478 against the encumbrancer or owner.

2479 (g) The priority of the security interest under paragraph
2480 (f)(2) continues for a reasonable time if the debtor's right to
2481 remove the goods as against the encumbrancer or owner terminates.

2482 (h) A mortgage is a construction mortgage to the extent that
2483 it secures an obligation incurred for the construction of an
2484 improvement on land, including the acquisition cost of the land,
2485 if a recorded record of the mortgage so indicates. Except as
2486 otherwise provided in subsections (e) and (f), a security interest
2487 in fixtures is subordinate to a construction mortgage if a record
2488 of the mortgage is recorded before the goods become fixtures and
2489 the goods become fixtures before the completion of the
2490 construction. A mortgage has this priority to the same extent as
2491 a construction mortgage to the extent that it is given to
2492 refinance a construction mortgage.

2493 (i) A perfected security interest in crops growing on real
2494 property has priority over a conflicting interest of an
2495 encumbrancer or owner of the real property if the debtor has an
2496 interest of record in or is in possession of the real property.

2497 **SECTION 75-9-335. Accessions.**

2498 (a) A security interest may be created in an accession and
2499 continues in collateral that becomes an accession.

2500 (b) If a security interest is perfected when the collateral
2501 becomes an accession, the security interest remains perfected in
2502 the collateral.

2503 (c) Except as otherwise provided in subsection (d), the
2504 other provisions of this part determine the priority of a security
2505 interest in an accession.

2506 (d) A security interest in an accession is subordinate to a
2507 security interest in the whole which is perfected by compliance
2508 with the requirements of a certificate-of-title statute under
2509 Section 75-9-311(b).

2510 (e) After default, subject to Part 6, a secured party may
2511 remove an accession from other goods if the security interest in
2512 the accession has priority over the claims of every person having
2513 an interest in the whole.

2514 (f) A secured party that removes an accession from other
2515 goods under subsection (e) shall promptly reimburse any holder of
2516 a security interest or other lien on, or owner of, the whole or of
2517 the other goods, other than the debtor, for the cost of repair of
2518 any physical injury to the whole or the other goods. The secured
2519 party need not reimburse the holder or owner for any diminution in
2520 value of the whole or the other goods caused by the absence of the
2521 accession removed or by any necessity for replacing it. A person
2522 entitled to reimbursement may refuse permission to remove until
2523 the secured party gives adequate assurance for the performance of
2524 the obligation to reimburse.

2525 **SECTION 75-9-336. Commingled goods.**

2526 (a) In this section, "commingled goods" means goods that are
2527 physically united with other goods in such a manner that their
2528 identity is lost in a product or mass.

2529 (b) A security interest does not exist in commingled goods
2530 as such. However, a security interest may attach to a product or
2531 mass that results when goods become commingled goods.

2532 (c) If collateral becomes commingled goods, a security
2533 interest attaches to the product or mass.

2534 (d) If a security interest in collateral is perfected before
2535 the collateral becomes commingled goods, the security interest
2536 that attaches to the product or mass under subsection (c) is
2537 perfected.

2538 (e) Except as otherwise provided in subsection (f), the
2539 other provisions of this part determine the priority of a security
2540 interest that attaches to the product or mass under subsection
2541 (c).

2542 (f) If more than one (1) security interest attaches to the
2543 product or mass under subsection (c), the following rules
2544 determine priority:

2545 (1) A security interest that is perfected under
2546 subsection (d) has priority over a security interest that is
2547 unperfected at the time the collateral becomes commingled goods.

2548 (2) If more than one (1) security interest is perfected
2549 under subsection (d), the security interests rank equally in
2550 proportion to the value of the collateral at the time it became
2551 commingled goods.

2552 **SECTION 75-9-337. Priority of security interests in goods**
2553 **covered by certificate of title.** If, while a security interest in
2554 goods is perfected by any method under the law of another
2555 jurisdiction, this state issues a certificate of title that does
2556 not show that the goods are subject to the security interest or
2557 contain a statement that they may be subject to security interests
2558 not shown on the certificate:

2559 (1) A buyer of the goods, other than a person in the
2560 business of selling goods of that kind, takes free of the security
2561 interest if the buyer gives value and receives delivery of the
2562 goods after issuance of the certificate and without knowledge of
2563 the security interest; and

2564 (2) The security interest is subordinate to a
2565 conflicting security interest in the goods that attaches, and is
2566 perfected under Section 75-9-311(b), after issuance of the
2567 certificate and without the conflicting secured party's knowledge
2568 of the security interest.

2569 **SECTION 75-9-338. Priority of security interest or**
2570 **agricultural lien perfected by filed financing statement providing**

2571 **certain incorrect information.** If a security interest or
2572 agricultural lien is perfected by a filed financing statement
2573 providing information described in Section 75-9-516(b)(5) which is
2574 incorrect at the time the financing statement is filed:

2575 (1) The security interest or agricultural lien is
2576 subordinate to a conflicting perfected security interest in the
2577 collateral to the extent that the holder of the conflicting
2578 security interest gives value in reasonable reliance upon the
2579 incorrect information; and

2580 (2) A purchaser, other than a secured party, of the
2581 collateral takes free of the security interest or agricultural
2582 lien to the extent that, in reasonable reliance upon the incorrect
2583 information, the purchaser gives value and, in the case of chattel
2584 paper, documents, goods, instruments or a security certificate,
2585 receives delivery of the collateral.

2586 **SECTION 75-9-339. Priority subject to subordination.** This
2587 article does not preclude subordination by agreement by a person
2588 entitled to priority.

2589 SUBPART 4. RIGHTS OF BANK

2590 **SECTION 75-9-340. Effectiveness of right of recoupment or**
2591 **set-off against deposit account.**

2592 (a) Except as otherwise provided in subsection (c), a bank
2593 with which a deposit account is maintained may exercise any right
2594 of recoupment or set-off against a secured party that holds a
2595 security interest in the deposit account.

2596 (b) Except as otherwise provided in subsection (c), the
2597 application of this article to a security interest in a deposit
2598 account does not affect a right of recoupment or set-off of the
2599 secured party as to a deposit account maintained with the secured
2600 party.

2601 (c) The exercise by a bank of a set-off against a deposit
2602 account is ineffective against a secured party that holds a
2603 security interest in the deposit account which is perfected by

2637 agricultural lien, or authority given to a debtor to dispose of or
2638 use collateral, without more, does not subject a secured party to
2639 liability in contract or tort for the debtor's acts or omissions.

2640 **SECTION 75-9-403. Agreement not to assert defenses against**
2641 **assignee.**

2642 (a) In this section, "value" has the meaning provided in
2643 Section 75-3-303(a).

2644 (b) Except as otherwise provided in this section, an
2645 agreement between an account debtor and an assignor not to assert
2646 against an assignee any claim or defense that the account debtor
2647 may have against the assignor is enforceable by an assignee that
2648 takes an assignment:

2649 (1) For value;

2650 (2) In good faith;

2651 (3) Without notice of a claim of a property or
2652 possessory right to the property assigned; and

2653 (4) Without notice of a defense or claim in recoupment
2654 of the type that may be asserted against a person entitled to
2655 enforce a negotiable instrument under Section 75-3-305(a).

2656 (c) Subsection (b) does not apply to defenses of a type that
2657 may be asserted against a holder in due course of a negotiable
2658 instrument under Section 75-3-305(b).

2659 (d) In a consumer transaction, if a record evidences the
2660 account debtor's obligation, law other than this article requires
2661 that the record include a statement to the effect that the rights
2662 of an assignee are subject to claims or defenses that the account
2663 debtor could assert against the original obligee, and the record
2664 does not include such a statement:

2665 (1) The record has the same effect as if the record
2666 included such a statement; and

2667 (2) The account debtor may assert against an assignee
2668 those claims and defenses that would have been available if the
2669 record included such a statement.

2670 (e) This section is subject to law other than this article
2671 which establishes a different rule for an account debtor who is an
2672 individual and who incurred the obligation primarily for personal,
2673 family or household purposes.

2674 (f) Except as otherwise provided in subsection (d), this
2675 section does not displace law other than this article which gives
2676 effect to an agreement by an account debtor not to assert a claim
2677 or defense against an assignee.

2678 **SECTION 75-9-404. Rights acquired by assignee; claims and**
2679 **defenses against assignee.**

2680 (a) Unless an account debtor has made an enforceable
2681 agreement not to assert defenses or claims, and subject to
2682 subsections (b) through (e), the rights of an assignee are subject
2683 to:

2684 (1) All terms of the agreement between the account
2685 debtor and assignor and any defense or claim in recoupment arising
2686 from the transaction that gave rise to the contract; and

2687 (2) Any other defense or claim of the account debtor
2688 against the assignor which accrues before the account debtor
2689 receives a notification of the assignment authenticated by the
2690 assignor or the assignee.

2691 (b) Subject to subsection (c) and except as otherwise
2692 provided in subsection (d), the claim of an account debtor against
2693 an assignor may be asserted against an assignee under subsection
2694 (a) only to reduce the amount the account debtor owes.

2695 (c) This section is subject to law other than this article
2696 which establishes a different rule for an account debtor who is an
2697 individual and who incurred the obligation primarily for personal,
2698 family or household purposes.

2699 (d) In a consumer transaction, if a record evidences the
2700 account debtor's obligation, law other than this article requires
2701 that the record include a statement to the effect that the account
2702 debtor's recovery against an assignee with respect to claims and

2703 defenses against the assignor may not exceed amounts paid by the
2704 account debtor under the record, and the record does not include
2705 such a statement, the extent to which a claim of an account debtor
2706 against the assignor may be asserted against an assignee is
2707 determined as if the record included such a statement.

2708 (e) This section does not apply to an assignment of a
2709 health-care-insurance receivable.

2710 **SECTION 75-9-405. Modification of assigned contract.**

2711 (a) A modification of or substitution for an assigned
2712 contract is effective against an assignee if made in good faith.
2713 The assignee acquires corresponding rights under the modified or
2714 substituted contract. The assignment may provide that the
2715 modification or substitution is a breach of contract by the
2716 assignor. This subsection is subject to subsections (b) through
2717 (d).

2718 (b) Subsection (a) applies to the extent that:

2719 (1) The right to payment or a part thereof under an
2720 assigned contract has not been fully earned by performance; or

2721 (2) The right to payment or a part thereof has been
2722 fully earned by performance and the account debtor has not
2723 received notification of the assignment under Section 75-9-406(a).

2724 (c) This section is subject to law other than this article
2725 which establishes a different rule for an account debtor who is an
2726 individual and who incurred the obligation primarily for personal,
2727 family or household purposes.

2728 (d) This section does not apply to an assignment of a
2729 health-care-insurance receivable.

2730 **SECTION 75-9-406. Discharge of account debtor; notification**
2731 **of assignment; identification and proof of assignment;**
2732 **restrictions on assignment of accounts, chattel paper, payment**
2733 **intangibles and promissory notes ineffective.**

2734 (a) Subject to subsections (b) through (i), an account
2735 debtor on an account, chattel paper, or a payment intangible may

2736 discharge its obligation by paying the assignor until, but not
2737 after, the account debtor receives a notification, authenticated
2738 by the assignor or the assignee, that the amount due or to become
2739 due has been assigned and that payment is to be made to the
2740 assignee. After receipt of the notification, the account debtor
2741 may discharge its obligation by paying the assignee and may not
2742 discharge the obligation by paying the assignor.

2743 (b) Subject to subsection (h), notification is ineffective
2744 under subsection (a):

2745 (1) If it does not reasonably identify the rights
2746 assigned;

2747 (2) To the extent that an agreement between an account
2748 debtor and a seller of a payment intangible limits the account
2749 debtor's duty to pay a person other than the seller and the
2750 limitation is effective under law other than this article; or

2751 (3) At the option of an account debtor, if the
2752 notification notifies the account debtor to make less than the
2753 full amount of any installment or other periodic payment to the
2754 assignee, even if:

2755 (A) Only a portion of the account, chattel paper,
2756 or payment intangible has been assigned to that assignee;

2757 (B) A portion has been assigned to another
2758 assignee; or

2759 (C) The account debtor knows that the assignment
2760 to that assignee is limited.

2761 (c) Subject to subsection (h), if requested by the account
2762 debtor, an assignee shall seasonably furnish reasonable proof that
2763 the assignment has been made. Unless the assignee complies, the
2764 account debtor may discharge its obligation by paying the
2765 assignor, even if the account debtor has received a notification
2766 under subsection (a).

2767 (d) Except as otherwise provided in subsection (e) and
2768 Sections 75-2A-303 and 75-9-407, and subject to subsection (h), a

2769 term in an agreement between an account debtor and an assignor or
2770 in a promissory note is ineffective to the extent that it:

2771 (1) Prohibits, restricts or requires the consent of the
2772 account debtor or person obligated on the promissory note to the
2773 assignment or transfer of, or the creation, attachment, perfection
2774 or enforcement of a security interest in, the account, chattel
2775 paper, payment intangible or promissory note; or

2776 (2) Provides that the assignment or transfer or the
2777 creation, attachment, perfection or enforcement of the security
2778 interest may give rise to a default, breach, right of recoupment,
2779 claim, defense, termination, right of termination or remedy under
2780 the account, chattel paper, payment intangible or promissory note.

2781 (e) Subsection (d) does not apply to the sale of a payment
2782 intangible or promissory note.

2783 (f) Except as otherwise provided in Sections 75-2A-303 and
2784 75-9-407 and subject to subsections (h) and (i), a rule of law,
2785 statute or regulation that prohibits, restricts or requires the
2786 consent of a government, governmental body or official, or account
2787 debtor to the assignment or transfer of, or creation of a security
2788 interest in, an account or chattel paper is ineffective to the
2789 extent that the rule of law, statute or regulation:

2790 (1) Prohibits, restricts or requires the consent of the
2791 government, governmental body or official, or account debtor to
2792 the assignment or transfer of, or the creation, attachment,
2793 perfection or enforcement of a security interest in the account or
2794 chattel paper; or

2795 (2) Provides that the assignment or transfer or the
2796 creation, attachment, perfection or enforcement of the security
2797 interest may give rise to a default, breach, right of recoupment,
2798 claim, defense, termination, right of termination or remedy under
2799 the account or chattel paper.

2800 (g) Subject to subsection (h), an account debtor may not
2801 waive or vary its option under subsection (b)(3).

2802 (h) This section is subject to law other than this article
2803 which establishes a different rule for an account debtor who is an
2804 individual and who incurred the obligation primarily for personal,
2805 family or household purposes.

2806 (i) This section does not apply to an assignment of a
2807 health-care-insurance receivable.

2808 (j) This section prevails over any inconsistent provision of
2809 an existing or future statute, rule or regulation of this state
2810 unless the provision is contained in a statute of this state,
2811 refers expressly to this section, and states that the provision
2812 prevails over this section.

2813 **SECTION 75-9-407. Restrictions on creation or enforcement of**
2814 **security interest in leasehold interest or in lessor's residual**
2815 **interest.**

2816 (a) Except as otherwise provided in subsection (b), a term
2817 in a lease agreement is ineffective to the extent that it:

2818 (1) Prohibits, restricts or requires the consent of a
2819 party to the lease to the assignment or transfer of, or the
2820 creation, attachment, perfection or enforcement of a security
2821 interest in, an interest of a party under the lease contract or in
2822 the lessor's residual interest in the goods; or

2823 (2) Provides that the assignment or transfer or the
2824 creation, attachment, perfection or enforcement of the security
2825 interest may give rise to a default, breach, right of recoupment,
2826 claim, defense, termination, right of termination or remedy under
2827 the lease.

2828 (b) Except as otherwise provided in Section 75-2A-303(7), a
2829 term described in subsection (a)(2) is effective to the extent
2830 that there is:

2831 (1) A transfer by the lessee of the lessee's right of
2832 possession or use of the goods in violation of the term; or

2833 (2) A delegation of a material performance of either
2834 party to the lease contract in violation of the term.

2835 (c) The creation, attachment, perfection or enforcement of a
2836 security interest in the lessor's interest under the lease
2837 contract or the lessor's residual interest in the goods is not a
2838 transfer that materially impairs the lessee's prospect of
2839 obtaining return performance or materially changes the duty of or
2840 materially increases the burden or risk imposed on the lessee
2841 within the purview of Section 75-2A-303(4) unless, and then only
2842 to the extent that, enforcement actually results in a delegation
2843 of material performance of the lessor.

2844 **SECTION 75-9-408. Restrictions on assignment of promissory**
2845 **notes, health-care-insurance receivables, and certain general**
2846 **intangibles ineffective.**

2847 (a) Except as otherwise provided in subsection (b), a term
2848 in a promissory note or in an agreement between an account debtor
2849 and a debtor which relates to a health-care-insurance receivable
2850 or a general intangible, including a contract, permit, license or
2851 franchise, and which term prohibits, restricts or requires the
2852 consent of the person obligated on the promissory note or the
2853 account debtor to, the assignment or transfer of, or creation,
2854 attachment or perfection of a security interest in, the promissory
2855 note, health-care-insurance receivable, or general intangible, is
2856 ineffective to the extent that the term:

2857 (1) Would impair the creation, attachment or perfection
2858 of a security interest; or

2859 (2) Provides that the assignment or transfer or the
2860 creation, attachment or perfection of the security interest may
2861 give rise to a default, breach, right of recoupment, claim,
2862 defense, termination, right of termination or remedy under the
2863 promissory note, health-care-insurance receivable, or general
2864 intangible.

2865 (b) Subsection (a) applies to a security interest in a
2866 payment intangible or promissory note only if the security

2867 interest arises out of a sale of the payment intangible or
2868 promissory note.

2869 (c) A rule of law, statute or regulation that prohibits,
2870 restricts or requires the consent of a government, governmental
2871 body or official, person obligated on a promissory note, or
2872 account debtor to the assignment or transfer of, or creation of a
2873 security interest in, a promissory note, health-care-insurance
2874 receivable or general intangible, including a contract, permit,
2875 license or franchise between an account debtor and a debtor, is
2876 ineffective to the extent that the rule of law, statute or
2877 regulation:

2878 (1) Would impair the creation, attachment or perfection
2879 of a security interest; or

2880 (2) Provides that the assignment or transfer or the
2881 creation, attachment or perfection of the security interest may
2882 give rise to a default, breach, right of recoupment, claim,
2883 defense, termination, right of termination or remedy under the
2884 promissory note, health-care-insurance receivable or general
2885 intangible.

2886 (d) To the extent that a term in a promissory note or in an
2887 agreement between an account debtor and a debtor which relates to
2888 a health-care-insurance receivable or general intangible or a rule
2889 of law, statute or regulation described in subsection (c) would be
2890 effective under law other than this article but is ineffective
2891 under subsection (a) or (c), the creation, attachment or
2892 perfection of a security interest in the promissory note,
2893 health-care-insurance receivable or general intangible:

2894 (1) Is not enforceable against the person obligated on
2895 the promissory note or the account debtor;

2896 (2) Does not impose a duty or obligation on the person
2897 obligated on the promissory note or the account debtor;

2898 (3) Does not require the person obligated on the
2899 promissory note or the account debtor to recognize the security

2900 interest, pay or render performance to the secured party or accept
2901 payment or performance from the secured party;

2902 (4) Does not entitle the secured party to use or assign
2903 the debtor's rights under the promissory note,
2904 health-care-insurance receivable or general intangible, including
2905 any related information or materials furnished to the debtor in
2906 the transaction giving rise to the promissory note,
2907 health-care-insurance receivable or general intangible;

2908 (5) Does not entitle the secured party to use, assign,
2909 possess or have access to any trade secrets or confidential
2910 information of the person obligated on the promissory note or the
2911 account debtor; and

2912 (6) Does not entitle the secured party to enforce the
2913 security interest in the promissory note, health-care-insurance
2914 receivable or general intangible.

2915 (e) This section prevails over any inconsistent provision of
2916 an existing or future statute, rule or regulation of this state
2917 unless the provision is contained in a statute of this state,
2918 refers expressly to this section, and states that the provision
2919 prevails over this section.

2920 **SECTION 75-9-409. Restrictions on assignment of**
2921 **letter-of-credit rights ineffective.**

2922 (a) A term in a letter of credit or a rule of law, statute,
2923 regulation, custom or practice applicable to the letter of credit
2924 which prohibits, restricts or requires the consent of an
2925 applicant, issuer or nominated person to a beneficiary's
2926 assignment of or creation of a security interest in a
2927 letter-of-credit right is ineffective to the extent that the term
2928 or rule of law, statute, regulation, custom or practice:

2929 (1) Would impair the creation, attachment or perfection
2930 of a security interest in the letter-of-credit right; or

2931 (2) Provides that the assignment or the creation,
2932 attachment or perfection of the security interest may give rise to

2933 a default, breach, right of recoupment, claim, defense,
2934 termination, right of termination or remedy under the
2935 letter-of-credit right.

2936 (b) To the extent that a term in a letter of credit is
2937 ineffective under subsection (a) but would be effective under law
2938 other than this article or a custom or practice applicable to the
2939 letter of credit, to the transfer of a right to draw or otherwise
2940 demand performance under the letter of credit, or to the
2941 assignment of a right to proceeds of the letter of credit, the
2942 creation, attachment or perfection of a security interest in the
2943 letter-of-credit right:

2944 (1) Is not enforceable against the applicant, issuer,
2945 nominated person or transferee beneficiary;

2946 (2) Imposes no duties or obligations on the applicant,
2947 issuer, nominated person or transferee beneficiary; and

2948 (3) Does not require the applicant, issuer, nominated
2949 person or transferee beneficiary to recognize the security
2950 interest, pay or render performance to the secured party, or
2951 accept payment or other performance from the secured party.

2952 **PART 5**

2953 **FILING**

2954 **SUBPART 1. FILING OFFICE; CONTENTS AND**
2955 **EFFECTIVENESS OF FINANCING STATEMENT**

2956 **SECTION 75-9-501. Filing office.**

2957 (a) Except as otherwise provided in subsection (b), if the
2958 local law of this state governs perfection of a security interest
2959 or agricultural lien, the office in which to file a financing
2960 statement to perfect the security interest or agricultural lien
2961 is:

2962 (1) The office designated for the filing or recording
2963 of a record of a mortgage on the related real property, if:

2964 (A) The collateral is as-extracted collateral or
2965 timber to be cut; or

2966 (B) The financing statement is filed as a fixture
2967 filing and the collateral is goods that are or are to become
2968 fixtures; or

2969 (2) The Office of the Secretary of State in all other
2970 cases, including a case in which the collateral is goods that are
2971 or are to become fixtures and the financing statement is not filed
2972 as a fixture filing.

2973 (b) The office in which to file a financing statement to
2974 perfect a security interest in collateral, including fixtures, of
2975 a transmitting utility is the Office of the Secretary of State.
2976 The financing statement also constitutes a fixture filing as to
2977 the collateral indicated in the financing statement which is or is
2978 to become fixtures.

2979 **SECTION 75-9-502. Contents of financing statement; record of**
2980 **mortgage as financing statement; time of filing financing**
2981 **statement.**

2982 (a) Subject to subsection (b), a financing statement is
2983 sufficient only if it:

2984 (1) Provides the name of the debtor;

2985 (2) Provides the name of the secured party or a
2986 representative of the secured party; and

2987 (3) Indicates the collateral covered by the financing
2988 statement.

2989 (b) Except as otherwise provided in Section 75-9-501(b), to
2990 be sufficient, a financing statement that covers as-extracted
2991 collateral or timber to be cut, or which is filed as a fixture
2992 filing and covers goods that are or are to become fixtures, must
2993 satisfy subsection (a) and also:

2994 (1) Indicate that it covers this type of collateral;

2995 (2) Indicate that it is to be filed for record in the
2996 real property records;

2997 (3) Provide a description of the real property to which
2998 the collateral is related sufficient to give constructive notice

2999 of a mortgage under the law of this state if the description were
3000 contained in a record of the mortgage of the real property; and

3001 (4) If the debtor does not have an interest of record
3002 in the real property, provide the name of a record owner.

3003 (c) A record of a mortgage is effective, from the date of
3004 recording, as a financing statement filed as a fixture filing or
3005 as a financing statement covering as-extracted collateral or
3006 timber to be cut only if:

3007 (1) The record indicates the goods or accounts that it
3008 covers;

3009 (2) The goods are or are to become fixtures related to
3010 the real property described in the record or the collateral is
3011 related to the real property described in the record and is
3012 as-extracted collateral or timber to be cut;

3013 (3) The record satisfies the requirements for a
3014 financing statement in this section other than an indication that
3015 it is to be filed in the real property records; and

3016 (4) The record is duly recorded.

3017 (d) A financing statement may be filed before a security
3018 agreement is made or a security interest otherwise attaches.

3019 **SECTION 75-9-503. Name of debtor and secured party.**

3020 (a) A financing statement sufficiently provides the name of
3021 the debtor:

3022 (1) If the debtor is a registered organization, only if
3023 the financing statement provides the name of the debtor indicated
3024 on the public record of the debtor's jurisdiction of organization
3025 which shows the debtor to have been organized;

3026 (2) If the debtor is a decedent's estate, only if the
3027 financing statement provides the name of the decedent and
3028 indicates that the debtor is an estate;

3029 (3) If the debtor is a trust or a trustee acting with
3030 respect to property held in trust, only if the financing
3031 statement:

3032 (A) Provides the name specified for the trust in
3033 its organic documents or, if no name is specified, provides the
3034 name of the settlor and additional information sufficient to
3035 distinguish the debtor from other trusts having one or more of the
3036 same settlors; and

3037 (B) Indicates, in the debtor's name or otherwise,
3038 that the debtor is a trust or is a trustee acting with respect to
3039 property held in trust; and

3040 (4) In other cases:

3041 (A) If the debtor has a name, only if it provides
3042 the individual or organizational name of the debtor; and

3043 (B) If the debtor does not have a name, only if it
3044 provides the names of the partners, members, associates or other
3045 persons comprising the debtor.

3046 (b) A financing statement that provides the name of the
3047 debtor in accordance with subsection (a) is not rendered
3048 ineffective by the absence of:

3049 (1) A trade name or other name of the debtor; or

3050 (2) Unless required under subsection (a)(4)(B), names
3051 of partners, members, associates or other persons comprising the
3052 debtor.

3053 (c) A financing statement that provides only the debtor's
3054 trade name does not sufficiently provide the name of the debtor.

3055 (d) Failure to indicate the representative capacity of a
3056 secured party or representative of a secured party does not affect
3057 the sufficiency of a financing statement.

3058 (e) A financing statement may provide the name of more than
3059 one (1) debtor and the name of more than one (1) secured party.

3060 **SECTION 75-9-504. Indication of collateral.** A financing
3061 statement sufficiently indicates the collateral that it covers if
3062 the financing statement provides:

3063 (1) A description of the collateral pursuant to Section
3064 75-9-108; or

3065 (2) An indication that the financing statement covers
3066 all assets or all personal property.

3067 **SECTION 75-9-505. Filing and compliance with other statutes**
3068 **and treaties for consignments, leases, other bailments, and other**
3069 **transactions.**

3070 (a) A consignor, lessor or other bailor of goods, a
3071 licensor, or a buyer of a payment intangible or promissory note
3072 may file a financing statement, or may comply with a statute or
3073 treaty described in Section 75-9-311(a), using the terms
3074 "consignor," "consignee," "lessor," "lessee," "bailor," "bailee,"
3075 "licensor," "licensee," "owner," "registered owner," "buyer,"
3076 "seller," or words of similar import, instead of the terms
3077 "secured party" and "debtor."

3078 (b) This part applies to the filing of a financing statement
3079 under subsection (a) and, as appropriate, to compliance that is
3080 equivalent to filing a financing statement under Section
3081 75-9-311(b), but the filing or compliance is not of itself a
3082 factor in determining whether the collateral secures an
3083 obligation. If it is determined for another reason that the
3084 collateral secures an obligation, a security interest held by the
3085 consignor, lessor, bailor, licensor, owner or buyer which attaches
3086 to the collateral is perfected by the filing or compliance.

3087 **SECTION 75-9-506. Effect of errors or omissions.**

3088 (a) A financing statement substantially satisfying the
3089 requirements of this part is effective, even if it has minor
3090 errors or omissions, unless the errors or omissions make the
3091 financing statement seriously misleading.

3092 (b) Except as otherwise provided in subsection (c), a
3093 financing statement that fails sufficiently to provide the name of
3094 the debtor in accordance with Section 75-9-503(a) is seriously
3095 misleading.

3096 (c) If a search of the records of the filing office under
3097 the debtor's correct name, using the filing office's standard

3098 search logic, if any, would disclose a financing statement that
3099 fails sufficiently to provide the name of the debtor in accordance
3100 with Section 75-9-503(a), the name provided does not make the
3101 financing statement seriously misleading.

3102 (d) For purposes of Section 75-9-508(b), the "debtor's
3103 correct name" in subsection (c) means the correct name of the new
3104 debtor.

3105 **SECTION 75-9-507. Effect of certain events on effectiveness**
3106 **of financing statement.**

3107 (a) A filed financing statement remains effective with
3108 respect to collateral that is sold, exchanged, leased, licensed or
3109 otherwise disposed of and in which a security interest or
3110 agricultural lien continues, even if the secured party knows of or
3111 consents to the disposition.

3112 (b) Except as otherwise provided in subsection (c) and
3113 Section 75-9-508, a financing statement is not rendered
3114 ineffective if, after the financing statement is filed, the
3115 information provided in the financing statement becomes seriously
3116 misleading under Section 75-9-506.

3117 (c) If a debtor so changes its name that a filed financing
3118 statement becomes seriously misleading under Section 75-9-506:

3119 (1) The financing statement is effective to perfect a
3120 security interest in collateral acquired by the debtor before, or
3121 within four (4) months after, the change; and

3122 (2) The financing statement is not effective to perfect
3123 a security interest in collateral acquired by the debtor more than
3124 four (4) months after the change, unless an amendment to the
3125 financing statement which renders the financing statement not
3126 seriously misleading is filed within four (4) months after the
3127 change.

3128 **SECTION 75-9-508. Effectiveness of financing statement if**
3129 **new debtor becomes bound by security agreement.**

3130 (a) Except as otherwise provided in this section, a filed
3131 financing statement naming an original debtor is effective to
3132 perfect a security interest in collateral in which a new debtor
3133 has or acquires rights to the extent that the financing statement
3134 would have been effective had the original debtor acquired rights
3135 in the collateral.

3136 (b) If the difference between the name of the original
3137 debtor and that of the new debtor causes a filed financing
3138 statement that is effective under subsection (a) to be seriously
3139 misleading under Section 75-9-506:

3140 (1) The financing statement is effective to perfect a
3141 security interest in collateral acquired by the new debtor before,
3142 and within four (4) months after, the new debtor becomes bound
3143 under Section 75-9-203(d); and

3144 (2) The financing statement is not effective to perfect
3145 a security interest in collateral acquired by the new debtor more
3146 than four (4) months after the new debtor becomes bound under
3147 Section 75-9-203(d) unless an initial financing statement
3148 providing the name of the new debtor is filed before the
3149 expiration of that time.

3150 (c) This section does not apply to collateral as to which a
3151 filed financing statement remains effective against the new debtor
3152 under Section 75-9-507(a).

3153 **SECTION 75-9-509. Persons entitled to file a record.**

3154 (a) A person may file an initial financing statement,
3155 amendment that adds collateral covered by a financing statement,
3156 or amendment that adds a debtor to a financing statement only if:

3157 (1) The debtor authorizes the filing in an
3158 authenticated record or pursuant to subsection (b) or (c); or

3159 (2) The person holds an agricultural lien that has
3160 become effective at the time of filing and the financing statement
3161 covers only collateral in which the person holds an agricultural
3162 lien.

3163 (b) By authenticating or becoming bound as debtor by a
3164 security agreement, a debtor or new debtor authorizes the filing
3165 of an initial financing statement, and an amendment, covering:

3166 (1) The collateral described in the security agreement;
3167 and

3168 (2) Property that becomes collateral under Section
3169 75-9-315(a)(2), whether or not the security agreement expressly
3170 covers proceeds.

3171 (c) By acquiring collateral in which a security interest or
3172 agricultural lien continues under Section 75-9-315(a)(1), a debtor
3173 authorizes the filing of an initial financing statement, and an
3174 amendment, covering the collateral and property that becomes
3175 collateral under Section 75-9-315(a)(2).

3176 (d) A person may file an amendment other than an amendment
3177 that adds collateral covered by a financing statement or an
3178 amendment that adds a debtor to a financing statement only if:

3179 (1) The secured party of record authorizes the filing;
3180 or

3181 (2) The amendment is a termination statement for a
3182 financing statement as to which the secured party of record has
3183 failed to file or send a termination statement as required by
3184 Section 75-9-513(a) or (c), the debtor authorizes the filing, and
3185 the termination statement indicates that the debtor authorized it
3186 to be filed.

3187 (e) If there is more than one (1) secured party of record
3188 for a financing statement, each secured party of record may
3189 authorize the filing of an amendment under subsection (d).

3190 **SECTION 75-9-510. Effectiveness of filed record.**

3191 (a) A filed record is effective only to the extent that it
3192 was filed by a person that may file it under Section 75-9-509.

3193 (b) A record authorized by one (1) secured party of record
3194 does not affect the financing statement with respect to another
3195 secured party of record.

3196 (c) A continuation statement that is not filed within the
3197 six-month period prescribed by Section 75-9-515(d) is ineffective.

3198 **SECTION 75-9-511. Secured party of record.**

3199 (a) A secured party of record with respect to a financing
3200 statement is a person whose name is provided as the name of the
3201 secured party or a representative of the secured party in an
3202 initial financing statement that has been filed. If an initial
3203 financing statement is filed under Section 75-9-514(a), the
3204 assignee named in the initial financing statement is the secured
3205 party of record with respect to the financing statement.

3206 (b) If an amendment of a financing statement which provides
3207 the name of a person as a secured party or a representative of a
3208 secured party is filed, the person named in the amendment is a
3209 secured party of record. If an amendment is filed under Section
3210 75-9-514(b), the assignee named in the amendment is a secured
3211 party of record.

3212 (c) A person remains a secured party of record until the
3213 filing of an amendment of the financing statement which deletes
3214 the person.

3215 **SECTION 75-9-512. Amendment of financing statement.**

3216 (a) Subject to Section 75-9-509, a person may add or delete
3217 collateral covered by, continue or terminate the effectiveness of,
3218 or, subject to subsection (e), otherwise amend the information
3219 provided in, a financing statement by filing an amendment that:

3220 (1) Identifies, by its file number, the initial
3221 financing statement to which the amendment relates; and

3222 (2) If the amendment relates to an initial financing
3223 statement filed for record in a filing office described in Section
3224 75-9-501(a)(1), provides the date that the initial financing
3225 statement was filed for record and the information specified in
3226 Section 75-9-502(b).

3227 (b) Except as otherwise provided in Section 75-9-515, the
3228 filing of an amendment does not extend the period of effectiveness
3229 of the financing statement.

3230 (c) A financing statement that is amended by an amendment
3231 that adds collateral is effective as to the added collateral only
3232 from the date of the filing of the amendment.

3233 (d) A financing statement that is amended by an amendment
3234 that adds a debtor is effective as to the added debtor only from
3235 the date of the filing of the amendment.

3236 (e) An amendment is ineffective to the extent it:

3237 (1) Purports to delete all debtors and fails to provide
3238 the name of a debtor to be covered by the financing statement; or

3239 (2) Purports to delete all secured parties of record
3240 and fails to provide the name of a new secured party of record.

3241 **SECTION 75-9-513. Termination statement.**

3242 (a) A secured party shall cause the secured party of record
3243 for a financing statement to file a termination statement for the
3244 financing statement if the financing statement covers consumer
3245 goods and:

3246 (1) There is no obligation secured by the collateral
3247 covered by the financing statement and no commitment to make an
3248 advance, incur an obligation, or otherwise give value; or

3249 (2) The debtor did not authorize the filing of the
3250 initial financing statement.

3251 (b) To comply with subsection (a), a secured party shall
3252 cause the secured party of record to file the termination
3253 statement:

3254 (1) Within one (1) month after there is no obligation
3255 secured by the collateral covered by the financing statement and
3256 no commitment to make an advance, incur an obligation, or
3257 otherwise give value; or

3258 (2) If earlier, within twenty (20) days after the
3259 secured party receives an authenticated demand from a debtor.

3260 (c) In cases not governed by subsection (a), within twenty
3261 (20) days after a secured party receives an authenticated demand
3262 from a debtor, the secured party shall cause the secured party of
3263 record for a financing statement to send to the debtor a
3264 termination statement for the financing statement or file the
3265 termination statement in the filing office if:

3266 (1) Except in the case of a financing statement
3267 covering accounts or chattel paper that has been sold or goods
3268 that are the subject of a consignment, there is no obligation
3269 secured by the collateral covered by the financing statement and
3270 no commitment to make an advance, incur an obligation, or
3271 otherwise give value;

3272 (2) The financing statement covers accounts or chattel
3273 paper that has been sold but as to which the account debtor or
3274 other person obligated has discharged its obligation;

3275 (3) The financing statement covers goods that were the
3276 subject of a consignment to the debtor but are not in the debtor's
3277 possession; or

3278 (4) The debtor did not authorize the filing of the
3279 initial financing statement.

3280 (d) Except as otherwise provided in Section 75-9-510, upon
3281 the filing of a termination statement with the filing office, the
3282 financing statement to which the termination statement relates
3283 ceases to be effective. Except as otherwise provided in Section
3284 75-9-510, for purposes of Sections 75-9-519(g), 75-9-522(a) and
3285 75-9-523(c), the filing with the filing office of a termination
3286 statement relating to a financing statement that indicates that
3287 the debtor is a transmitting utility also causes the effectiveness
3288 of the financing statement to lapse.

3289 **SECTION 75-9-514. Assignment of powers of secured party of**
3290 **record.**

3291 (a) Except as otherwise provided in subsection (c), an
3292 initial financing statement may reflect an assignment of all of

3293 the secured party's power to authorize an amendment to the
3294 financing statement by providing the name and mailing address of
3295 the assignee as the name and address of the secured party.

3296 (b) Except as otherwise provided in subsection (c), a
3297 secured party of record may assign of record all or part of its
3298 power to authorize an amendment to a financing statement by filing
3299 in the filing office an amendment of the financing statement
3300 which:

3301 (1) Identifies, by its file number, the initial
3302 financing statement to which it relates;

3303 (2) Provides the name of the assignor; and

3304 (3) Provides the name and mailing address of the
3305 assignee.

3306 (c) An assignment of record of a security interest in a
3307 fixture covered by a record of a mortgage which is effective as a
3308 financing statement filed as a fixture filing under Section
3309 75-9-502(c) may be made only by an assignment of record of the
3310 mortgage in the manner provided by law of this state other than
3311 the Uniform Commercial Code.

3312 **SECTION 75-9-515. Duration and effectiveness of financing**
3313 **statement; effect of lapsed financing statement.**

3314 (a) Except as otherwise provided in subsections (b), (e),
3315 (f) and (g), a filed financing statement is effective for a period
3316 of five (5) years after the date of filing.

3317 (b) Except as otherwise provided in subsections (e), (f) and
3318 (g), an initial financing statement filed in connection with a
3319 public-finance transaction or manufactured-home transaction is
3320 effective for a period of thirty (30) years after the date of
3321 filing if it indicates that it is filed in connection with a
3322 public-finance transaction or manufactured-home transaction.

3323 (c) The effectiveness of a filed financing statement lapses
3324 on the expiration of the period of its effectiveness unless before
3325 the lapse a continuation statement is filed pursuant to subsection

3326 (d). Upon lapse, a financing statement ceases to be effective and
3327 any security interest or agricultural lien that was perfected by
3328 the financing statement becomes unperfected, unless the security
3329 interest is perfected otherwise. If the security interest or
3330 agricultural lien becomes unperfected upon lapse, it is deemed
3331 never to have been perfected as against a purchaser of the
3332 collateral for value.

3333 (d) A continuation statement may be filed only within six
3334 (6) months before the expiration of the five-year period specified
3335 in subsection (a) or the thirty-year period specified in
3336 subsection (b), whichever is applicable.

3337 (e) Except as otherwise provided in Section 75-9-510, upon
3338 timely filing of a continuation statement, the effectiveness of
3339 the initial financing statement continues for a period of five (5)
3340 years commencing on the day on which the financing statement would
3341 have become ineffective in the absence of the filing. Upon the
3342 expiration of the five-year period, the financing statement lapses
3343 in the same manner as provided in subsection (c), unless, before
3344 the lapse, another continuation statement is filed pursuant to
3345 subsection (d). Succeeding continuation statements may be filed
3346 in the same manner to continue the effectiveness of the initial
3347 financing statement.

3348 (f) If a debtor is a transmitting utility and a filed
3349 financing statement so indicates, the financing statement is
3350 effective until a termination statement is filed.

3351 (g) A record of a mortgage that is effective as a financing
3352 statement filed as a fixture filing under Section 75-9-502(c)
3353 remains effective as a financing statement filed as a fixture
3354 filing until the mortgage is released or satisfied of record or
3355 its effectiveness otherwise terminates as to the real property.

3356 **SECTION 75-9-516. What constitutes filing; effectiveness of**
3357 **filing.**

3358 (a) Except as otherwise provided in subsection (b),
3359 communication of a record to a filing office and tender of the
3360 filing fee or acceptance of the record by the filing office
3361 constitutes filing.

3362 (b) Filing does not occur with respect to a record that a
3363 filing office refuses to accept because:

3364 (1) The record is not communicated by a method or
3365 medium of communication authorized by the filing office;

3366 (2) An amount equal to or greater than the applicable
3367 filing fee is not tendered;

3368 (3) The filing office is unable to index the record
3369 because:

3370 (A) In the case of an initial financing statement,
3371 the record does not provide a name for the debtor;

3372 (B) In the case of an amendment or correction
3373 statement, the record:

3374 (i) Does not identify the initial financing
3375 statement as required by Section 75-9-512 or 75-9-518, as
3376 applicable; or

3377 (ii) Identifies an initial financing
3378 statement whose effectiveness has lapsed under Section 75-9-515;

3379 (C) In the case of an initial financing statement
3380 that provides the name of a debtor identified as an individual or
3381 an amendment that provides a name of a debtor identified as an
3382 individual which was not previously provided in the financing
3383 statement to which the record relates, the record does not
3384 identify the debtor's last name; or

3385 (D) In the case of a record filed, or filed for
3386 record, in the filing office described in Section 75-9-501(a)(1),
3387 the record does not provide a sufficient description of the real
3388 property to which it relates;

3389 (4) In the case of an initial financing statement or an
3390 amendment that adds a secured party of record, the record does not

3391 provide a name and mailing address for the secured party of
3392 record;

3393 (5) In the case of an initial financing statement or an
3394 amendment that provides a name of a debtor which was not
3395 previously provided in the financing statement to which the
3396 amendment relates, the record does not:

3397 (A) Provide a mailing address for the debtor;

3398 (B) Indicate whether the debtor is an individual
3399 or an organization; or

3400 (C) If the financing statement indicates that the
3401 debtor is an organization, provide:

3402 (i) A type of organization for the debtor;

3403 (ii) A jurisdiction of organization for the
3404 debtor; or

3405 (iii) An organizational identification number
3406 for the debtor or indicate that the debtor has none;

3407 (6) In the case of an assignment reflected in an
3408 initial financing statement under Section 75-9-514(a) or an
3409 amendment filed under Section 75-9-514(b), the record does not
3410 provide a name and mailing address for the assignee; or

3411 (7) In the case of a continuation statement, the record
3412 is not filed within the six-month period prescribed by Section
3413 75-9-515(d).

3414 (c) For purposes of subsection (b):

3415 (1) A record does not provide information if the filing
3416 office is unable to read or decipher the information; and

3417 (2) A record that does not indicate that it is an
3418 amendment or identify an initial financing statement to which it
3419 relates, as required by Section 75-9-512, 75-9-514 or 75-9-518, is
3420 an initial financing statement.

3421 (d) A record that is communicated to the filing office with
3422 tender of the filing fee, but which the filing office refuses to
3423 accept for a reason other than one set forth in subsection (b), is

3424 effective as a filed record except as against a purchaser of the
3425 collateral which gives value in reasonable reliance upon the
3426 absence of the record from the files.

3427 **SECTION 75-9-517. Effect of indexing errors.** The failure of
3428 the filing office to index a record correctly does not affect the
3429 effectiveness of the filed record.

3430 **SECTION 75-9-518. Claim concerning inaccurate or wrongfully**
3431 **filed record.**

3432 (a) A person may file in the filing office a correction
3433 statement with respect to a record indexed there under the
3434 person's name if the person believes that the record is inaccurate
3435 or was wrongfully filed.

3436 (b) A correction statement must:

3437 (1) Identify the record to which it relates by:

3438 (A) The file number assigned to the initial
3439 financing statement to which the record relates; and

3440 (B) If the correction statement relates to a
3441 record filed for record in a filing office described in Section
3442 75-9-501(a)(1), the date that the initial financing statement was
3443 filed for record and the information specified in Section
3444 75-9-502(b);

3445 (2) Indicate that it is a correction statement; and

3446 (3) Provide the basis for the person's belief that the
3447 record is inaccurate and indicate the manner in which the person
3448 believes the record should be amended to cure any inaccuracy or
3449 provide the basis for the person's belief that the record was
3450 wrongfully filed.

3451 (c) The filing of a correction statement does not affect the
3452 effectiveness of an initial financing statement or other filed
3453 record.

3454 SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

3455 **SECTION 75-9-519. Numbering, maintaining and indexing**
3456 **records; communicating information provided in records.**

3457 (a) For each record filed in a filing office, the filing
3458 office shall:

3459 (1) Assign a unique number to the filed record;

3460 (2) Create a record that bears the number assigned to
3461 the filed record and the date and time of filing;

3462 (3) Maintain the filed record for public inspection;

3463 and

3464 (4) Index the filed record in accordance with
3465 subsections (c), (d) and (e).

3466 (b) Except as provided in subsection (i), a file number
3467 assigned after January 1, 2002, must include a digit that:

3468 (1) Is mathematically derived from or related to the
3469 other digits of the file number; and

3470 (2) Aids the filing office in determining whether a
3471 number communicated as the file number includes a single-digit or
3472 transpositional error.

3473 (c) Except as otherwise provided in subsections (d) and (e),
3474 the filing office shall:

3475 (1) Index an initial financing statement according to
3476 the name of the debtor and index all filed records relating to the
3477 initial financing statement in a manner that associates with one
3478 another an initial financing statement and all filed records
3479 relating to the initial financing statement; and

3480 (2) Index a record that provides a name of a debtor
3481 which was not previously provided in the financing statement to
3482 which the record relates also according to the name that was not
3483 previously provided.

3484 (d) If a financing statement is filed as a fixture filing or
3485 covers as-extracted collateral or timber to be cut, it must be
3486 filed for record and the filing office shall index it:

3487 (1) Under the names of the debtor and of each owner of
3488 record shown on the financing statement as if they were the
3489 mortgagors under a mortgage of the real property described; and

3490 (2) To the extent that the law of this state provides
3491 for indexing of records of mortgages under the name of the
3492 mortgagee, under the name of the secured party as if the secured
3493 party were the mortgagee thereunder, or, if indexing is by
3494 description, as if the financing statement were a record of a
3495 mortgage of the real property described.

3496 (e) If a financing statement is filed as a fixture filing or
3497 covers as-extracted collateral or timber to be cut, the filing
3498 office shall index an assignment filed under Section 75-9-514(a)
3499 or an amendment filed under Section 75-9-514(b):

3500 (1) Under the name of the assignor as grantor; and

3501 (2) To the extent that the law of this state provides
3502 for indexing a record of the assignment of a mortgage under the
3503 name of the assignee, under the name of the assignee.

3504 (f) The filing office shall maintain a capability:

3505 (1) To retrieve a record by the name of the debtor and:

3506 (A) If the filing office is described in Section
3507 75-9-501(a)(1), by the file number assigned to the initial
3508 financing statement to which the record relates and the date and
3509 time that the record was filed for record; or

3510 (B) If the filing office is described in Section
3511 75-9-501(a)(2), by the file number assigned to the initial
3512 financing statement to which the record relates; and

3513 (2) To associate and retrieve with one another an
3514 initial financing statement and each filed record relating to the
3515 initial financing statement.

3516 (g) The filing office may not remove a debtor's name from
3517 the index until one (1) year after the effectiveness of a
3518 financing statement naming the debtor lapses under Section
3519 75-9-515 with respect to all secured parties of record.

3520 (h) Except as provided in subsection (i), the filing office
3521 shall perform the acts required by subsections (a) through (e) at
3522 the time and in the manner prescribed by filing-office rule, but

3523 not later than two (2) business days after the filing office
3524 receives the record in question.

3525 (i) Subsections (b) and (h) do not apply to a filing office
3526 described in Section 75-9-501(a)(1).

3527 **SECTION 75-9-520. Acceptance and refusal to accept record.**

3528 (a) A filing office shall refuse to accept a record for
3529 filing for a reason set forth in Section 75-9-516(b) and may
3530 refuse to accept a record for filing only for a reason set forth
3531 in Section 75-9-516(b).

3532 (b) If a filing office refuses to accept a record for
3533 filing, it shall communicate to the person that presented the
3534 record the fact of and reason for the refusal and the date and
3535 time the record would have been filed had the filing office
3536 accepted it. The communication must be made at the time and in
3537 the manner prescribed by filing-office rule but, in the case of a
3538 filing office described in Section 75-9-501(a)(1), in no event
3539 more than two (2) business days after the filing office receives
3540 the record.

3541 (c) A filed financing statement satisfying Section
3542 75-9-502(a) and (b) is effective, even if the filing office is
3543 required to refuse to accept it for filing under subsection (a).
3544 However, Section 75-9-338 applies to a filed financing statement
3545 providing information described in Section 75-9-516(b)(5) which is
3546 incorrect at the time the financing statement is filed.

3547 (d) If a record communicated to a filing office provides
3548 information that relates to more than one (1) debtor, this part
3549 applies as to each debtor separately.

3550 **SECTION 75-9-521. Uniform form of written financing
3551 statement and amendment.**

3552 (a) A filing office that accepts written records may not
3553 refuse to accept a written initial financing statement in the form
3554 and format set forth in the final official text of the 1999
3555 revisions to Article 9 of the Uniform Commercial Code promulgated

3556 by The American Law Institute and the National Conference of
3557 Commissioners on Uniform State Laws, except for a reason set forth
3558 in Section 75-9-516(b).

3559 (b) A filing office that accepts written records may not
3560 refuse to accept a written record in the form and format set forth
3561 in the final official text of the 1999 revisions to Article 9 of
3562 the Uniform Commercial Code promulgated by The American Law
3563 Institute and the National Conference of Commissioners on Uniform
3564 State Laws, except for a reason set forth in Section 75-9-516(b).

3565 **SECTION 75-9-522. Maintenance and destruction of records.**

3566 (a) The filing office shall maintain a record of the
3567 information provided in a filed financing statement for at least
3568 one (1) year after the effectiveness of the financing statement
3569 has lapsed under Section 75-9-515 with respect to all secured
3570 parties of record. The record must be retrievable by using the
3571 name of the debtor and:

3572 (1) If the record was filed or recorded in the filing
3573 office described in Section 75-9-501(a)(1), by using the file
3574 number assigned to the initial financing statement to which the
3575 record relates and the date that the record was filed for record;
3576 or

3577 (2) If the record was filed in the filing office
3578 described in Section 75-9-501(a)(2), by using the file number
3579 assigned to the initial financing statement to which the record
3580 relates.

3581 (b) Except to the extent that a statute governing
3582 disposition of public records provides otherwise, the filing
3583 office immediately may destroy any written record evidencing a
3584 financing statement. However, if the filing office destroys a
3585 written record, it shall maintain another record of the financing
3586 statement which complies with subsection (a).

3587 **SECTION 75-9-523. Information from filing office; sale or**
3588 **license of records.**

3589 (a) If a person that files a written record requests an
3590 acknowledgment of the filing, the filing office shall send to the
3591 person an image of the record showing the number assigned to the
3592 record pursuant to Section 75-9-519(a)(1) and the date and time of
3593 the filing of the record. However, if the person furnishes a copy
3594 of the record to the filing office, the filing office may instead:

3595 (1) Note upon the copy the number assigned to the
3596 record pursuant to Section 75-9-519(a)(1) and the date and time of
3597 the filing of the record; and

3598 (2) Send the copy to the person.

3599 (b) If a person files a record other than a written record,
3600 the filing office shall communicate to the person an
3601 acknowledgment that provides:

3602 (1) The information in the record;

3603 (2) The number assigned to the record pursuant to
3604 Section 75-9-519(a)(1); and

3605 (3) The date and time of the filing of the record.

3606 (c) The filing office shall communicate or otherwise make
3607 available in a record the following information to any person that
3608 requests it:

3609 (1) Whether there is on file on a date and time
3610 specified by the filing office, but not a date earlier than three

3611 (3) business days before the filing office receives the request,
3612 any financing statement that:

3613 (A) Designates a particular debtor or, if the
3614 request so states, designates a particular debtor at the address
3615 specified in the request;

3616 (B) Has not lapsed under Section 75-9-515 with
3617 respect to all secured parties of record; and

3618 (C) If the request so states, has lapsed under
3619 Section 75-9-515 and a record of which is maintained by the filing
3620 office under Section 75-9-522(a);

3621 (2) The date and time of filing of each financing
3622 statement; and

3623 (3) The information provided in each financing
3624 statement.

3625 (d) In complying with its duty under subsection (c), the
3626 filing office may communicate information in any medium. However,
3627 if requested, the filing office shall communicate information by
3628 issuing its written certificate or, if so requested in writing, a
3629 record that can be admitted into evidence in the courts of this
3630 state without extrinsic evidence of its authenticity.

3631 (e) The filing office shall perform the acts required by
3632 subsections (a) through (d) at the time and in the manner
3633 prescribed by filing-office rule, but, in the case of a filing
3634 office described in Section 75-9-501(a)(2), not later than two (2)
3635 business days after the filing office receives the request.

3636 (f) At least weekly, the filing office shall offer to sell
3637 or license to the public on a nonexclusive basis, in bulk, copies
3638 of all records filed in it under this part, in every medium from
3639 time to time available to the filing office. This subsection
3640 shall apply only to records filed in a filing office described in
3641 Section 75-9-501(a)(2).

3642 **SECTION 75-9-524. Delay by filing office.** Delay by the
3643 filing office beyond a time limit prescribed by this part is
3644 excused if:

3645 (1) The delay is caused by interruption of
3646 communication or computer facilities, war, emergency conditions,
3647 failure of equipment, or other circumstances beyond control of the
3648 filing office; and

3649 (2) The filing office exercises reasonable diligence
3650 under the circumstances.

3651 **SECTION 75-9-525. Fees.**

3652 (a) Except as otherwise provided in subsection (e), the fee
3653 for filing and indexing a record under this part, other than an

3654 initial financing statement of the kind described in subsection
3655 (b) is the amount specified in subsection (c), if applicable,
3656 plus:

3657 (1) Eight Dollars (\$8.00) if the record is communicated
3658 in writing and is in the standard form prescribed by the Secretary
3659 of State;

3660 (2) Thirteen Dollars (\$13.00) if the record is
3661 communicated in writing and is not in the standard form prescribed
3662 by the Secretary of State; and

3663 (3) Eight Dollars (\$8.00) if the record is communicated
3664 by another medium authorized by filing-office rule.

3665 (b) Except as otherwise provided in subsection (e), the fee
3666 for filing and indexing an initial financing statement of the
3667 following kind is the amount specified in subsection (c), if
3668 applicable, plus:

3669 (1) Thirteen Dollars (\$13.00) if the financing
3670 statement indicates that it is filed in connection with a
3671 public-finance transaction;

3672 (2) Eight Dollars (\$8.00) if the financing statement
3673 indicates that it is filed in connection with a manufactured-home
3674 transaction.

3675 (c) Except as otherwise provided in subsection (e), if a
3676 record is communicated in writing, the fee for each additional
3677 debtor name more than one (1) required to be indexed is Four
3678 Dollars (\$4.00).

3679 (d) The fee for responding to a request for information from
3680 the filing office, including for issuing a certificate showing
3681 whether there is on file any financing statement naming a
3682 particular debtor, is:

3683 (1) Five Dollars (\$5.00) if the request is communicated
3684 in writing on the standard form prescribed by the Secretary of
3685 State;

3686 (2) Ten Dollars (\$10.00) if the request is communicated
3687 in writing and is not in the standard form prescribed by the
3688 Secretary of State;

3689 (3) Three Dollars (\$3.00) if the request is
3690 communicated by another medium authorized by filing-office rule;
3691 and

3692 (4) An additional fee of Two Dollars (\$2.00) shall be
3693 paid by the requesting party for each financing statement listed
3694 on the filing officer's certificate, the aggregate of which shall
3695 be billed to the requesting party at the time the filing officer's
3696 certificate is issued.

3697 (e) This section does not require a fee to the chancery
3698 clerk with respect to a record of a mortgage which is effective as
3699 a financing statement filed as a fixture filing or as a financing
3700 statement covering as-extracted collateral or timber to be cut
3701 under Section 75-9-502(c). However, the recording and
3702 satisfaction fees to the chancery clerk that otherwise would be
3703 applicable under Section 25-7-9 to the record of the mortgage
3704 apply.

3705 **SECTION 75-9-526. Filing-office rules.**

3706 (a) The Secretary of State shall adopt and publish rules to
3707 implement this article. The filing-office rules must be:

- 3708 (1) Consistent with this article; and
3709 (2) Adopted and published in accordance with the
3710 Mississippi Administrative Procedures Act.

3711 (b) To keep the filing-office rules and practices of the
3712 filing office in harmony with the rules and practices of filing
3713 offices in other jurisdictions that enact substantially this part,
3714 and to keep the technology used by the filing office compatible
3715 with the technology used by filing offices in other jurisdictions
3716 that enact substantially this part, the Secretary of State, so far
3717 as is consistent with the purposes, policies and provisions of

3718 this article, in adopting, amending and repealing filing-office
3719 rules, shall:

3720 (1) Consult with filing offices in other jurisdictions
3721 that enact substantially this part; and

3722 (2) Consult the most recent version of the Model Rules
3723 promulgated by the International Association of Corporate
3724 Administrators or any successor organization; and

3725 (3) Take into consideration the rules and practices of,
3726 and the technology used by, filing offices in other jurisdictions
3727 that enact substantially this part.

3728 **SECTION 75-9-527. Duty to report.** The Secretary of State
3729 shall report annually on or before January 2 to the Legislature on
3730 the operation of the filing office. The report must contain a
3731 statement of the extent to which:

3732 (1) The filing-office rules are not in harmony with the
3733 rules of filing offices in other jurisdictions that enact
3734 substantially this part and the reasons for these variations; and

3735 (2) The filing-office rules are not in harmony with the
3736 most recent version of the Model Rules promulgated by the
3737 International Association of Corporate Administrators, or any
3738 successor organization, and the reasons for these variations.

3739 **PART 6**

3740 **DEFAULT**

3741 SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

3742 **SECTION 75-9-601. Rights after default; judicial**
3743 **enforcement; consignor or buyer of accounts, chattel paper,**
3744 **payment intangibles or promissory notes.**

3745 (a) After default, a secured party has the rights provided
3746 in this part and, except as otherwise provided in Section
3747 75-9-602, those provided by agreement of the parties. A secured
3748 party:

3749 (1) May reduce a claim to judgment, foreclose or
3750 otherwise enforce the claim, security interest or agricultural
3751 lien by any available judicial procedure; and

3752 (2) If the collateral is documents, may proceed either
3753 as to the documents or as to the goods they cover.

3754 (b) A secured party in possession of collateral or control
3755 of collateral under Section 75-9-104, 75-9-105, 75-9-106 or
3756 75-9-107 has the rights and duties provided in Section 75-9-207.

3757 (c) The rights under subsections (a) and (b) are cumulative
3758 and may be exercised simultaneously.

3759 (d) Except as otherwise provided in subsection (g) and
3760 Section 75-9-605, after default, a debtor and an obligor have the
3761 rights provided in this part and by agreement of the parties.

3762 (e) If a secured party has reduced its claim to judgment,
3763 the lien of any levy that may be made upon the collateral by
3764 virtue of an execution based upon the judgment relates back to the
3765 earliest of:

3766 (1) The date of perfection of the security interest or
3767 agricultural lien in the collateral;

3768 (2) The date of filing a financing statement covering
3769 the collateral; or

3770 (3) Any date specified in a statute under which the
3771 agricultural lien was created.

3772 (f) A sale pursuant to an execution is a foreclosure of the
3773 security interest or agricultural lien by judicial procedure
3774 within the meaning of this section. A secured party may purchase
3775 at the sale and thereafter hold the collateral free of any other
3776 requirements of this article.

3777 (g) Except as otherwise provided in Section 75-9-607(c),
3778 this part imposes no duties upon a secured party that is a
3779 consignor or is a buyer of accounts, chattel paper, payment
3780 intangibles or promissory notes.

3781 **SECTION 75-9-602. Waiver and variance of rights and duties.**

3782 Except as otherwise provided in Section 75-9-624, to the extent
3783 that they give rights to a debtor or obligor and impose duties on
3784 a secured party, the debtor or obligor may not waive or vary the
3785 rules stated in the following listed sections:

3786 (1) Section 75-9-207(b)(4)(C), which deals with use and
3787 operation of the collateral by the secured party;

3788 (2) Section 75-9-210, which deals with requests for an
3789 accounting and requests concerning a list of collateral and
3790 statement of account;

3791 (3) Section 75-9-607(c), which deals with collection
3792 and enforcement of collateral;

3793 (4) Sections 75-9-608(a) and 75-9-615(c) to the extent
3794 that they deal with application or payment of noncash proceeds of
3795 collection, enforcement or disposition;

3796 (5) Sections 75-9-608(a) and 75-9-615(d) to the extent
3797 that they require accounting for or payment of surplus proceeds of
3798 collateral;

3799 (6) Section 75-9-609 to the extent that it imposes upon
3800 a secured party that takes possession of collateral without
3801 judicial process the duty to do so without breach of the peace;

3802 (7) Sections 75-9-610(b), 75-9-611, 75-9-613 and
3803 75-9-614, which deal with disposition of collateral;

3804 (8) Section 75-9-615(f), which deals with calculation
3805 of a deficiency or surplus when a disposition is made to the
3806 secured party, a person related to the secured party, or a
3807 secondary obligor;

3808 (9) Section 75-9-616, which deals with explanation of
3809 the calculation of a surplus or deficiency;

3810 (10) Sections 75-9-620, 75-9-621 and 75-9-622, which
3811 deal with acceptance of collateral in satisfaction of obligation;

3812 (11) Section 75-9-623, which deals with redemption of
3813 collateral;

3814 (12) Section 75-9-624, which deals with permissible
3815 waivers; and

3816 (13) Sections 75-9-625 and 75-9-626, which deal with
3817 the secured party's liability for failure to comply with this
3818 article.

3819 **SECTION 75-9-603. Agreement on standards concerning rights**
3820 **and duties.**

3821 (a) The parties may determine by agreement the standards
3822 measuring the fulfillment of the rights of a debtor or obligor and
3823 the duties of a secured party under a rule stated in Section
3824 75-9-602 if the standards are not manifestly unreasonable.

3825 (b) Subsection (a) does not apply to the duty under Section
3826 75-9-609 to refrain from breaching the peace.

3827 **SECTION 75-9-604. Procedure if security agreement covers**
3828 **real property or fixtures.**

3829 (a) If a security agreement covers both personal and real
3830 property, a secured party may proceed:

3831 (1) Under this part as to the personal property without
3832 prejudicing any rights with respect to the real property; or

3833 (2) As to both the personal property and the real
3834 property in accordance with the rights with respect to the real
3835 property, in which case the other provisions of this part do not
3836 apply.

3837 (b) Subject to subsection (c), if a security agreement
3838 covers goods that are or become fixtures, a secured party may
3839 proceed:

3840 (1) Under this part; or

3841 (2) In accordance with the rights with respect to real
3842 property, in which case the other provisions of this part do not
3843 apply.

3844 (c) Subject to the other provisions of this part, if a
3845 secured party holding a security interest in fixtures has priority
3846 over all owners and encumbrancers of the real property, the

3847 secured party, after default, may remove the collateral from the
3848 real property.

3849 (d) A secured party that removes collateral shall promptly
3850 reimburse any encumbrancer or owner of the real property, other
3851 than the debtor, for the cost of repair of any physical injury
3852 caused by the removal. The secured party need not reimburse the
3853 encumbrancer or owner for any diminution in value of the real
3854 property caused by the absence of the goods removed or by any
3855 necessity of replacing them. A person entitled to reimbursement
3856 may refuse permission to remove until the secured party gives
3857 adequate assurance for the performance of the obligation to
3858 reimburse.

3859 **SECTION 75-9-605. Unknown debtor or secondary obligor.** A
3860 secured party does not owe a duty based on its status as secured
3861 party:

3862 (1) To a person that is a debtor or obligor, unless the
3863 secured party knows:

3864 (A) That the person is a debtor or obligor;

3865 (B) The identity of the person; and

3866 (C) How to communicate with the person; or

3867 (2) To a secured party or lienholder that has filed a
3868 financing statement against a person, unless the secured party
3869 knows:

3870 (A) That the person is a debtor; and

3871 (B) The identity of the person.

3872 **SECTION 75-9-606. Time of default for agricultural lien.**

3873 For purposes of this part, a default occurs in connection with an
3874 agricultural lien at the time the secured party becomes entitled
3875 to enforce the lien in accordance with the statute under which it
3876 was created.

3877 **SECTION 75-9-607. Collection and enforcement by secured**
3878 **party.**

3879 (a) If so agreed, and in any event after default, a secured
3880 party:

3881 (1) May notify an account debtor or other person
3882 obligated on collateral to make payment or otherwise render
3883 performance to or for the benefit of the secured party;

3884 (2) May take any proceeds to which the secured party is
3885 entitled under Section 75-9-315;

3886 (3) May enforce the obligations of an account debtor or
3887 other person obligated on collateral and exercise the rights of
3888 the debtor with respect to the obligation of the account debtor or
3889 other person obligated on collateral to make payment or otherwise
3890 render performance to the debtor, and with respect to any property
3891 that secures the obligations of the account debtor or other person
3892 obligated on the collateral;

3893 (4) If it holds a security interest in a deposit
3894 account perfected by control under Section 75-9-104(a)(1), may
3895 apply the balance of the deposit account to the obligation secured
3896 by the deposit account; and

3897 (5) If it holds a security interest in a deposit
3898 account perfected by control under Section 75-9-104(a)(2) or (3),
3899 may instruct the bank to pay the balance of the deposit account to
3900 or for the benefit of the secured party.

3901 (b) If necessary to enable a secured party to exercise under
3902 subsection (a)(3) the right of a debtor to enforce a mortgage
3903 nonjudicially, the secured party may record in the office in which
3904 a record of the mortgage is recorded:

3905 (1) A copy of the security agreement that creates or
3906 provides for a security interest in the obligation secured by the
3907 mortgage; and

3908 (2) The secured party's sworn affidavit in recordable
3909 form stating that:

3910 (A) A default has occurred; and

3911 (B) The secured party is entitled to enforce the
3912 mortgage nonjudicially.

3913 (c) A secured party shall proceed in a commercially
3914 reasonable manner if the secured party:

3915 (1) Undertakes to collect from or enforce an obligation
3916 of an account debtor or other person obligated on collateral; and

3917 (2) Is entitled to charge back uncollected collateral
3918 or otherwise to full or limited recourse against the debtor or a
3919 secondary obligor.

3920 (d) A secured party may deduct from the collections made
3921 pursuant to subsection (c) reasonable expenses of collection and
3922 enforcement, including reasonable attorney's fees and legal
3923 expenses incurred by the secured party.

3924 (e) This section does not determine whether an account
3925 debtor, bank or other person obligated on collateral owes a duty
3926 to a secured party.

3927 **SECTION 75-9-608. Application of proceeds of collection or**
3928 **enforcement; liability for deficiency and right to surplus.**

3929 (a) If a security interest or agricultural lien secures
3930 payment or performance of an obligation, the following rules
3931 apply:

3932 (1) A secured party shall apply or pay over for
3933 application the cash proceeds of collection or enforcement under
3934 Section 75-9-607 in the following order to:

3935 (A) The reasonable expenses of collection and
3936 enforcement and, to the extent provided for by agreement and not
3937 prohibited by law, reasonable attorney's fees and legal expenses
3938 incurred by the secured party;

3939 (B) The satisfaction of obligations secured by the
3940 security interest or agricultural lien under which the collection
3941 or enforcement is made; and

3942 (C) The satisfaction of obligations secured by any
3943 subordinate security interest in or other lien on the collateral

3944 subject to the security interest or agricultural lien under which
3945 the collection or enforcement is made if the secured party
3946 receives an authenticated demand for proceeds before distribution
3947 of the proceeds is completed.

3948 (2) If requested by a secured party, a holder of a
3949 subordinate security interest or other lien shall furnish
3950 reasonable proof of the interest or lien within a reasonable time.
3951 Unless the holder complies, the secured party need not comply with
3952 the holder's demand under paragraph (1)(C).

3953 (3) A secured party need not apply or pay over for
3954 application noncash proceeds of collection and enforcement under
3955 Section 75-9-607 unless the failure to do so would be commercially
3956 unreasonable. A secured party that applies or pays over for
3957 application noncash proceeds shall do so in a commercially
3958 reasonable manner.

3959 (4) A secured party shall account to and pay a debtor
3960 for any surplus, and the obligor is liable for any deficiency.

3961 (b) If the underlying transaction is a sale of accounts,
3962 chattel paper, payment intangibles or promissory notes, the debtor
3963 is not entitled to any surplus, and the obligor is not liable for
3964 any deficiency.

3965 **SECTION 75-9-609. Secured party's right to take possession**
3966 **after default.**

3967 (a) After default, a secured party:

3968 (1) May take possession of the collateral; and

3969 (2) Without removal, may render equipment unusable and
3970 dispose of collateral on a debtor's premises under Section
3971 75-9-610.

3972 (b) A secured party may proceed under subsection (a):

3973 (1) Pursuant to judicial process; or

3974 (2) Without judicial process, if it proceeds without
3975 breach of the peace.

3976 (c) If so agreed, and in any event after default, a secured
3977 party may require the debtor to assemble the collateral and make
3978 it available to the secured party at a place to be designated by
3979 the secured party which is reasonably convenient to both parties.

3980 **SECTION 75-9-610. Disposition of collateral after default.**

3981 (a) After default, a secured party may sell, lease, license,
3982 or otherwise dispose of any or all of the collateral in its
3983 present condition or following any commercially reasonable
3984 preparation or processing.

3985 (b) Every aspect of a disposition of collateral, including
3986 the method, manner, time, place and other terms, must be
3987 commercially reasonable. If commercially reasonable, a secured
3988 party may dispose of collateral by public or private proceedings,
3989 by one or more contracts, as a unit or in parcels, and at any time
3990 and place and on any terms.

3991 (c) A secured party may purchase collateral:

3992 (1) At a public disposition; or

3993 (2) At a private disposition only if the collateral is
3994 of a kind that is customarily sold on a recognized market or the
3995 subject of widely distributed standard price quotations.

3996 (d) A contract for sale, lease, license or other disposition
3997 includes the warranties relating to title, possession, quiet
3998 enjoyment, and the like which by operation of law accompany a
3999 voluntary disposition of property of the kind subject to the
4000 contract.

4001 (e) A secured party may disclaim or modify warranties under
4002 subsection (d):

4003 (1) In a manner that would be effective to disclaim or
4004 modify the warranties in a voluntary disposition of property of
4005 the kind subject to the contract of disposition; or

4006 (2) By communicating to the purchaser a record
4007 evidencing the contract for disposition and including an express
4008 disclaimer or modification of the warranties.

4009 (f) A record is sufficient to disclaim warranties under
4010 subsection (e) if it indicates "There is no warranty relating to
4011 title, possession, quiet enjoyment or the like in this
4012 disposition" or uses words of similar import.

4013 **SECTION 75-9-611. Notification before disposition of**
4014 **collateral.**

4015 (a) In this section, "notification date" means the earlier
4016 of the date on which:

- 4017 (1) A secured party sends to the debtor and any
4018 secondary obligor an authenticated notification of disposition; or
4019 (2) The debtor and any secondary obligor waive the
4020 right to notification.

4021 (b) Except as otherwise provided in subsection (d), a
4022 secured party that disposes of collateral under Section 75-9-610
4023 shall send to the persons specified in subsection (c) a reasonable
4024 authenticated notification of disposition.

4025 (c) To comply with subsection (b), the secured party shall
4026 send an authenticated notification of disposition to:

- 4027 (1) The debtor;
4028 (2) Any secondary obligor; and
4029 (3) If the collateral is other than consumer goods:
4030 (A) Any other person from which the secured party
4031 has received, before the notification date, an authenticated
4032 notification of a claim of an interest in the collateral;
4033 (B) Any other secured party or lienholder that,
4034 ten (10) days before the notification date, held a security
4035 interest in or other lien on the collateral perfected by the
4036 filing of a financing statement that:
4037 (i) Identified the collateral;
4038 (ii) Was indexed under the debtor's name as
4039 of that date; and

4040 (iii) Was filed in the office in which to
4041 file a financing statement against the debtor covering the
4042 collateral as of that date; and

4043 (C) Any other secured party that, ten (10) days
4044 before the notification date, held a security interest in the
4045 collateral perfected by compliance with a statute, regulation or
4046 treaty described in Section 75-9-311(a).

4047 (d) Subsection (b) does not apply if the collateral is
4048 perishable or threatens to decline speedily in value or is of a
4049 type customarily sold on a recognized market.

4050 (e) A secured party complies with the requirement for
4051 notification prescribed by subsection (c)(3)(B) if:

4052 (1) Not later than twenty (20) days or earlier than
4053 thirty (30) days before the notification date, the secured party
4054 requests, in a commercially reasonable manner, information
4055 concerning financing statements indexed under the debtor's name in
4056 the office indicated in subsection (c)(3)(B); and

4057 (2) Before the notification date, the secured party:

4058 (A) Did not receive a response to the request for
4059 information; or

4060 (B) Received a response to the request for
4061 information and sent an authenticated notification of disposition
4062 to each secured party or other lienholder named in that response
4063 whose financing statement covered the collateral.

4064 **SECTION 75-9-612. Timeliness of notification before**
4065 **disposition of collateral.**

4066 (a) Except as otherwise provided in subsection (b), whether
4067 a notification is sent within a reasonable time is a question of
4068 fact.

4069 (b) A notification of disposition sent after default and ten
4070 (10) days or more before the earliest time of disposition set
4071 forth in the notification is sent within a reasonable time before
4072 the disposition.

4106 is sent]
4107 From: [Name, address and telephone number
4108 of secured party]
4109 Name of Debtor(s): [Include only if debtor(s) are not
4110 an addressee]

4111 [For a public disposition:]

4112 We will sell (or lease or license, as applicable) the
4113 [describe collateral] to the highest qualified bidder in
4114 public as follows:

4115 Day and Date: _____

4116 Time: _____

4117 Place: _____

4118 [For a private disposition:]

4119 We will sell (or lease or license, as applicable), the
4120 [describe collateral] privately sometime after [day and
4121 date] .

4122 You are entitled to an accounting of the unpaid indebtedness
4123 secured by the property that we intend to sell (or lease or
4124 license, as applicable) (for a charge of \$_____). You may
4125 request an accounting by calling us at [telephone number] .

4126 [END OF FORM]

4127 **SECTION 75-9-614. Contents and form of notification before**
4128 **disposition of collateral: consumer-goods transaction.** In a
4129 consumer-goods transaction, the following rules apply:

4130 (1) A notification of disposition must provide the
4131 following information:

4132 (A) The information specified in Section
4133 75-9-613(1);

4134 (B) A description of any liability for a
4135 deficiency of the person to which the notification is sent;

4136 (C) A telephone number from which the amount that
4137 must be paid to the secured party to redeem the collateral under
4138 Section 75-9-623 is available; and

4139 (D) A telephone number or mailing address from
4140 which additional information concerning the disposition and the
4141 obligation secured is available.

4142 (2) A particular phrasing of the notification is not
4143 required.

4144 (3) The following form of notification, when completed,
4145 provides sufficient information:

4146 Name and address of secured party:

4147 Date:

4148 **NOTICE OF OUR PLAN TO SELL PROPERTY**

4149 Name and address of any obligor who is also a debtor:

4150 Subject: [Identification of transaction]

4151 We have your: [describe collateral] because you broke
4152 promises in our agreement.

4153 [For a public disposition:]

4154 We will sell [describe collateral] at public sale. A sale
4155 could include a lease or license. The sale will be held as
4156 follows:

4157 Date: _____

4158 Time: _____

4159 Place: _____

4160 You may attend the sale and bring bidders if you want.

4161 [For a private disposition]

4162 We will sell [describe collateral] at private sale sometime
4163 after [date]. A sale could include a lease or license.

4164 The money that we get from the sale (after paying our costs) will
4165 reduce the amount you owe. If we get less money than you owe, you
4166 [will or will not, as applicable] still owe us the difference.

4167 If we get more money than you owe, you will get the extra money,
4168 unless we must pay it to someone else.

4169 You can get the property back at any time before we sell it by
4170 paying us the full amount you owe which is then due or past due,
4171 (excluding any amount that would not be due except for an

4172 acceleration provision), including our expenses. To learn the
4173 exact amount you must pay, call us at [telephone number] .
4174 If you want us to explain to you in writing how we have figured
4175 the amount that you owe us, you may call us at [telephone
4176 number] , or write us at [secured party's address] and
4177 request a written explanation. We will charge you \$_____ for
4178 the explanation if we sent you another written explanation of the
4179 amount you owe us within the last six (6) months.

4180 If you need more information about the sale call us at
4181 [telephone number] , or write us at [secured party's
4182 address] .

4183 We are sending this notice to the following other people who have
4184 an interest in [describe collateral] or who owe money under
4185 your agreement:

4186 Names of all other debtors and obligors, if any:

4187 **[END OF FORM]**

4188 (4) A notification in the form of paragraph (3) is
4189 sufficient, even if additional information appears at the end of
4190 the form.

4191 (5) A notification in the form of paragraph (3) is
4192 sufficient, even if it includes errors in information not required
4193 by paragraph (1), unless the error is misleading with respect to
4194 rights arising under this article.

4195 (6) If a notification under this section is not in the
4196 form of paragraph (3), law other than this article determines the
4197 effect of including information not required by paragraph (1).

4198 **SECTION 75-9-615. Application of proceeds of disposition;**
4199 **liability for deficiency and right to surplus.**

4200 (a) A secured party shall apply or pay over for application
4201 the cash proceeds of disposition under Section 75-9-610 in the
4202 following order to:

4203 (1) The reasonable expenses of retaking, holding,
4204 preparing for disposition, processing and disposing, and, to the

4205 extent provided for by agreement and not prohibited by law,
4206 reasonable attorney's fees and legal expenses incurred by the
4207 secured party;

4208 (2) The satisfaction of obligations secured by the
4209 security interest or agricultural lien under which the disposition
4210 is made;

4211 (3) The satisfaction of obligations secured by any
4212 subordinate security interest in or other subordinate lien on the
4213 collateral if:

4214 (A) The secured party receives from the holder of
4215 the subordinate security interest or other lien an authenticated
4216 demand for proceeds before distribution of the proceeds is
4217 completed; and

4218 (B) In a case in which a consignor has an interest
4219 in the collateral, the subordinate security interest or other lien
4220 is senior to the interest of the consignor; and

4221 (4) A secured party that is a consignor of the
4222 collateral if the secured party receives from the consignor an
4223 authenticated demand for proceeds before distribution of the
4224 proceeds is completed.

4225 (b) If requested by a secured party, a holder of a
4226 subordinate security interest or other lien shall furnish
4227 reasonable proof of the interest or lien within a reasonable time.
4228 Unless the holder does so, the secured party need not comply with
4229 the holder's demand under subsection (a)(3).

4230 (c) A secured party need not apply or pay over for
4231 application noncash proceeds of disposition under Section 75-9-610
4232 unless the failure to do so would be commercially unreasonable. A
4233 secured party that applies or pays over for application noncash
4234 proceeds shall do so in a commercially reasonable manner.

4235 (d) If the security interest under which a disposition is
4236 made secures payment or performance of an obligation, after making

4237 the payments and applications required by subsection (a) and
4238 permitted by subsection (c):

4239 (1) Unless subsection (a)(4) requires the secured party
4240 to apply or pay over cash proceeds to a consignor, the secured
4241 party shall account to and pay a debtor for any surplus; and

4242 (2) The obligor is liable for any deficiency.

4243 (e) If the underlying transaction is a sale of accounts,
4244 chattel paper, payment intangibles or promissory notes:

4245 (1) The debtor is not entitled to any surplus; and

4246 (2) The obligor is not liable for any deficiency.

4247 (f) The surplus or deficiency following a disposition is
4248 calculated based on the amount of proceeds that would have been
4249 realized in a disposition complying with this part to a transferee
4250 other than the secured party, a person related to the secured
4251 party, or a secondary obligor if:

4252 (1) The transferee in the disposition is the secured
4253 party, a person related to the secured party, or a secondary
4254 obligor; and

4255 (2) The amount of proceeds of the disposition is
4256 significantly below the range of proceeds that a complying
4257 disposition to a person other than the secured party, a person
4258 related to the secured party, or a secondary obligor would have
4259 brought.

4260 (g) A secured party that receives cash proceeds of a
4261 disposition in good faith and without knowledge that the receipt
4262 violates the rights of the holder of a security interest or other
4263 lien that is not subordinate to the security interest or
4264 agricultural lien under which the disposition is made:

4265 (1) Takes the cash proceeds free of the security
4266 interest or other lien;

4267 (2) Is not obligated to apply the proceeds of the
4268 disposition to the satisfaction of obligations secured by the
4269 security interest or other lien; and

4270 (3) Is not obligated to account to or pay the holder of
4271 the security interest or other lien for any surplus.

4272 **SECTION 75-9-616. Explanation of calculation of surplus or**
4273 **deficiency.**

4274 (a) In this section:

4275 (1) "Explanation" means a writing that:

4276 (A) States the amount of the surplus or
4277 deficiency;

4278 (B) Provides an explanation in accordance with
4279 subsection (c) of how the secured party calculated the surplus or
4280 deficiency;

4281 (C) States, if applicable, that future debits,
4282 credits, charges, including additional credit service charges or
4283 interest, rebates and expenses may affect the amount of the
4284 surplus or deficiency; and

4285 (D) Provides a telephone number or mailing address
4286 from which additional information concerning the transaction is
4287 available.

4288 (2) "Request" means a record:

4289 (A) Authenticated by a debtor or consumer obligor;

4290 (B) Requesting that the recipient provide an
4291 explanation; and

4292 (C) Sent after disposition of the collateral under
4293 Section 75-9-610.

4294 (b) In a consumer-goods transaction in which the debtor is
4295 entitled to a surplus or a consumer obligor is liable for a
4296 deficiency under Section 75-9-615, the secured party shall:

4297 (1) Send an explanation to the debtor or consumer
4298 obligor, as applicable, after the disposition and:

4299 (A) Before or when the secured party accounts to
4300 the debtor and pays any surplus or first makes written demand on
4301 the consumer obligor after the disposition for payment of the
4302 deficiency; and

4303 (B) Within fourteen (14) days after receipt of a
4304 request; or

4305 (2) In the case of a consumer obligor who is liable for
4306 a deficiency, within fourteen (14) days after receipt of a
4307 request, send to the consumer obligor a record waiving the secured
4308 party's right to a deficiency.

4309 (c) To comply with subsection (a)(1)(B), a writing must
4310 provide the following information in the following order:

4311 (1) The aggregate amount of obligations secured by the
4312 security interest under which the disposition was made, and, if
4313 the amount reflects a rebate of unearned interest or credit
4314 service charge, an indication of that fact, calculated as of a
4315 specified date:

4316 (A) If the secured party takes or receives
4317 possession of the collateral after default, not more than
4318 thirty-five (35) days before the secured party takes or receives
4319 possession; or

4320 (B) If the secured party takes or receives
4321 possession of the collateral before default or does not take
4322 possession of the collateral, not more than thirty-five (35) days
4323 before the disposition;

4324 (2) The amount of proceeds of the disposition;

4325 (3) The aggregate amount of the obligations after
4326 deducting the amount of proceeds;

4327 (4) The amount, in the aggregate or by type, and types
4328 of expenses, including expenses of retaking, holding, preparing
4329 for disposition, processing and disposing of the collateral, and
4330 attorney's fees secured by the collateral which are known to the
4331 secured party and relate to the current disposition;

4332 (5) The amount, in the aggregate or by type, and types
4333 of credits, including rebates of interest or credit service
4334 charges, to which the obligor is known to be entitled and which
4335 are not reflected in the amount in paragraph (1); and

4336 (6) The amount of the surplus or deficiency.

4337 (d) A particular phrasing of the explanation is not
4338 required. An explanation complying substantially with the
4339 requirements of subsection (a) is sufficient, even if it includes
4340 minor errors that are not seriously misleading.

4341 (e) A debtor or consumer obligor is entitled without charge
4342 to one (1) response to a request under this section during any
4343 six-month period in which the secured party did not send to the
4344 debtor or consumer obligor an explanation pursuant to subsection
4345 (b)(1). The secured party may require payment of a charge not
4346 exceeding Twenty-five Dollars (\$25.00) for each additional
4347 response.

4348 **SECTION 75-9-617. Rights of transferee of collateral.**

4349 (a) A secured party's disposition of collateral after
4350 default:

4351 (1) Transfers to a transferee for value all of the
4352 debtor's rights in the collateral;

4353 (2) Discharges the security interest under which the
4354 disposition is made; and

4355 (3) Discharges any subordinate security interest or
4356 other subordinate lien.

4357 (b) A transferee that acts in good faith takes free of the
4358 rights and interests described in subsection (a), even if the
4359 secured party fails to comply with this article or the
4360 requirements of any judicial proceeding.

4361 (c) If a transferee does not take free of the rights and
4362 interests described in subsection (a), the transferee takes the
4363 collateral subject to:

4364 (1) The debtor's rights in the collateral;

4365 (2) The security interest or agricultural lien under
4366 which the disposition is made; and

4367 (3) Any other security interest or other lien.

4368 **SECTION 75-9-618. Rights and duties of certain secondary**
4369 **obligors.**

4370 (a) A secondary obligor acquires the rights and becomes
4371 obligated to perform the duties of the secured party after the
4372 secondary obligor:

4373 (1) Receives an assignment of a secured obligation from
4374 the secured party;

4375 (2) Receives a transfer of collateral from the secured
4376 party and agrees to accept the rights and assume the duties of the
4377 secured party; or

4378 (3) Is subrogated to the rights of a secured party with
4379 respect to collateral.

4380 (b) An assignment, transfer, or subrogation described in
4381 subsection (a):

4382 (1) Is not a disposition of collateral under Section
4383 75-9-610; and

4384 (2) Relieves the secured party of further duties under
4385 this article.

4386 **SECTION 75-9-619. Transfer of record or legal title.**

4387 (a) In this section, "transfer statement" means a record
4388 authenticated by a secured party stating:

4389 (1) That the debtor has defaulted in connection with an
4390 obligation secured by specified collateral;

4391 (2) That the secured party has exercised its
4392 post-default remedies with respect to the collateral;

4393 (3) That, by reason of the exercise, a transferee has
4394 acquired the rights of the debtor in the collateral; and

4395 (4) The name and mailing address of the secured party,
4396 debtor and transferee.

4397 (b) A transfer statement entitles the transferee to the
4398 transfer of record of all rights of the debtor in the collateral
4399 specified in the statement in any official filing, recording,
4400 registration or certificate-of-title system covering the

4401 collateral. If a transfer statement is presented with the
4402 applicable fee and request form to the official or office
4403 responsible for maintaining the system, the official or office
4404 shall:

4405 (1) Accept the transfer statement;

4406 (2) Promptly amend its records to reflect the transfer;

4407 and

4408 (3) If applicable, issue a new appropriate certificate
4409 of title in the name of the transferee.

4410 (c) A transfer of the record or legal title to collateral to
4411 a secured party under subsection (b) or otherwise is not of itself
4412 a disposition of collateral under this article and does not of
4413 itself relieve the secured party of its duties under this article.

4414 **SECTION 75-9-620. Acceptance of collateral in full or**
4415 **partial satisfaction of obligation; compulsory disposition of**
4416 **collateral.**

4417 (a) Except as otherwise provided in subsection (g), a
4418 secured party may accept collateral in full or partial
4419 satisfaction of the obligation it secures only if:

4420 (1) The debtor consents to the acceptance under
4421 subsection (c);

4422 (2) The secured party does not receive, within the time
4423 set forth in subsection (d), a notification of objection to the
4424 proposal authenticated by:

4425 (A) A person to which the secured party was
4426 required to send a proposal under Section 75-9-621; or

4427 (B) Any other person, other than the debtor,
4428 holding an interest in the collateral subordinate to the security
4429 interest that is the subject of the proposal;

4430 (3) If the collateral is consumer goods, the collateral
4431 is not in the possession of the debtor when the debtor consents to
4432 the acceptance; and

4433 (4) Subsection (e) does not require the secured party
4434 to dispose of the collateral or the debtor waives the requirement
4435 pursuant to Section 75-9-624.

4436 (b) A purported or apparent acceptance of collateral under
4437 this section is ineffective unless:

4438 (1) The secured party consents to the acceptance in an
4439 authenticated record or sends a proposal to the debtor; and

4440 (2) The conditions of subsection (a) are met.

4441 (c) For purposes of this section:

4442 (1) A debtor consents to an acceptance of collateral in
4443 partial satisfaction of the obligation it secures only if the
4444 debtor agrees to the terms of the acceptance in a record
4445 authenticated after default; and

4446 (2) A debtor consents to an acceptance of collateral in
4447 full satisfaction of the obligation it secures only if the debtor
4448 agrees to the terms of the acceptance in a record authenticated
4449 after default or the secured party:

4450 (A) Sends to the debtor after default a proposal
4451 that is unconditional or subject only to a condition that
4452 collateral not in the possession of the secured party be preserved
4453 or maintained;

4454 (B) In the proposal, proposes to accept collateral
4455 in full satisfaction of the obligation it secures; and

4456 (C) Does not receive a notification of objection
4457 authenticated by the debtor within twenty (20) days after the
4458 proposal is sent.

4459 (d) To be effective under subsection (a)(2), a notification
4460 of objection must be received by the secured party:

4461 (1) In the case of a person to which the proposal was
4462 sent pursuant to Section 75-9-621, within twenty (20) days after
4463 notification was sent to that person; and

4464 (2) In other cases:

4465 (A) Within twenty (20) days after the last
4466 notification was sent pursuant to Section 75-9-621; or

4467 (B) If a notification was not sent, before the
4468 debtor consents to the acceptance under subsection (c).

4469 (e) A secured party that has taken possession of collateral
4470 shall dispose of the collateral pursuant to Section 75-9-610
4471 within the time specified in subsection (f) if:

4472 (1) Sixty percent (60%) of the cash price has been paid
4473 in the case of a purchase-money security interest in consumer
4474 goods; or

4475 (2) Sixty percent (60%) of the principal amount of the
4476 obligation secured has been paid in the case of a
4477 nonpurchase-money security interest in consumer goods.

4478 (f) To comply with subsection (e), the secured party shall
4479 dispose of the collateral:

4480 (1) Within ninety (90) days after taking possession; or

4481 (2) Within any longer period to which the debtor and
4482 all secondary obligors have agreed in an agreement to that effect
4483 entered into and authenticated after default.

4484 (g) In a consumer transaction, a secured party may not
4485 accept collateral in partial satisfaction of the obligation it
4486 secures.

4487 **SECTION 75-9-621. Notification of proposal to accept**
4488 **collateral.**

4489 (a) A secured party that desires to accept collateral in
4490 full or partial satisfaction of the obligation it secures shall
4491 send its proposal to:

4492 (1) Any person from which the secured party has
4493 received, before the debtor consented to the acceptance, an
4494 authenticated notification of a claim of an interest in the
4495 collateral;

4496 (2) Any other secured party or lienholder that, ten
4497 (10) days before the debtor consented to the acceptance, held a

4498 security interest in or other lien on the collateral perfected by
4499 the filing of a financing statement that:

4500 (A) Identified the collateral;

4501 (B) Was indexed under the debtor's name as of that
4502 date; and

4503 (C) Was filed in the office or offices in which to
4504 file a financing statement against the debtor covering the
4505 collateral as of that date; and

4506 (3) Any other secured party that, ten (10) days before
4507 the debtor consented to the acceptance, held a security interest
4508 in the collateral perfected by compliance with a statute,
4509 regulation or treaty described in Section 75-9-311(a).

4510 (b) A secured party that desires to accept collateral in
4511 partial satisfaction of the obligation it secures shall send its
4512 proposal to any secondary obligor in addition to the persons
4513 described in subsection (a).

4514 **SECTION 75-9-622. Effect of acceptance of collateral.**

4515 (a) A secured party's acceptance of collateral in full or
4516 partial satisfaction of the obligation it secures:

4517 (1) Discharges the obligation to the extent consented
4518 to by the debtor;

4519 (2) Transfers to the secured party all of a debtor's
4520 rights in the collateral;

4521 (3) Discharges the security interest or agricultural
4522 lien that is the subject of the debtor's consent and any
4523 subordinate security interest or other subordinate lien; and

4524 (4) Terminates any other subordinate interest.

4525 (b) A subordinate interest is discharged or terminated under
4526 subsection (a), even if the secured party fails to comply with
4527 this article.

4528 **SECTION 75-9-623. Right to redeem collateral.**

4529 (a) A debtor, any secondary obligor, or any other secured
4530 party or lienholder may redeem collateral.

4531 (b) To redeem collateral, a person shall tender:
4532 (1) Fulfillment of all obligations secured by the
4533 collateral then due or past due (excluding any sums that would not
4534 be due except for an acceleration provision); and
4535 (2) The reasonable expenses and attorney's fees
4536 described in Section 75-9-615(a)(1).
4537 (c) A redemption may occur at any time before a secured
4538 party:
4539 (1) Has collected collateral under Section 75-9-607;
4540 (2) Has disposed of collateral or entered into a
4541 contract for its disposition under Section 75-9-610; or
4542 (3) Has accepted collateral in full or partial
4543 satisfaction of the obligation it secures under Section 75-9-622.

4544 **SECTION 75-9-624. Waiver.**

4545 (a) A debtor or secondary obligor may waive the right to
4546 notification of disposition of collateral under Section 75-9-611
4547 only by an agreement to that effect entered into and authenticated
4548 after default.

4549 (b) A debtor may waive the right to require disposition of
4550 collateral under Section 75-9-620(e) only by an agreement to that
4551 effect entered into and authenticated after default.

4552 (c) Except in a consumer-goods transaction, a debtor or
4553 secondary obligor may waive the right to redeem collateral under
4554 Section 75-9-623 only by an agreement to that effect entered into
4555 and authenticated after default.

4556 SUBPART 2. NONCOMPLIANCE WITH ARTICLE

4557 **SECTION 75-9-625. Remedies for secured party's failure to**
4558 **comply with article.**

4559 (a) If it is established that a secured party is not
4560 proceeding in accordance with this article, a court may order or
4561 restrain collection, enforcement or disposition of collateral on
4562 appropriate terms and conditions.

4563 (b) Subject to subsections (c), (d) and (f), a person is
4564 liable for damages in the amount of any loss caused by a failure
4565 to comply with this article. Loss caused by a failure to comply
4566 may include loss resulting from the debtor's inability to obtain,
4567 or increased costs of, alternative financing.

4568 (c) Except as otherwise provided in Section 75-9-628:

4569 (1) A person that, at the time of the failure, was a
4570 debtor, was an obligor or held a security interest in or other
4571 lien on the collateral may recover damages under subsection (b)
4572 for its loss; and

4573 (2) If the collateral is consumer goods, a person that
4574 was a debtor or a secondary obligor at the time a secured party
4575 failed to comply with this part may recover for that failure in
4576 any event an amount not less than the credit service charge plus
4577 ten percent (10%) of the principal amount of the obligation or the
4578 time-price differential plus ten percent (10%) of the cash price.

4579 (d) A debtor whose deficiency is eliminated under Section
4580 75-9-626 may recover damages for the loss of any surplus.
4581 However, a debtor or secondary obligor whose deficiency is
4582 eliminated or reduced under Section 75-9-626 may not otherwise
4583 recover under subsection (b) for noncompliance with the provisions
4584 of this part relating to collection, enforcement, disposition, or
4585 acceptance.

4586 (e) In addition to any damages recoverable under subsection
4587 (b), the debtor, consumer obligor or person named as a debtor in a
4588 filed record, as applicable, may recover Five Hundred Dollars
4589 (\$500.00) in each case from a person that:

4590 (1) Fails to comply with Section 75-9-208;

4591 (2) Fails to comply with Section 75-9-209;

4592 (3) Files a record that the person is not entitled to
4593 file under Section 75-9-509(a) and fails to file a termination
4594 statement with respect to the filed record within ten (10) days

4595 after receiving an authenticated demand by the debtor, consumer
4596 obligor, or person named as a debtor in the filed record;

4597 (4) Fails to cause the secured party of record to file
4598 or send a termination statement as required by Section 75-9-513(a)
4599 or (c);

4600 (5) Fails to comply with Section 75-9-616(b)(1) and
4601 whose failure is part of a pattern, or consistent with a practice,
4602 of noncompliance; or

4603 (6) Fails to comply with Section 75-9-616(b)(2).

4604 (f) A debtor or consumer obligor may recover damages under
4605 subsection (b) and, in addition, Five Hundred Dollars (\$500.00) in
4606 each case from a person that, without reasonable cause, fails to
4607 comply with a request under Section 75-9-210. A recipient of a
4608 request under Section 75-9-210 which never claimed an interest in
4609 the collateral or obligations that are the subject of a request
4610 under that section has a reasonable excuse for failure to comply
4611 with the request within the meaning of this subsection.

4612 (g) If a secured party fails to comply with a request
4613 regarding a list of collateral or a statement of account under
4614 Section 75-9-210, the secured party may claim a security interest
4615 only as shown in the list or statement included in the request as
4616 against a person that is reasonably misled by the failure.

4617 **SECTION 75-9-626. Action in which deficiency or surplus is**
4618 **in issue.**

4619 (a) In an action arising from a transaction in which the
4620 amount of a deficiency or surplus is in issue, the following rules
4621 apply:

4622 (1) A secured party need not prove compliance with the
4623 provisions of this part relating to collection, enforcement,
4624 disposition or acceptance unless the debtor or a secondary obligor
4625 places the secured party's compliance in issue.

4626 (2) If the secured party's compliance is placed in
4627 issue, the secured party has the burden of establishing that the

4628 collection, enforcement, disposition or acceptance was conducted
4629 in accordance with this part.

4630 (3) Except as otherwise provided in Section 75-9-628,
4631 if a secured party fails to prove that the collection,
4632 enforcement, disposition or acceptance was conducted in accordance
4633 with the provisions of this part relating to collection,
4634 enforcement, disposition or acceptance, the liability of a debtor
4635 or a secondary obligor for a deficiency is limited to an amount by
4636 which the sum of the secured obligation, expenses and attorney's
4637 fees exceeds the greater of:

4638 (A) The proceeds of the collection, enforcement,
4639 disposition or acceptance; or

4640 (B) The amount of proceeds that would have been
4641 realized had the noncomplying secured party proceeded in
4642 accordance with the provisions of this part relating to
4643 collection, enforcement, disposition or acceptance.

4644 (4) For purposes of paragraph (3)(B), the amount of
4645 proceeds that would have been realized is equal to the sum of the
4646 secured obligation, expenses and attorney's fees unless the
4647 secured party proves that the amount is less than that sum.

4648 (5) If a deficiency or surplus is calculated under
4649 Section 75-9-615(f), the debtor or obligor has the burden of
4650 establishing that the amount of proceeds of the disposition is
4651 significantly below the range of prices that a complying
4652 disposition to a person other than the secured party, a person
4653 related to the secured party, or a secondary obligor would have
4654 brought.

4655 (b) The limitation of the rules in subsection (a) to
4656 transactions other than consumer transactions is intended to leave
4657 to the court the determination of the proper rules in consumer
4658 transactions. The court may not infer from that limitation the
4659 nature of the proper rule in consumer transactions and may
4660 continue to apply established approaches.

4661 **SECTION 75-9-627. Determination of whether conduct was**
4662 **commercially reasonable.**

4663 (a) The fact that a greater amount could have been obtained
4664 by a collection, enforcement, disposition or acceptance at a
4665 different time or in a different method from that selected by the
4666 secured party is not of itself sufficient to preclude the secured
4667 party from establishing that the collection, enforcement,
4668 disposition or acceptance was made in a commercially reasonable
4669 manner.

4670 (b) A disposition of collateral is made in a commercially
4671 reasonable manner if the disposition is made:

4672 (1) In the usual manner on any recognized market;

4673 (2) At the price current in any recognized market at
4674 the time of the disposition; or

4675 (3) Otherwise in conformity with reasonable commercial
4676 practices among dealers in the type of property that was the
4677 subject of the disposition.

4678 (c) A collection, enforcement, disposition or acceptance is
4679 commercially reasonable if it has been approved:

4680 (1) In a judicial proceeding;

4681 (2) By a bona fide creditors' committee;

4682 (3) By a representative of creditors; or

4683 (4) By an assignee for the benefit of creditors.

4684 (d) Approval under subsection (c) need not be obtained, and
4685 lack of approval does not mean that the collection, enforcement,
4686 disposition or acceptance is not commercially reasonable.

4687 **SECTION 75-9-628. Nonliability and limitation on liability**
4688 **of secured party; liability of secondary obligor.**

4689 (a) Unless a secured party knows that a person is a debtor
4690 or obligor, knows the identity of the person, and knows how to
4691 communicate with the person:

4692 (1) The secured party is not liable to the person, or
4693 to a secured party or lienholder that has filed a financing

4694 statement against the person, for failure to comply with this
4695 article; and

4696 (2) The secured party's failure to comply with this
4697 article does not affect the liability of the person for a
4698 deficiency.

4699 (b) A secured party is not liable because of its status as
4700 secured party:

4701 (1) To a person that is a debtor or obligor, unless the
4702 secured party knows:

4703 (A) That the person is a debtor or obligor;

4704 (B) The identity of the person; and

4705 (C) How to communicate with the person; or

4706 (2) To a secured party or lienholder that has filed a
4707 financing statement against a person, unless the secured party
4708 knows:

4709 (A) That the person is a debtor; and

4710 (B) The identity of the person.

4711 (c) A secured party is not liable to any person, and a
4712 person's liability for a deficiency is not affected, because of
4713 any act or omission arising out of the secured party's reasonable
4714 belief that a transaction is not a consumer-goods transaction or a
4715 consumer transaction or that goods are not consumer goods, if the
4716 secured party's belief is based on its reasonable reliance on:

4717 (1) A debtor's representation concerning the purpose
4718 for which collateral was to be used, acquired or held; or

4719 (2) An obligor's representation concerning the purpose
4720 for which a secured obligation was incurred.

4721 (d) A secured party is not liable to any person under
4722 Section 75-9-625(c)(2) for its failure to comply with Section
4723 75-9-616.

4724 (e) A secured party is not liable under Section
4725 75-9-625(c)(2) more than once with respect to any one (1) secured
4726 obligation.

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PART 7

TRANSITION

SECTION 75-9-701. Definitions. (1) References in Part 7 to

"this act" refer to the legislative enactment by which this part is added to Article 9 of the Uniform Commercial Code.

(2) References in this part to "former Article 9" are to Article 9 found in Chapter 9 of Title 75 as in effect on June 30, 2001.

SECTION 75-9-702. Savings clause.

(a) Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) Except as otherwise provided in subsection (c) and Sections 75-9-703 through 75-9-709:

(1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before this act takes effect, and would be subject to this act if they had been entered into or created after this act takes effect, and the rights, duties and interests flowing from those transactions and liens remain valid after this act takes effect; and

(2) The transactions and liens may be terminated, completed, consummated and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) This act does not affect an action, case or proceeding commenced before this act takes effect.

SECTION 75-9-703. Security interest perfected before effective date.

(a) A security interest that is enforceable immediately before this act takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act if, when this act takes

4760 effect, the applicable requirements for enforceability and
4761 perfection under this act are satisfied without further action.

4762 (b) Except as otherwise provided in Section 75-9-705, if,
4763 immediately before this act takes effect, a security interest is
4764 enforceable and would have priority over the rights of a person
4765 that becomes a lien creditor at that time, but the applicable
4766 requirements for enforceability or perfection under this act are
4767 not satisfied when this act takes effect, the security interest:

4768 (1) Is a perfected security interest for one (1) year
4769 after this act takes effect;

4770 (2) Remains enforceable thereafter only if the security
4771 interest becomes enforceable under Section 75-9-203 before the
4772 year expires; and

4773 (3) Remains perfected thereafter only if the applicable
4774 requirements for perfection under this act are satisfied before
4775 the year expires.

4776 **SECTION 75-9-704. Security interest unperfected before**

4777 **effective date.** A security interest that is enforceable
4778 immediately before this act takes effect but which would be
4779 subordinate to the rights of a person that becomes a lien creditor
4780 at that time:

4781 (1) Remains an enforceable security interest for one
4782 (1) year after this act takes effect;

4783 (2) Remains enforceable thereafter if the security
4784 interest becomes enforceable under Section 75-9-203 when this act
4785 takes effect or within one (1) year thereafter; and

4786 (3) Becomes perfected:

4787 (A) Without further action, when this act takes
4788 effect if the applicable requirements for perfection under this
4789 act are satisfied before or at that time; or

4790 (B) When the applicable requirements for
4791 perfection are satisfied if the requirements are satisfied after
4792 that time.

4793 **SECTION 75-9-705. Effectiveness of action taken before**
4794 **effective date.**

4795 (a) If action, other than the filing of a financing
4796 statement, is taken before this act takes effect and the action
4797 would have resulted in priority of a security interest over the
4798 rights of a person that becomes a lien creditor had the security
4799 interest become enforceable before this act takes effect, the
4800 action is effective to perfect a security interest that attaches
4801 under this act within one (1) year after this act takes effect.
4802 An attached security interest becomes unperfected one (1) year
4803 after this act takes effect unless the security interest becomes a
4804 perfected security interest under this act before the expiration
4805 of that period.

4806 (b) The filing of a financing statement before this act
4807 takes effect is effective to perfect a security interest to the
4808 extent the filing would satisfy the applicable requirements for
4809 perfection under this act.

4810 (c) This act does not render ineffective an effective
4811 financing statement that, before this act takes effect, is filed
4812 and satisfies the applicable requirements for perfection under the
4813 law of the jurisdiction governing perfection as provided in former
4814 Section 75-9-103. However, except as otherwise provided in
4815 subsections (d) and (e) and Section 75-9-706, the financing
4816 statement ceases to be effective at the earlier of:

4817 (1) The time the financing statement would have ceased
4818 to be effective under the law of the jurisdiction in which it is
4819 filed; or

4820 (2) June 30, 2006.

4821 (d) The filing of a continuation statement after this act
4822 takes effect does not continue the effectiveness of the financing
4823 statement filed before this act takes effect. However, upon the
4824 timely filing of a continuation statement after this act takes
4825 effect and in accordance with the law of the jurisdiction

4826 governing perfection as provided in Part 3, the effectiveness of a
4827 financing statement filed in the same office in that jurisdiction
4828 before this act takes effect continues for the period provided by
4829 the law of that jurisdiction.

4830 (e) Subsection (c)(2) applies to a financing statement that,
4831 before this act takes effect, is filed against a transmitting
4832 utility and satisfies the applicable requirements for perfection
4833 under the law of the jurisdiction governing perfection as provided
4834 in former Section 75-9-103 only to the extent that Part 3 provides
4835 that the law of a jurisdiction other than the jurisdiction in
4836 which the financing statement is filed governs perfection of a
4837 security interest in collateral covered by the financing
4838 statement.

4839 (f) A financing statement that includes a financing
4840 statement filed before this act takes effect and a continuation
4841 statement filed after this act takes effect is effective only to
4842 the extent that it satisfies the requirements of Part 5 for an
4843 initial financing statement.

4844 **SECTION 75-9-706. When initial financing statement suffices**
4845 **to continue effectiveness of financing statement.**

4846 (a) The filing of an initial financing statement in the
4847 office specified in Section 75-9-501 continues the effectiveness
4848 of a financing statement filed before this act takes effect if:

4849 (1) The filing of an initial financing statement in
4850 that office would be effective to perfect a security interest
4851 under this act;

4852 (2) The pre-effective-date financing statement was
4853 filed in an office in another state or another office in this
4854 state; and

4855 (3) The initial financing statement satisfies
4856 subsection (c).

4857 (b) The filing of an initial financing statement under
4858 subsection (a) continues the effectiveness of the
4859 pre-effective-date financing statement:

4860 (1) If the initial financing statement is filed before
4861 this act takes effect, for the period provided in former Section
4862 75-9-403 with respect to a financing statement; and

4863 (2) If the initial financing statement is filed after
4864 this act takes effect, for the period provided in Section 75-9-515
4865 with respect to an initial financing statement.

4866 (c) To be effective for purposes of subsection (a), an
4867 initial financing statement must:

4868 (1) Satisfy the requirements of Part 5 for an initial
4869 financing statement;

4870 (2) Identify the pre-effective-date financing statement
4871 by indicating the office in which the financing statement was
4872 filed and providing the dates of filing and file numbers, if any,
4873 of the financing statement and of the most recent continuation
4874 statement filed with respect to the financing statement; and

4875 (3) Indicate that the pre-effective-date financing
4876 statement remains effective.

4877 **SECTION 75-9-707. Amendment of pre-effective-date financing**
4878 **statement.**

4879 (a) In this section, "pre-effective-date financing
4880 statement" means a financing statement filed before this act takes
4881 effect.

4882 (b) After this act takes effect, a person may add or delete
4883 collateral covered by, continue or terminate the effectiveness of,
4884 or otherwise amend the information provided in, a
4885 pre-effective-date financing statement only in accordance with the
4886 law of the jurisdiction governing perfection as provided in Part.

4887 (3) However, the effectiveness of a pre-effective-date
4888 financing statement also may be terminated in accordance with the
4889 law of the jurisdiction in which the financing statement is filed.

4890 (c) Except as otherwise provided in subsection (d), if the
4891 law of this state governs perfection of a security interest, the
4892 information in a pre-effective-date financing statement may be
4893 amended after this act takes effect only if:

4894 (1) The pre-effective-date financing statement and an
4895 amendment are filed in the office specified in Section 75-9-501;

4896 (2) An amendment is filed in the office specified in
4897 Section 75-9-501 concurrently with, or after the filing in that
4898 office of, an initial financing statement that satisfies Section
4899 75-9-706(c); or

4900 (3) An initial financing statement that provides the
4901 information as amended and satisfies Section 75-9-706(c) is filed
4902 in the office specified in Section 75-9-501.

4903 (d) If the law of this state governs perfection of a
4904 security interest, the effectiveness of a pre-effective-date
4905 financing statement may be continued only under Section
4906 75-9-705(d) and (f) or 75-9-706.

4907 (e) Whether or not the law of this state governs perfection
4908 of a security interest, the effectiveness of a pre-effective-date
4909 financing statement filed in this state may be terminated after
4910 this act takes effect by filing a termination statement in the
4911 office in which the pre-effective-date financing statement is
4912 filed, unless an initial financing statement that satisfies
4913 Section 75-9-706(c) has been filed in the office specified by the
4914 law of the jurisdiction governing perfection as provided in Part 3
4915 as the office in which to file a financing statement.

4916 **SECTION 75-9-708. Persons entitled to file initial financing**
4917 **statement or continuation statement.** A person may file an initial
4918 financing statement or a continuation statement under this part
4919 if:

4920 (1) The secured party of record authorizes the filing;
4921 and

4922 (2) The filing is necessary under this part:

4923 (A) To continue the effectiveness of a financing
4924 statement filed before this act takes effect; or

4925 (B) To perfect or continue the perfection of a
4926 security interest.

4927 **SECTION 75-9-709. Priority.**

4928 (a) This act determines the priority of conflicting claims
4929 to collateral. However, if the relative priorities of the claims
4930 were established before this act takes effect, former Article 9
4931 determines priority.

4932 (b) For purposes of Section 75-9-322(a), the priority of a
4933 security interest that becomes enforceable under Section 75-9-203
4934 of this act dates from the time this act takes effect if the
4935 security interest is perfected under this act by the filing of a
4936 financing statement before this act takes effect which would not
4937 have been effective to perfect the security interest under former
4938 Article 9. This subsection does not apply to conflicting security
4939 interests each of which is perfected by the filing of such a
4940 financing statement.

4941 **SECTION 75-9-710. Special transitional provisions for**
4942 **maintaining and searching local records.**

4943 (a) In this section:

4944 (1) "Local-filing office" means a filing office, other
4945 than the statewide central filing office identified in Section
4946 75-9-401(1) of former Article 9, that is designated as the proper
4947 place to file a financing statement under Section 75-9-401(1) of
4948 former Article 9. The term applies only with respect to a record
4949 that covers a type of collateral as to which the filing office is
4950 designated in that section as the proper place to file.

4951 (2) "Former-Article-9 records" means:

4952 (A) Financing statements and other records that
4953 have been filed in a local-filing office before July 1, 2001, and
4954 that are, or upon processing and indexing will be, reflected in
4955 the index maintained, as of June 30, 2001, by the local-filing

4956 office for financing statements and other records filed in the
4957 local-filing office before July 1, 2001, and

4958 (B) The index as of June 30, 2001.

4959 The term does not include records presented to a local-filing
4960 office for filing after June 30, 2001, whether or not the records
4961 relate to financing statements filed in the local-filing office
4962 before July 1, 2001.

4963 (3) "Mortgage," "as-extracted collateral," "fixture
4964 filing," "goods" and "fixtures" have the meanings set forth in
4965 Revised Article 9 for those terms.

4966 (b) Except as expressly provided in Part 5 of Article 9 as
4967 effective on and after July 1, 2001, a local-filing office must
4968 not accept for filing a record presented after June 30, 2001,
4969 whether or not the record relates to a financing statement filed
4970 in the local-filing office before July 1, 2001.

4971 (c) Until July 1, 2008, each local-filing office must
4972 maintain all former-Article-9 records in accordance with former
4973 Article 9. A former-Article-9 record that is not reflected on the
4974 index maintained at June 30, 2001, by the local-filing office must
4975 be processed and indexed, and reflected on the index as of June
4976 30, 2001, as soon as practicable but in any event no later than
4977 July 30, 2001.

4978 (d) Until at least June 30, 2008, each local-filing office
4979 must respond to requests for information with respect to
4980 former-Article-9 records relating to a debtor and issue
4981 certificates in accordance with former Article 9.

4982 (1) Upon request in writing of any person, the filing
4983 officer shall issue his certificate showing whether there is on
4984 file, on the date and hour stated therein, any presently effective
4985 financing statements naming a particular debtor thereof, and if
4986 there is, giving the date and hour of filing and file number of
4987 each such financing statement and the name and address of each
4988 secured party or his assignee therein. Each such request shall be

4989 accompanied by a search fee of Five Dollars (\$5.00) if the request
4990 is made on the standard form prescribed by the Secretary of State,
4991 and otherwise it shall be Ten Dollars (\$10.00). An additional fee
4992 of Two Dollars (\$2.00) shall be paid by the requesting party for
4993 each financing statement listed on the filing officer's
4994 certificate, the aggregate of which shall be billed to the
4995 requesting party at the time the filing officer's certificate is
4996 issued. Failure to pay the additional fee by any requesting party
4997 when due may result in denial of further service to the requesting
4998 party until the amount due has been paid.

4999 (2) Upon request, the filing officer shall furnish a
5000 copy of any presently effective financing statements on file for a
5001 uniform fee of Two Dollars (\$2.00) per page naming a particular
5002 debtor when the request is made on the form and in the manner
5003 hereinbefore provided for listing the same.

5004 (e) After June 30, 2008, each local-filing office may remove
5005 and destroy, in accordance with any then applicable record
5006 retention law of this state, all former-Article-9 records,
5007 including the related index.

5008 (f) This section does not apply, with respect to financing
5009 statements and other records, to a filing office in which
5010 mortgages or records of mortgages on real property are required to
5011 be filed or recorded, if:

5012 (1) The collateral is timber to be cut or as-extracted
5013 collateral, or

5014 (2) The record is or relates to a financing statement
5015 filed as a fixture filing and the collateral is goods that are or
5016 are to become fixtures.

5017 SECTION 2. Sections 75-9-101, 75-9-102, 75-9-103, 75-9-104,
5018 75-9-105, 75-9-106, 75-9-107, 75-9-108, 75-9-109, 75-9-110,
5019 75-9-111, 75-9-112, 75-9-113, 75-9-114, 75-9-115, 75-9-116,
5020 75-9-201, 75-9-202, 75-9-203, 75-9-204, 75-9-205, 75-9-206,
5021 75-9-207, 75-9-208, 75-9-301, 75-9-302, 75-9-303, 75-9-304,

5022 75-9-305, 75-9-306, 75-9-307, 75-9-308, 75-9-309, 75-9-310,
5023 75-9-311, 75-9-312, 75-9-313, 75-9-314, 75-9-315, 75-9-316,
5024 75-9-317, 75-9-318, 75-9-319, 75-9-401, 75-9-402, 75-9-403,
5025 75-9-404, 75-9-405, 75-9-406, 75-9-407, 75-9-408, 75-9-409,
5026 75-9-410, 75-9-501, 75-9-502, 75-9-503, 75-9-504, 75-9-505,
5027 75-9-506 and 75-9-507, Mississippi Code of 1972, which comprise
5028 Uniform Commercial Code Article 9 - Secured Transactions, are
5029 repealed.

5030 SECTION 3. The following shall be codified as Section
5031 75-5-118, Mississippi Code of 1972:

5032 75-5-118. **Security interest of issuer or nominated person.**

5033 (a) An issuer or nominated person has a security interest in
5034 a document presented under a letter of credit to the extent that
5035 the issuer or nominated person honors or gives value for the
5036 presentation.

5037 (b) So long as and to the extent that an issuer or nominated
5038 person has not been reimbursed or has not otherwise recovered the
5039 value given with respect to a security interest in a document
5040 under subsection (a), the security interest continues and is
5041 subject to Article 9 of the Uniform Commercial Code, but:

5042 (1) A security agreement is not necessary to make the
5043 security interest enforceable under Section 75-9-203(b)(3);

5044 (2) If the document is presented in a medium other than
5045 a written or other tangible medium, the security interest is
5046 perfected; and

5047 (3) If the document is presented in a written or other
5048 tangible medium and is not a certificated security, chattel paper,
5049 a document of title, an instrument, or a letter of credit, the
5050 security interest is perfected and has priority over a conflicting
5051 security interest in the document so long as the debtor does not
5052 have possession of the document.

5053 SECTION 4. Section 75-1-105, Mississippi Code of 1972, is
5054 amended as follows:

5055 75-1-105. (1) Except as provided hereafter in this section,
5056 when a transaction bears a reasonable relation to this state and
5057 also to another state or nation the parties may agree that the law
5058 either of this state or of such other state or nation shall govern
5059 their rights and duties. Failing such agreement, this code
5060 applies to transactions bearing an appropriate relation to this
5061 state. Provided, however, the law of the State of Mississippi
5062 shall always govern the rights and duties of the parties in regard
5063 to disclaimers of implied warranties of merchantability or
5064 fitness, limitations of remedies for breaches of implied
5065 warranties of merchantability or fitness, or the necessity for
5066 privity of contract to maintain a civil action for breach of
5067 implied warranties of merchantability or fitness notwithstanding
5068 any agreement by the parties that the laws of some other state or
5069 nation shall govern the rights and duties of the parties.

5070 (2) Where one of the following provisions of this chapter
5071 specifies the applicable law, that provision governs and a
5072 contrary agreement is effective only to the extent permitted by
5073 the law (including the conflict of laws rules) so specified:

5074 Rights of creditors against sold goods (Section 75-2-402).

5075 Applicability of the Article on Leases (Sections 75-2A-105
5076 and 75-2A-106).

5077 Applicability of the Article on Bank Deposits and Collections
5078 (Section 75-4-102).

5079 Governing law in the Article on Funds Transfers (Section
5080 75-4A-507).

5081 Letters of credit (Section 75-5-116).

5082 Applicability of the Article on Investment Securities
5083 (Section 75-8-110).

5084 Law governing perfection, the effect of perfection or
5085 nonperfection, and the priority of security interests and
5086 agricultural liens (Sections 75-9-301 through 75-9-307).

5087 SECTION 5. Section 75-1-201, Mississippi Code of 1972, is
5088 amended as follows:

5089 75-1-201. Subject to additional definitions contained in the
5090 subsequent chapters of this code which are applicable to specific
5091 chapters or parts thereof, and unless the context otherwise
5092 requires, in this code:

5093 (1) "Action" in the sense of a judicial proceeding
5094 includes recoupment, counterclaim, set-off, suit in equity and any
5095 other proceedings in which rights are determined.

5096 (2) "Aggrieved party" means a party entitled to resort
5097 to a remedy.

5098 (3) "Agreement" means the bargain of the parties in
5099 fact as found in their language or by implication from other
5100 circumstances including course of dealing or usage of trade or
5101 course of performance as provided in this code (Sections 75-1-205
5102 and 75-2-208). Whether an agreement has legal consequences is
5103 determined by the provisions of this code, if applicable;
5104 otherwise by the law of contracts (Section 75-1-103). (Compare
5105 "Contract.")

5106 (4) "Bank" means any person engaged in the business of
5107 banking.

5108 (5) "Bearer" means the person in possession of an
5109 instrument, document of title, or certificated security payable to
5110 bearer or indorsed in blank.

5111 (6) "Bill of lading" means a document evidencing the
5112 receipt of goods for shipment issued by a person engaged in the
5113 business of transporting or forwarding goods, and includes an
5114 airbill. "Airbill" means a document serving for air
5115 transportation as a bill of lading does for marine or rail
5116 transportation, and includes an air consignment note or air
5117 waybill.

5118 (7) "Branch" includes a separately incorporated foreign
5119 branch of a bank.

5120 (8) "Burden of establishing" a fact means the burden of
5121 persuading the triers of fact that the existence of the fact is
5122 more probable than its nonexistence.

5123 (9) "Buyer in ordinary course of business" means a
5124 person that buys goods in good faith, without knowledge that the
5125 sale violates the * * * rights * * * of another person in the
5126 goods, and in the ordinary course from a person, other than a
5127 pawnbroker, in the business of selling goods of that kind * * *.
5128 A person buys goods in the ordinary course if the sale to the
5129 person comports with the usual or customary practices in the kind
5130 of business in which the seller is engaged or with the seller's
5131 own usual or customary practices. A person that sells oil, gas or
5132 other minerals at the wellhead or minehead is a person in the
5133 business of selling goods of that kind. A buyer in the ordinary
5134 course of business may buy for cash, by exchange of other
5135 property, or on secured or unsecured credit, and may acquire goods
5136 or documents of title under a preexisting contract for sale * * *.
5137 Only a buyer that takes possession of the goods or has a right to
5138 recover the goods from the seller under Article 2 may be a buyer
5139 in ordinary course of business. A person that acquires goods in a
5140 transfer in bulk or as security for or in total or partial
5141 satisfaction of a money debt is not a buyer in ordinary course of
5142 business.

5143 (10) "Conspicuous": A term or clause is conspicuous
5144 when it is so written that a reasonable person against whom it is
5145 to operate ought to have noticed it. A printed heading in
5146 capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous.
5147 Language in the body of a form is "conspicuous" if it is in larger
5148 or other contrasting type or color. But in a telegram any stated
5149 term is "conspicuous." Whether a term or clause is "conspicuous"
5150 or not is for decision by the court.

5151 (11) "Contract" means the total legal obligation which
5152 results from the parties' agreement as affected by this code and
5153 any other applicable rules of law. (Compare "Agreement.")

5154 (12) "Creditor" includes a general creditor, a secured
5155 creditor, a lien creditor and any representative of creditors,
5156 including an assignee for the benefit of creditors, a trustee in
5157 bankruptcy, a receiver in equity and an executor or administrator
5158 of an insolvent debtor's or assignor's estate.

5159 (13) "Defendant" includes a person in the position of
5160 defendant in a cross-action or counterclaim.

5161 (14) "Delivery" with respect to instruments, documents
5162 of title, chattel paper or certificated securities means voluntary
5163 transfer of possession.

5164 (15) "Document of title" includes bill of lading, dock
5165 warrant, dock receipt, warehouse receipt or order for the delivery
5166 of goods, and also any other document which in the regular course
5167 of business or financing is treated as adequately evidencing that
5168 the person in possession of it is entitled to receive, hold and
5169 dispose of the document and the goods it covers. To be a document
5170 of title a document must purport to be issued by or addressed to a
5171 bailee and purport to cover goods in the bailee's possession which
5172 are either identified or are fungible portions of an identified
5173 mass.

5174 (16) "Fault" means wrongful act, omission or breach.

5175 (17) "Fungible" with respect to goods or securities
5176 means goods or securities of which any unit is, by nature or usage
5177 of trade, the equivalent of any other like unit. Goods which are
5178 not fungible shall be deemed fungible for the purposes of this
5179 code to the extent that under a particular agreement or document
5180 unlike units are treated as equivalents.

5181 (18) "Genuine" means free of forgery or counterfeiting.

5182 (19) "Good faith" means honesty in fact in the conduct
5183 or transaction concerned.

5184 (20) "Holder," with respect to a negotiable instrument,
5185 means the person in possession if the instrument is payable to
5186 bearer or, in the case of an instrument payable to an identified
5187 person, if the identified person is in possession. "Holder," with
5188 respect to a document of title, means the person in possession if
5189 the goods are deliverable to bearer or to the order of the person
5190 in possession.

5191 (21) To "honor" is to pay or to accept and pay, or
5192 where a credit so engages to purchase or discount a draft
5193 complying with the terms of the credit.

5194 (22) "Insolvency proceedings" includes any assignment
5195 for the benefit of creditors or other proceedings intended to
5196 liquidate or rehabilitate the estate of the person involved.

5197 (23) A person is "insolvent" who either has ceased to
5198 pay his debts in the ordinary course of business or cannot pay his
5199 debts as they become due or is insolvent within the meaning of the
5200 federal bankruptcy law.

5201 (24) "Money" means a medium of exchange authorized or
5202 adopted by a domestic or foreign government and includes a
5203 monetary unit of account established by an intergovernmental
5204 organization or by agreement between two (2) or more nations.

5205 (25) A person has "notice" of a fact when

5206 (a) He has actual knowledge of it; or

5207 (b) He has received a notice or notification of
5208 it; or

5209 (c) From all the facts and circumstances known to
5210 him at the time in question he has reason to know that it exists.

5211 A person "knows" or has "knowledge" of a fact when he has
5212 actual knowledge of it. "Discover" or "learn" or a word or phrase
5213 of similar import refers to knowledge rather than to reason to
5214 know. The time and circumstances under which a notice or
5215 notification may cease to be effective are not determined by this
5216 code.

5217 (26) A person "notifies" or "gives" a notice or
5218 notification to another by taking such steps as may be reasonably
5219 required to inform the other in ordinary course whether or not
5220 such other actually comes to know of it. A person "receives" a
5221 notice or notification when:

5222 (a) It comes to his attention; or

5223 (b) It is duly delivered at the place of business
5224 through which the contract was made or at any other place held out
5225 by him as the place for receipt of such communications.

5226 (27) Notice, knowledge or a notice or notification
5227 received by an organization is effective for a particular
5228 transaction from the time when it is brought to the attention of
5229 the individual conducting that transaction, and in any event from
5230 the time when it would have been brought to his attention if the
5231 organization had exercised due diligence. An organization
5232 exercises due diligence if it maintains reasonable routines for
5233 communicating significant information to the person conducting the
5234 transaction and there is reasonable compliance with the routines.
5235 Due diligence does not require an individual acting for the
5236 organization to communicate information unless such communication
5237 is part of his regular duties or unless he has reason to know of
5238 the transaction and that the transaction would be materially
5239 affected by the information.

5240 (28) "Organization" includes a corporation, government
5241 or governmental subdivision or agency, business trust, estate,
5242 trust, partnership or association, two (2) or more persons having
5243 a joint or common interest, or any other legal or commercial
5244 entity.

5245 (29) "Party," as distinct from "third party," means a
5246 person who has engaged in a transaction or made an agreement
5247 within this code.

5248 (30) "Person" includes an individual or an organization
5249 (see Section 75-1-102).

5250 (31) "Presumption" or "presumed" means that the trier
5251 of fact must find the existence of the fact presumed unless and
5252 until evidence is introduced which would support a finding of its
5253 nonexistence.

5254 (32) "Purchase" includes taking by sale, discount,
5255 negotiation, mortgage, pledge, lien, security interest, issue or
5256 reissue, gift or any other voluntary transaction creating an
5257 interest in property.

5258 (33) "Purchaser" means a person who takes by purchase.

5259 (34) "Remedy" means any remedial right to which an
5260 aggrieved party is entitled with or without resort to a tribunal.

5261 (35) "Representative" includes an agent, an officer of
5262 a corporation or association, and a trustee, executor or
5263 administrator of an estate, or any other person empowered to act
5264 for another.

5265 (36) "Rights" includes remedies.

5266 (37) "Security interest" means an interest in personal
5267 property or fixtures which secures payment or performance of an
5268 obligation.

5269 (a) * * * The term also includes any interest of a
5270 consignor and a buyer of accounts, chattel paper, a payment
5271 intangible, or a promissory note in a transaction that is subject
5272 to Article 9. The special property interest of a buyer of goods
5273 on identification of such goods to a contract for sale under
5274 Section 75-2-401 is not a "security interest," but a buyer may
5275 also acquire "security interest," by complying with Article 9.
5276 Except as otherwise provided in Section 75-2-505, the right of a
5277 seller or lessor of goods under Article 2 or 2A to retain or
5278 acquire possession of the goods is not a "security interest," but
5279 a seller or lessor may also acquire a "security interest" by
5280 complying with Article 9. The retention or reservation of title
5281 by a seller of goods notwithstanding shipment or delivery to the

5282 buyer (Section 75-2-401) is limited in effect to a reservation of
5283 a security interest.

5284 (b) Whether a transaction creates a lease or
5285 security interest is determined by the facts of each case;
5286 however, a transaction creates a security interest if the
5287 consideration the lessee is to pay the lessor for the right to
5288 possession and use of the goods is an obligation for the term of
5289 the lease not subject to termination by the lessee, and

5290 (i) The original term of the lease is equal
5291 to or greater than the remaining economic life of the goods,

5292 (ii) The lessee is bound to renew the lease
5293 for the remaining economic life of the goods or is bound to become
5294 the owner of the goods,

5295 (iii) The lessee has an option to renew the
5296 lease for the remaining economic life of the goods for no
5297 additional consideration or nominal additional consideration upon
5298 compliance with the lease agreement, or

5299 (iv) The lessee has an option to become the
5300 owner of the goods for no additional consideration or nominal
5301 additional consideration upon compliance with the lease agreement.

5302 (c) A transaction does not create a security
5303 interest merely because it provides that:

5304 (i) The present value of the consideration
5305 the lessee is obligated to pay the lessor for the right to
5306 possession and use of the goods is substantially equal to or is
5307 greater than the fair market value of the goods at the time the
5308 lease is entered into,

5309 (ii) The lessee assumes risk of loss of the
5310 goods, or agrees to pay taxes, insurance, filing, recording, or
5311 registration fees, or service or maintenance costs with respect to
5312 the goods,

5313 (iii) The lessee has an option to renew the
5314 lease or to become the owner of the goods,

5315 (iv) The lessee has an option to renew the
5316 lease for a fixed rent that is equal to or greater than the
5317 reasonably predictable fair market rent for the use of the goods
5318 for the term of the renewal at the time the option is to be
5319 performed, or

5320 (v) The lessee has an option to become the
5321 owner of the goods for a fixed price that is equal to or greater
5322 than the reasonably predictable fair market value of the goods at
5323 the time the option is to be performed.

5324 (d) For purposes of this subsection (37):

5325 (i) Additional consideration is not nominal
5326 if

5327 1. When the option to renew the lease is
5328 granted to the lessee the rent is stated to be the fair market
5329 rent for the use of the goods for the term of the renewal
5330 determined at the time the option is to be performed, or

5331 2. When the option to become the owner
5332 of the goods is granted to the lessee the price is stated to be
5333 the fair market value of the goods determined at the time the
5334 option is to be performed. Additional consideration is nominal if
5335 it is less than the lessee's reasonably predictable cost of
5336 performing under the lease agreement if the option is not
5337 exercised;

5338 (ii) "Reasonably predictable" and "remaining
5339 economic life of the goods" are to be determined with reference to
5340 the fact and circumstances at the time the transaction is entered
5341 into; and

5342 (iii) "Present value" means the amount as of
5343 a date certain of one or more sums payable in the future,
5344 discounted to the date certain. The discount is determined by the
5345 interest rate specified by the parties if the rate is not
5346 manifestly unreasonable at the time the transaction is entered
5347 into; otherwise, the discount is determined by a commercially

5348 reasonable rate that takes into account the facts and
5349 circumstances of each case at the time the transaction was entered
5350 into.

5351 (38) "Send" in connection with any writing or notice
5352 means to deposit in the mail or deliver for transmission by any
5353 other usual means of communication with postage or cost of
5354 transmission provided for and properly addressed and in the case
5355 of an instrument to an address specified thereon or otherwise
5356 agreed, or if there be none to any address reasonable under the
5357 circumstances. The receipt of any writing or notice within the
5358 time at which it would have arrived if properly sent has the
5359 effect of a proper sending.

5360 (39) "Signed" includes any symbol executed or adopted
5361 by a party with present intention to authenticate a writing.

5362 (40) "Surety" includes guarantor.

5363 (41) "Telegram" includes a message transmitted by
5364 radio, teletype, cable, any mechanical method of transmission, or
5365 the like.

5366 (42) "Term" means that portion of an agreement which
5367 relates to a particular matter.

5368 (43) "Unauthorized" signature means one made without
5369 actual, implied or apparent authority and includes a forgery.

5370 (44) "Value," except as otherwise provided with respect
5371 to negotiable instruments and bank collections (Sections 75-3-303,
5372 75-4-208 and 75-4-209), a person gives "value" for rights if he
5373 acquires them:

5374 (a) In return for a binding commitment to extend
5375 credit or for the extension of immediately available credit
5376 whether or not drawn upon and whether or not a charge-back is
5377 provided for in the event of difficulties in collection; or

5378 (b) As security for or in total or partial
5379 satisfaction of a preexisting claim; or

5380 (c) By accepting delivery pursuant to a
5381 preexisting contract for purchase; or

5382 (d) Generally, in return for any consideration
5383 sufficient to support a simple contract.

5384 (45) "Warehouse receipt" means a receipt issued by a
5385 person engaged in the business of storing goods for hire.

5386 (46) "Written" or "writing" includes printing,
5387 typewriting, or any other intentional reduction to tangible form.

5388 SECTION 6. Section 75-2-103, Mississippi Code of 1972, is
5389 amended as follows:

5390 75-2-103. (1) In this chapter unless the context otherwise
5391 requires:

5392 (a) "Buyer" means a person who buys or contracts to buy
5393 goods.

5394 (b) "Good faith" in the case of a merchant means
5395 honesty in fact and the observance of reasonable commercial
5396 standards of fair dealing in the trade.

5397 (c) "Receipt" of goods means taking physical possession
5398 of them.

5399 (d) "Seller" means a person who sells or contracts to
5400 sell goods.

5401 (2) Other definitions applying to this chapter or to
5402 specified parts thereof, and the sections in which they appear
5403 are:

5404	"Acceptance"	Section <u>75-2-606</u> .
5405	"Banker's credit"	Section <u>75-2-325</u> .
5406	"Between merchants"	Section <u>75-2-104</u> .
5407	"Cancellation"	Section <u>75-2-106(4)</u> .
5408	"Commercial unit"	Section <u>75-2-105</u> .
5409	"Confirmed credit"	Section <u>75-2-325</u> .
5410	"Conforming to contract"	Section <u>75-2-106</u> .
5411	"Contract for sale"	Section <u>75-2-106</u> .
5412	"Cover"	Section <u>75-2-712</u> .

5413	"Entrusting"	Section <u>75-2-403</u> .
5414	"Financing agency"	Section <u>75-2-104</u> .
5415	"Future goods"	Section <u>75-2-105</u> .
5416	"Goods"	Section <u>75-2-105</u> .
5417	"Identification"	Section <u>75-2-501</u> .
5418	"Installment contract"	Section <u>75-2-612</u> .
5419	"Letter of Credit"	Section <u>75-2-325</u> .
5420	"Lot"	Section <u>75-2-105</u> .
5421	"Merchant"	Section <u>75-2-104</u> .
5422	"Overseas"	Section <u>75-2-323</u> .
5423	"Person in position of seller"	Section <u>75-2-707</u> .
5424	"Present sale"	Section <u>75-2-106</u> .
5425	"Sale"	Section <u>75-2-106</u> .
5426	"Sale on approval"	Section <u>75-2-326</u> .
5427	"Sale or return"	Section <u>75-2-326</u> .
5428	"Termination"	Section <u>75-2-106</u> .

5429 (3) The following definitions in other chapters apply to
5430 this chapter:

5431	"Check"	Section <u>75-3-104</u> .
5432	"Consignee"	Section <u>75-7-102</u> .
5433	"Consignor"	Section <u>75-7-102</u> .
5434	"Consumer goods"	Section <u>75-9-102</u> .
5435	"Dishonor"	Section <u>75-3-502</u> .
5436	"Draft"	Section <u>75-3-104</u> .

5437 (4) In addition Chapter 1 contains general definitions and
5438 principles of construction and interpretation applicable
5439 throughout this chapter.

5440 SECTION 7. Section 75-2-210, Mississippi Code of 1972, is
5441 amended as follows:

5442 75-2-210. (1) A party may perform his duty through a
5443 delegate unless otherwise agreed or unless the other party has a
5444 substantial interest in having his original promisor perform or
5445 control the acts required by the contract. No delegation of

5446 performance relieves the party delegating of any duty to perform
5447 or any liability for breach.

5448 (2) Except as otherwise provided in Section 75-9-406, unless
5449 otherwise agreed, all rights of either seller or buyer can be
5450 assigned except where the assignment would materially change the
5451 duty of the other party, or increase materially the burden or risk
5452 imposed on him by his contract, or impair materially his chance of
5453 obtaining return performance. A right to damages for breach of
5454 the whole contract or a right arising out of the assignor's due
5455 performance of his entire obligation can be assigned despite
5456 agreement otherwise.

5457 (3) The creation, attachment, perfection or enforcement of a
5458 security interest in the seller's interest under a contract is not
5459 a transfer that materially changes the duty of or increases
5460 materially the burden or risk imposed on the buyer or impairs
5461 materially the buyer's chance of obtaining return performance
5462 within the purview of subsection (2) unless, and then only to the
5463 extent that, enforcement actually results in a delegation of
5464 material performance of the seller. Even in that event, the
5465 creation, attachment, perfection and enforcement of the security
5466 interest remain effective, but (i) the seller is liable to the
5467 buyer for damages caused by the delegation to the extent that the
5468 damages could not reasonably be prevented by the buyer, and (ii) a
5469 court having jurisdiction may grant other appropriate relief,
5470 including cancellation of the contract for sale or an injunction
5471 against enforcement of the security interest or consummation of
5472 the enforcement.

5473 (4) Unless the circumstances indicate the contrary a
5474 prohibition of assignment of "the contract" is to be construed as
5475 barring only the delegation to the assignee of the assignor's
5476 performance.

5477 (5) An assignment of "the contract" or of "all my rights
5478 under the contract" or an assignment in similar general terms is

5479 an assignment of rights and unless the language or the
5480 circumstances (as in an assignment for security) indicate the
5481 contrary, it is a delegation of performance of the duties of the
5482 assignor and its acceptance by the assignee constitutes a promise
5483 by him to perform those duties. This promise is enforceable by
5484 either the assignor or the other party to the original contract.

5485 (6) The other party may treat any assignment which delegates
5486 performance as creating reasonable grounds for insecurity and may
5487 without prejudice to his rights against the assignor demand
5488 assurances from the assignee (Section 75-2-609).

5489 SECTION 8. Section 75-2-326, Mississippi Code of 1972, is
5490 amended as follows:

5491 75-2-326. (1) Unless otherwise agreed, if delivered goods
5492 may be returned by the buyer even though they conform to the
5493 contract, the transaction is

5494 (a) A "sale on approval" if the goods are delivered
5495 primarily for use, and

5496 (b) A "sale or return" if the goods are delivered
5497 primarily for resale.

5498 (2) * * * Goods held on approval are not subject to the
5499 claims of the buyer's creditors until acceptance; goods held on
5500 sale or return are subject to such claims while in the buyer's
5501 possession.

5502 * * *

5503 (3) Any "or return" term of a contract for sale is to be
5504 treated as a separate contract for sale within the statute of
5505 frauds section of this chapter (Section 75-2-201) and as
5506 contradicting the sale aspect of the contract within the
5507 provisions of this chapter on parol or extrinsic evidence (Section
5508 75-2-202).

5509 SECTION 9. Section 75-2-502, Mississippi Code of 1972, is
5510 amended as follows:

5511 75-2-502. **Buyer's right to goods on seller's repudiation,**
5512 **failure to deliver, or insolvency.**

5513 (1) Subject to subsections (2) and (3) and even though the
5514 goods have not been shipped a buyer who has paid a part or all of
5515 the price of goods in which he has a special property under the
5516 provisions of Section 75-2-501 may on making and keeping good a
5517 tender of any unpaid portion of their price recover them from the
5518 seller if:

5519 (a) In the case of goods bought for personal, family or
5520 household purposes, the seller repudiates or fails to deliver as
5521 required by the contract; or

5522 (b) In all cases, the seller becomes insolvent within
5523 ten (10) days after receipt of the first installment on their
5524 price.

5525 (2) The buyer's right to recover the goods under subsection
5526 (1)(a) vests upon acquisition of a special property, even if the
5527 seller had not then repudiated or failed to deliver.

5528 (3) If the identification creating his special property has
5529 been made by the buyer he acquires the right to recover the goods
5530 only if they conform to the contract for sale.

5531 SECTION 10. Section 75-2-716, Mississippi Code of 1972, is
5532 amended as follows:

5533 75-2-716. (1) Specific performance may be decreed where the
5534 goods are unique or in other proper circumstances.

5535 (2) The decree for specific performance may include such
5536 terms and conditions as to payment of the price, damages, or other
5537 relief as the court may deem just.

5538 (3) The buyer has a right of replevin for goods identified
5539 to the contract if after reasonable effort he is unable to effect
5540 cover for such goods or the circumstances reasonably indicate that
5541 such effort will be unavailing or if the goods have been shipped
5542 under reservation and satisfaction of the security interest in
5543 them has been made or tendered. In the case of goods bought for

5544 personal, family or household purposes, the buyer's right of
5545 replevin vests upon acquisition of a special property, even if the
5546 seller had not then repudiated or failed to deliver.

5547 SECTION 11. Section 75-2A-103, Mississippi Code of 1972, is
5548 amended as follows:

5549 75-2A-103. (1) In this chapter unless the context otherwise
5550 requires:

5551 (a) "Buyer in ordinary course of business" means a
5552 person who in good faith and without knowledge that the sale to
5553 him is in violation of the ownership rights or security interest
5554 or leasehold interest of a third party in the goods, buys in
5555 ordinary course from a person in the business of selling goods of
5556 that kind but does not include a pawnbroker. "Buying" may be for
5557 cash or by exchange of other property or on secured or unsecured
5558 credit and includes receiving goods or documents of title under a
5559 preexisting contract for sale but does not include a transfer in
5560 bulk or as security for or in total or partial satisfaction of a
5561 money debt.

5562 (b) "Cancellation" occurs when either party puts an end
5563 to the lease contract for default by the other party.

5564 (c) "Commercial unit" means such a unit of goods as by
5565 commercial usage is a single whole for purposes of lease and
5566 division of which materially impairs its character or value on the
5567 market or in use. A commercial unit may be a single article, as a
5568 machine, or a set of articles, as a suite of furniture or a line
5569 of machinery, or a quantity, as a gross or carload, or any other
5570 unit treated in use or in the relevant market as a single whole.

5571 (d) "Conforming" goods or performance under a lease
5572 contract means goods or performance that are in accordance with
5573 the obligations under the lease contract.

5574 (e) "Consumer lease" means a lease that a lessor
5575 regularly engaged in the business of leasing or selling makes to a
5576 lessee who is an individual and who takes under the lease

5577 primarily for a personal, family or household purpose, if the
5578 total payments to be made under the lease contract, excluding
5579 payments for options to renew or buy, do not exceed Twenty-five
5580 Thousand Dollars (\$25,000.00).

5581 (f) "Fault" means wrongful act, omission, breach or
5582 default.

5583 (g) "Finance lease" means a lease with respect to
5584 which:

5585 (i) The lessor does not select, manufacture or
5586 supply the goods;

5587 (ii) The lessor acquires the goods or the right to
5588 possession and use of the goods in connection with the lease; and

5589 (iii) One (1) of the following occurs:

5590 (A) The lessee receives a copy of the
5591 contract by which the lessor acquired the goods or the right to
5592 possession and use of the goods before signing the lease contract;

5593 (B) The lessee's approval of the contract by
5594 which the lessor acquired the goods or the right to possession and
5595 use of the goods is a condition to effectiveness of the lease
5596 contract;

5597 (C) The lessee, before signing the lease
5598 contract, receives an accurate and complete statement designating
5599 the promises and warranties, and any disclaimers of warranties,
5600 limitations or modifications of remedies, or liquidated damages,
5601 including those of a third party, such as the manufacturer of the
5602 goods, provided to the lessor by the person supplying the goods in
5603 connection with or as part of the contract by which the lessor
5604 acquired the goods or the right to possession and use of the
5605 goods; or

5606 (D) If the lease is not a consumer lease, the
5607 lessor, before the lessee signs the lease contract, informs the
5608 lessee in writing (a) of the identity of the person supplying the
5609 goods to the lessor, unless the lessee has selected that person

5610 and directed the lessor to acquire the goods or the right to
5611 possession and use of the goods from that person, (b) that the
5612 lessee is entitled under this chapter to the promises and
5613 warranties, including those of any third party, provided to the
5614 lessor by the person supplying the goods in connection with or as
5615 part of the contract by which the lessor acquired the goods or the
5616 right to possession and use of the goods, and (c) that the lessee
5617 may communicate with the person supplying the goods to the lessor
5618 and receive an accurate and complete statement of those promises
5619 and warranties, including any disclaimers and limitations of them
5620 or of remedies.

5621 (h) "Goods" means all things that are movable at the
5622 time of identification to the lease contract, or are fixtures
5623 (Section 75-2A-309), but the term does not include money,
5624 documents, instruments, accounts, chattel paper, general
5625 intangibles or minerals or the like, including oil and gas, before
5626 extraction. The term also includes the unborn young of animals.

5627 (i) "Installment lease contract" means a lease contract
5628 that authorizes or requires the delivery of goods in separate lots
5629 to be separately accepted, even though the lease contract contains
5630 a clause "each delivery is a separate lease" or its equivalent.

5631 (j) "Lease" means a transfer of the right to possession
5632 and use of goods for a term in return for consideration, but a
5633 sale, including a sale on approval or a sale or return, or
5634 retention or creation of a security interest is not a lease.
5635 Unless the context clearly indicates otherwise, the term includes
5636 a sublease.

5637 (k) "Lease agreement" means the bargain, with respect
5638 to the lease, of the lessor and the lessee in fact as found in
5639 their language or by implication from other circumstances
5640 including course of dealing or usage of trade or course of
5641 performance as provided in this chapter. Unless the context

5642 clearly indicates otherwise, the term includes a sublease
5643 agreement.

5644 (l) "Lease contract" means the total legal obligation
5645 that results from the lease agreement as affected by this chapter
5646 and any other applicable rules of law. Unless the context clearly
5647 indicates otherwise, the term includes a sublease contract.

5648 (m) "Leasehold interest" means the interest of the
5649 lessor or the lessee under a lease contract.

5650 (n) "Lessee" means a person who acquires the right to
5651 possession and use of goods under a lease. Unless the context
5652 clearly indicates otherwise, the term includes a sublease.

5653 (o) "Lessee in ordinary course of business" means a
5654 person who in good faith and without knowledge that the lease to
5655 him is in violation of the ownership rights or security interest
5656 or leasehold interest of a third party in the goods leases in
5657 ordinary course from a person in the business of selling or
5658 leasing goods of that kind but does not include a pawnbroker.
5659 "Leasing" may be for cash or by exchange of other property or on
5660 secured or unsecured credit and includes receiving goods or
5661 documents of title under a preexisting lease contract but does not
5662 include a transfer in bulk or as security for or in total or
5663 partial satisfaction of a money debt.

5664 (p) "Lessor" means a person who transfers the right to
5665 possession and use of goods under a lease. Unless the context
5666 clearly indicates otherwise, the term includes a sublessor.

5667 (q) "Lessor's residual interest" means the lessor's
5668 interest in the goods after expiration, termination or
5669 cancellation of the lease contract.

5670 (r) "Lien" means a charge against or interest in goods
5671 to secure payment of a debt or performance of an obligation, but
5672 the term does not include a security interest.

5673 (s) "Lot" means a parcel or a single article that is
5674 the subject matter of a separate lease or delivery, whether or not
5675 it is sufficient to perform the lease contract.

5676 (t) "Merchant lessee" means a lessee that is a merchant
5677 with respect to goods of the kind subject to the lease.

5678 (u) "Present value" means the amount as of a date
5679 certain of one or more sums payable in the future, discounted to
5680 the date certain. The discount is determined by the interest rate
5681 specified by the parties if the rate was not manifestly
5682 unreasonable at the time the transaction was entered into;
5683 otherwise, the discount is determined by a commercially reasonable
5684 rate that takes into account the facts and circumstances of each
5685 case at the time the transaction was entered into.

5686 (v) "Purchase" includes taking by sale, lease,
5687 mortgage, security interest, pledge, gift or any other voluntary
5688 transaction creating an interest in goods.

5689 (w) "Sublease" means a lease of goods the right to
5690 possession and use of which was acquired by the lessor as a lessee
5691 under an existing lease.

5692 (x) "Supplier" means a person from whom a lessor buys
5693 or leases goods to be leased under a finance lease.

5694 (y) "Supply contract" means a contract under which a
5695 lessor buys or leases goods to be leased.

5696 (z) "Termination" occurs when either party pursuant to
5697 a power created by agreement or law puts an end to the lease
5698 contract otherwise than for default.

5699 (2) Other definitions applying to this chapter and the
5700 sections in which they appear are:

5701	"Accessions."	Section 75-2A-310(1).
5702	"Construction mortgage."	Section 75-2A-309(1)(d).
5703	"Encumbrance."	Section 75-2A-309(1)(e).
5704	"Fixtures."	Section 75-2A-309(1)(a).
5705	"Fixture filing."	Section 75-2A-309(1)(b).

5706 "Purchase money lease." Section 75-2A-309(1)(c).

5707 (3) The following definitions in other chapters apply to
5708 this chapter:

5709 "Account" Section 75-9-102(a)(2).

5710 "Between merchants" Section 75-2-104(3).

5711 "Buyer" Section 75-2-103(1)(a).

5712 "Chattel paper" Section 75-9-102(a)(11).

5713 "Consumer goods" Section 75-9-102(a)(23).

5714 "Document" Section 75-9-102(a)(30).

5715 "Entrusting" Section 75-2-403(3).

5716 "General intangible" Section 75-9-102(a)(42).

5717 "Good faith" Section 75-2-103(1)(b).

5718 "Instrument" Section 75-9-102(a)(47).

5719 "Merchant" Section 75-2-104(1).

5720 "Mortgage" Section 75-9-102(a)(55).

5721 "Pursuant to commitment" Section 75-9-102(a)(68).

5722 "Receipt" Section 75-2-103(1)(c).

5723 "Sale" Section 75-2-106(1).

5724 "Sale on approval" Section 75-2-326.

5725 "Sale or return" Section 75-2-326.

5726 "Seller" Section 75-2-103(1)(d).

5727 (4) In addition, Chapter 1 contains general definitions and
5728 principles of construction and interpretation applicable
5729 throughout this chapter.

5730 SECTION 12. Section 75-2A-303, Mississippi Code of 1972, is
5731 amended as follows:

5732 75-2A-303. (1) As used in this section, "creation of a
5733 security interest" includes the sale of a lease contract that is
5734 subject to Chapter 9, Secured Transactions, by reason of Section
5735 75-9-109(a)(3).

5736 (2) Except as provided in subsection (3) of Section
5737 75-9-705, a provision in a lease agreement which (i) prohibits the
5738 voluntary or involuntary transfer, including a transfer by sale,

5739 sublease, creation or enforcement of a security interest, or
5740 attachment, levy, or other judicial process, of an interest of a
5741 party under the lease contract or of the lessor's residual
5742 interest in the goods, or (ii) makes such a transfer an event of
5743 default, gives rise to the rights and remedies provided in
5744 subsection (4), but a transfer that is prohibited or is an event
5745 of default under the lease agreement is otherwise effective.

5746 * * *

5747 (3) A provision in a lease agreement which (i) prohibits a
5748 transfer of a right to damages for default with respect to the
5749 whole lease contract or of a right to payment arising out of the
5750 transferor's due performance of the transferor's entire
5751 obligation, or (ii) makes such a transfer an event of default, is
5752 not enforceable, and such a transfer is not a transfer that
5753 materially impairs the prospect of obtaining return performance
5754 by, materially changes the duty of, or materially increases the
5755 burden or risk imposed on, the other party to the lease contract
5756 within the purview of subsection (4).

5757 (4) Subject to subsections (3) and Section 75-9-407:

5758 (a) If a transfer is made which is made an event of
5759 default under a lease agreement, the party to the lease contract
5760 not making the transfer, unless that party waives the default or
5761 otherwise agrees, has the rights and remedies described in Section
5762 75-2A-501(2);

5763 (b) If paragraph (a) is not applicable and if a
5764 transfer is made that (i) is prohibited under a lease agreement or
5765 (ii) materially impairs the prospect of obtaining return
5766 performance by, materially changes the duty of, or materially
5767 increases the burden or risk imposed on, the other party to the
5768 lease contract, unless the party not making the transfer agrees at
5769 any time to the transfer in the lease contract or otherwise, then,
5770 except as limited by contract, (i) the transferor is liable to the
5771 party not making the transfer for damages caused by the transfer

5772 to the extent that the damages could not reasonably be prevented
5773 by the party not making the transfer and (ii) a court having
5774 jurisdiction may grant other appropriate relief, including
5775 cancellation of the lease contract or an injunction against the
5776 transfer.

5777 (5) A transfer of "the lease" or of "all my rights under the
5778 lease," or a transfer in similar general terms, is a transfer of
5779 rights and, unless the language or the circumstances, as in a
5780 transfer for security, indicate the contrary, the transfer is a
5781 delegation of duties by the transferor to the transferee.
5782 Acceptance by the transferee constitutes a promise by the
5783 transferee to perform those duties. The promise is enforceable by
5784 either the transferor or the other party to the lease contract.

5785 (6) Unless otherwise agreed by the lessor and the lessee, a
5786 delegation of performance does not relieve the transferor as
5787 against the other party of any duty to perform or of any liability
5788 for default.

5789 (7) In a consumer lease, to prohibit the transfer of an
5790 interest of a party under the lease contract or to make a transfer
5791 an event of default, the language must be specific, by a writing,
5792 and conspicuous.

5793 SECTION 13. Section 75-2A-307, Mississippi Code of 1972, is
5794 amended as follows:

5795 75-2A-307. (1) Except as otherwise provided in Section
5796 75-2A-306, a creditor of a lessee takes subject to the lease
5797 contract.

5798 (2) Except as otherwise provided in subsection (3), * * *
5799 and in Sections 75-2A-306 and 75-2A-308, a creditor of a lessor
5800 takes subject to the lease contract unless * * * the creditor
5801 holds a lien that attached to the goods before the lease contract
5802 became enforceable.

5803 * * *

5804 (3) Except as otherwise provided in Section 75-9-317,
5805 75-9-321 and 75-9-323, a lessee takes a leasehold interest subject
5806 to a security interest held by a creditor of the lessor.

5807 * * *

5808 SECTION 14. Section 75-2A-309, Mississippi Code of 1972, is
5809 amended as follows:

5810 75-2A-309. (1) In this section:

5811 (a) Goods are "fixtures" when they become so related to
5812 particular real estate that an interest in them arises under real
5813 estate law;

5814 (b) A "fixture filing" is the filing, in the office
5815 where a record of a mortgage on the real estate would be filed or
5816 recorded, of a financing statement covering goods that are or are
5817 to become fixtures and conforming to the requirements of Section
5818 75-9-502(a) and (b);

5819 (c) A lease is a "purchase money lease" unless the
5820 lessee has possession or use of the goods or the right to
5821 possession or use of the goods before the lease agreement is
5822 enforceable;

5823 (d) A mortgage is a "construction mortgage" to the
5824 extent it secures an obligation incurred for the construction of
5825 an improvement on land including the acquisition cost of the land,
5826 if the recorded writing so indicates; and

5827 (e) "Encumbrance" includes real estate mortgages and
5828 other liens on real estate and all other rights in real estate
5829 that are not ownership interests.

5830 (2) Under this chapter a lease may be of goods that are
5831 fixtures or may continue in goods that become fixtures, but no
5832 lease exists under this chapter of ordinary building materials
5833 incorporated into an improvement on land.

5834 (3) This chapter does not prevent creation of a lease of
5835 fixtures pursuant to real estate law.

5836 (4) The perfected interest of a lessor of fixtures has
5837 priority over a conflicting interest of an encumbrancer or owner
5838 of the real estate if:

5839 (a) The lease is a purchase money lease, the
5840 conflicting interest of the encumbrancer or owner arises before
5841 the goods become fixtures, the interest of the lessor is perfected
5842 by a fixture filing before the goods become fixtures or within ten
5843 (10) days thereafter, and the lessee has an interest of record in
5844 the real estate or is in possession of the real estate; or

5845 (b) The interest of the lessor is perfected by a
5846 fixture filing before the interest of the encumbrancer or owner is
5847 of record, the lessor's interest has priority over any conflicting
5848 interest of a predecessor in title of the encumbrancer or owner,
5849 and the lessee has an interest of record in the real estate or is
5850 in possession of the real estate.

5851 (5) The interest of a lessor of fixtures, whether or not
5852 perfected, has priority over the conflicting interest of an
5853 encumbrancer or owner of the real estate if:

5854 (a) The fixtures are readily removable factory or
5855 office machines, readily removable equipment that is not primarily
5856 used or leased for use in the operation of the real estate, or
5857 readily removable replacements of domestic appliances that are
5858 goods subject to a consumer lease, and before the goods become
5859 fixtures the lease contract is enforceable; or

5860 (b) The conflicting interest is a lien on the real
5861 estate obtained by legal or equitable proceedings after the lease
5862 contract is enforceable; or

5863 (c) The encumbrancer or owner has consented in writing
5864 to the lease or has disclaimed an interest in the goods as
5865 fixtures; or

5866 (d) The lessee has a right to remove the goods as
5867 against the encumbrancer or owner. If the lessee's right to

5868 remove terminates, the priority of the interest of the lessor
5869 continues for a reasonable time.

5870 (6) Notwithstanding subsection (4)(a) but otherwise subject
5871 to subsections (4) and (5), the interest of a lessor of fixtures,
5872 including the lessor's residual interest, is subordinate to the
5873 conflicting interest of an encumbrancer of the real estate under a
5874 construction mortgage recorded before the goods become fixtures if
5875 the goods become fixtures before the completion of the
5876 construction. To the extent given to refinance a construction
5877 mortgage, the conflicting interest of an encumbrancer of the real
5878 estate under a mortgage has this priority to the same extent as
5879 the encumbrancer of the real estate under the construction
5880 mortgage.

5881 (7) In cases not within the preceding subsections, priority
5882 between the interest of a lessor of fixtures, including the
5883 lessor's residual interest, and the conflicting interest of an
5884 encumbrancer or owner of the real estate who is not the lessee is
5885 determined by the priority rules governing conflicting interests
5886 in real estate.

5887 (8) If the interest of a lessor of fixtures, including the
5888 lessor's residual interest, has priority over all conflicting
5889 interests of all owners and encumbrancers of the real estate, the
5890 lessor or the lessee may (i) on default, expiration, termination
5891 or cancellation of the lease agreement but subject to the lease
5892 agreement and this chapter, or (ii) if necessary to enforce other
5893 rights and remedies of the lessor or lessee under this chapter,
5894 remove the goods from the real estate, free and clear of all
5895 conflicting interests of all owners and encumbrancers of the real
5896 estate, but the lessor or lessee must reimburse any encumbrancer
5897 or owner of the real estate who is not the lessee and who has not
5898 otherwise agreed for the cost of repair of any physical injury,
5899 but not for any diminution in value of the real estate caused by
5900 the absence of the goods removed or by any necessity of replacing

5901 them. A person entitled to reimbursement may refuse permission to
5902 remove until the party seeking removal gives adequate security for
5903 the performance of this obligation.

5904 (9) Even though the lease agreement does not create a
5905 security interest, the interest of a lessor of fixtures, including
5906 the lessor's residual interest, is perfected by filing a financing
5907 statement as a fixture filing for leased goods that are or are to
5908 become fixtures in accordance with the relevant provisions of the
5909 Chapter on Secured Transactions (Chapter 9).

5910 SECTION 15. Section 75-4-210, Mississippi Code of 1972, is
5911 amended as follows:

5912 75-4-210. (a) A collecting bank has a security interest in
5913 an item and any accompanying documents or the proceeds of either:

5914 (1) In case of an item deposited in an account, to the
5915 extent to which credit given for the item has been withdrawn or
5916 applied;

5917 (2) In case of an item for which it has given credit
5918 available for withdrawal as of right, to the extent of the credit
5919 given, whether or not the credit is drawn upon or there is a right
5920 of charge-back; or

5921 (3) If it makes an advance on or against the item.

5922 (b) If credit given for several items received at one time
5923 or pursuant to a single agreement is withdrawn or applied in part,
5924 the security interest remains upon all the items, any accompanying
5925 documents or the proceeds of either. For the purpose of this
5926 section, credits first given are first withdrawn.

5927 (c) Receipt by a collecting bank of a final settlement for
5928 an item is a realization on its security interest in the item,
5929 accompanying documents, and proceeds. So long as the bank does
5930 not receive final settlement for the item or give up possession of
5931 the item or accompanying documents for purposes other than
5932 collection, the security interest continues to that extent and is
5933 subject to Chapter 9, but:

5934 (1) No security agreement is necessary to make the
5935 security interest enforceable (Section 75-9-203(b)(3)(A));
5936 (2) No filing is required to perfect the security
5937 interest; and
5938 (3) The security interest has priority over conflicting
5939 perfected security interests in the item, accompanying documents,
5940 or proceeds.

5941 SECTION 16. Section 75-7-503, Mississippi Code of 1972, is
5942 amended as follows:

5943 75-7-503. (1) A document of title confers no right in goods
5944 against a person who before issuance of the document had a legal
5945 interest or a perfected security interest in them and who neither

5946 (a) Delivered or entrusted them or any document of
5947 title covering them to the bailor or his nominee with actual or
5948 apparent authority to ship, store or sell or with power to obtain
5949 delivery under this chapter (Section 75-7-403) or with power of
5950 disposition under this code (Sections 75-2-403 and 75-9-320) or
5951 other statute or rule of law; nor

5952 (b) Acquiesced in the procurement by the bailor or his
5953 nominee of any document of title.

5954 (2) Title to goods based upon an unaccepted delivery order
5955 is subject to the rights of anyone to whom a negotiable warehouse
5956 receipt or bill of lading covering the goods has been duly
5957 negotiated. Such a title may be defeated under the next section
5958 to the same extent as the rights of the issuer or a transferee
5959 from the issuer.

5960 (3) Title to goods based upon a bill of lading issued to a
5961 freight forwarder is subject to the rights of anyone to whom a
5962 bill issued by the freight forwarder is duly negotiated; but
5963 delivery by the carrier in accordance with Part 4 of this chapter
5964 pursuant to its own bill of lading discharges the carrier's
5965 obligation to deliver.

5966 SECTION 17. Section 75-8-103, Mississippi Code of 1972, is
5967 amended as follows:

5968 75-8-103. (a) A share or similar equity interest issued by
5969 a corporation, business trust, joint stock company, or similar
5970 entity is a security.

5971 (b) An "investment company security" is a security.

5972 "Investment company security" means a share or similar equity
5973 interest issued by an entity that is registered as an investment
5974 company under the federal investment company laws, an interest in
5975 a unit investment trust that is so registered, or a face-amount
5976 certificate issued by a face-amount certificate company that is so
5977 registered. Investment company security does not include an
5978 insurance policy or endowment policy or annuity contract issued by
5979 an insurance company.

5980 (c) An interest in a partnership or limited liability
5981 company is not a security unless it is dealt in or traded on
5982 securities exchanges or in securities markets, its terms expressly
5983 provide that it is a security governed by this chapter, or it is
5984 an investment company security. However, an interest in a
5985 partnership or limited liability company is a financial asset if
5986 it is held in a securities account.

5987 (d) A writing that is a security certificate is governed by
5988 this chapter and not by Chapter 3, even though it also meets the
5989 requirements of that chapter. However, a negotiable instrument
5990 governed by Chapter 3 is a financial asset if it is held in a
5991 securities account.

5992 (e) An option or similar obligation issued by a clearing
5993 corporation to its participants is not a security, but is a
5994 financial asset.

5995 (f) A commodity contract, as defined in Section
5996 75-9-102(a)(15), is not a security or a financial asset.

5997 SECTION 18. Section 75-8-106, Mississippi Code of 1972, is
5998 amended as follows:

5999 75-8-106. (a) A purchaser has "control" of a certificated
6000 security in bearer form if the certificated security is delivered
6001 to the purchaser.

6002 (b) A purchaser has "control" of a certificated security in
6003 registered form if the certificated security is delivered to the
6004 purchaser, and:

6005 (1) The certificate is endorsed to the purchaser or in
6006 blank by an effective endorsement; or

6007 (2) The certificate is registered in the name of the
6008 purchaser, upon original issue or registration of transfer by the
6009 issuer.

6010 (c) A purchaser has "control" of an uncertificated security
6011 if:

6012 (1) The uncertificated security is delivered to the
6013 purchaser; or

6014 (2) The issuer has agreed that it will comply with
6015 instructions originated by the purchaser without further consent
6016 by the registered owner.

6017 (d) A purchaser has "control" of a security entitlement if:

6018 (1) The purchaser becomes the entitlement holder; * * *

6019 (2) The securities intermediary has agreed that it will
6020 comply with entitlement orders originated by the purchaser without
6021 further consent by the entitlement holder; or

6022 (3) Another person has control of the security
6023 entitlement on behalf of the purchaser or, having previously
6024 acquired control of the security entitlement, acknowledges that it
6025 has control on behalf of the purchaser.

6026 (e) If an interest in a security entitlement is granted by
6027 the entitlement holder to the entitlement holder's own securities
6028 intermediary, the securities intermediary has control.

6029 (f) A purchaser who has satisfied the requirements of
6030 subsection (c) * * * or (d) * * * has control, even if the
6031 registered owner in the case of subsection (c) * * * or the

6032 entitlement holder in the case of subsection (d) * * * retains the
6033 right to make substitutions for the uncertificated security or
6034 security entitlement, to originate instructions or entitlement
6035 orders to the issuer or securities intermediary, or otherwise to
6036 deal with the uncertificated security or security entitlement.

6037 (g) An issuer or a securities intermediary may not enter
6038 into an agreement of the kind described in subsection (c)(2) or
6039 (d)(2) without the consent of the registered owner or entitlement
6040 holder, but an issuer or a securities intermediary is not required
6041 to enter into such an agreement even though the registered owner
6042 or entitlement holder so directs. An issuer or securities
6043 intermediary that has entered into such an agreement is not
6044 required to confirm the existence of the agreement to another
6045 party unless requested to do so by the registered owner or
6046 entitlement holder.

6047 SECTION 19. Section 75-8-110, Mississippi Code of 1972, is
6048 amended as follows:

6049 75-8-110. (a) The local law of the issuer's jurisdiction,
6050 as specified in subsection (d), governs:

- 6051 (1) The validity of a security;
- 6052 (2) The rights and duties of the issuer with respect to
6053 registration of transfer;
- 6054 (3) The effectiveness of registration of transfer by
6055 the issuer;
- 6056 (4) Whether the issuer owes any duties to an adverse
6057 claimant to a security; and
- 6058 (5) Whether an adverse claim can be asserted against a
6059 person to whom transfer of a certificated or uncertificated
6060 security is registered or a person who obtains control of an
6061 uncertificated security.

6062 (b) The local law of the securities intermediary's
6063 jurisdiction, as specified in subsection (e), governs:

6064 (1) Acquisition of a security entitlement from the
6065 securities intermediary;

6066 (2) The rights and duties of the securities
6067 intermediary and entitlement holder arising out of a security
6068 entitlement;

6069 (3) Whether the securities intermediary owes any duties
6070 to an adverse claimant to a security entitlement; and

6071 (4) Whether an adverse claim can be asserted against a
6072 person who acquires a security entitlement from the securities
6073 intermediary or a person who purchases a security entitlement or
6074 interest therein from an entitlement holder.

6075 (c) The local law of the jurisdiction in which a security
6076 certificate is located at the time of delivery governs whether an
6077 adverse claim can be asserted against a person to whom the
6078 security certificate is delivered.

6079 (d) "Issuer's jurisdiction" means the jurisdiction under
6080 which the issuer of the security is organized or, if permitted by
6081 the law of that jurisdiction, the law of another jurisdiction
6082 specified by the issuer. An issuer organized under the law of
6083 this state may specify the law of another jurisdiction as the law
6084 governing the matters specified in subsection (a)(2) through (5).

6085 (e) The following rules determine a "securities
6086 intermediary's jurisdiction" for purposes of this section:

6087 (1) If an agreement between the securities intermediary
6088 and its entitlement holder governing the securities account
6089 expressly provides that a particular jurisdiction is the
6090 securities intermediary's jurisdiction for the purposes of this
6091 part, this article or the Uniform Commercial Code, that
6092 jurisdiction is the securities intermediary's jurisdiction.

6093 (2) If paragraph (1) does not apply and an agreement
6094 between the securities intermediary and its entitlement holder
6095 governing the securities account expressly provides that the

6096 agreement is governed by the law of a particular jurisdiction,
6097 that jurisdiction is the securities intermediary's jurisdiction.

6098 (3) If neither paragraph (1) nor paragraph (2) applies
6099 and an agreement between the securities intermediary and its
6100 entitlement holder * * * expressly provides that the securities
6101 account is maintained at an office in a particular jurisdiction,
6102 that jurisdiction is the securities intermediary's jurisdiction.

6103 (4) If none of the preceding paragraphs of this
6104 subsection apply, the securities intermediary's jurisdiction is
6105 the jurisdiction in which * * * the office identified in an
6106 account statement as the office serving the entitlement holder's
6107 account is located.

6108 (5) If none of the preceding paragraphs of this
6109 subsection apply, the securities intermediary's jurisdiction is
6110 the jurisdiction in which * * * the chief executive office of the
6111 securities intermediary is located.

6112 (f) A securities intermediary's jurisdiction is not
6113 determined by the physical location of certificates representing
6114 financial assets, or by the jurisdiction in which is organized the
6115 issuer of the financial asset with respect to which an entitlement
6116 holder has a security entitlement, or by the location of
6117 facilities for data processing or other record keeping concerning
6118 the account.

6119 SECTION 20. Section 75-8-301, Mississippi Code of 1972, is
6120 amended as follows:

6121 75-8-301. (a) Delivery of a certificated security to a
6122 purchaser occurs when:

6123 (1) The purchaser acquires possession of the security
6124 certificate;

6125 (2) Another person, other than a securities
6126 intermediary, either acquires possession of the security
6127 certificate on behalf of the purchaser or, having previously

6128 acquired possession of the certificate, acknowledges that it holds
6129 for the purchaser; or

6130 (3) A securities intermediary acting on behalf of the
6131 purchaser acquires possession of the security certificate, only if
6132 the certificate is in registered form and is (i) registered in the
6133 name of the purchaser, (ii) payable to the order of the purchaser,
6134 or (iii) specially endorsed to the purchaser by an effective
6135 endorsement and has not been endorsed to the securities
6136 intermediary or in blank.

6137 (b) Delivery of an uncertificated security to a purchaser
6138 occurs when:

6139 (1) The issuer registers the purchaser as the
6140 registered owner, upon original issue or registration of transfer;
6141 or

6142 (2) Another person, other than a securities
6143 intermediary, either becomes the registered owner of the
6144 uncertificated security on behalf of the purchaser or, having
6145 previously become the registered owner, acknowledges that it holds
6146 for the purchaser.

6147 SECTION 21. Section 75-8-302, Mississippi Code of 1972, is
6148 amended as follows:

6149 75-8-302. (a) Except as otherwise provided in subsections
6150 (b) and (c), * * * a purchaser of a certificated or uncertificated
6151 security acquires all rights in the security that the transferor
6152 had or had power to transfer.

6153 (b) A purchaser of a limited interest acquires rights only
6154 to the extent of the interest purchased.

6155 (c) A purchaser of a certificated security who as a previous
6156 holder had notice of an adverse claim does not improve its
6157 position by taking from a protected purchaser.

6158 SECTION 22. Section 75-8-510, Mississippi Code of 1972, is
6159 amended as follows:

6160 75-8-510. (a) In a case not covered by the priority rules
6161 in Article 9 or the rules stated in subsection (c), an action
6162 based on an adverse claim to a financial asset or security
6163 entitlement, whether framed in conversion, replevin, constructive
6164 trust, equitable lien, or other theory, may not be asserted
6165 against a person who purchases a security entitlement, or an
6166 interest therein, from an entitlement holder if the purchaser
6167 gives value, does not have notice of the adverse claim, and
6168 obtains control.

6169 (b) If an adverse claim could not have been asserted against
6170 an entitlement holder under Section 75-8-502, the adverse claim
6171 cannot be asserted against a person who purchases a security
6172 entitlement, or an interest therein, from the entitlement holder.

6173 (c) In a case not covered by the priority rules in Chapter
6174 9, a purchaser for value of a security entitlement, or an interest
6175 therein, who obtains control has priority over a purchaser of a
6176 security entitlement, or an interest therein, who does not obtain
6177 control. Except as otherwise provided in subsection (d),
6178 purchasers who have control rank according to priority in time of:

6179 (1) The purchaser's becoming the person for whom the
6180 securities account, in which the security entitlement is carried,
6181 is maintained, if the purchaser obtained control under Section
6182 75-8-106(d)(1);

6183 (2) The securities intermediary's agreement to comply
6184 with the purchaser's entitlement orders with respect to security
6185 entitlements carried or to be carried in the securities account in
6186 which the security entitlement is carried, if the purchaser
6187 obtained control under Section 75-8-106(d)(2); or

6188 (3) If the purchaser obtained control through another
6189 person under Section 75-8-106(d)(3), the time on which priority
6190 would be based under this subsection if the other person were the
6191 secured party.

6192 (d) A securities intermediary as purchaser has priority over
6193 a conflicting purchaser who has control unless otherwise agreed by
6194 the securities intermediary.

6195 SECTION 23. Section 71-3-43, Mississippi Code of 1972, is
6196 amended as follows:

6197 71-3-43. No assignment, release, or commutation of
6198 compensation or benefits due or payable under this chapter, except
6199 as provided by this chapter, shall be valid; and such compensation
6200 and benefits shall be exempt from all claims of creditors and from
6201 levy, execution, and attachment or other remedy for recovery or
6202 collection of a debt, which exemption may be waived. This section
6203 prevails over Sections 75-9-406 and 75-9-408 of Article 9 of the
6204 Uniform Commercial Code to the extent, if any, that these sections
6205 may otherwise be applicable.

6206 SECTION 24. Section 41-29-177, Mississippi Code of 1972, is
6207 amended as follows:

6208 41-29-177. (1) Except as otherwise provided in Section
6209 41-29-176, Mississippi Code of 1972, when any property, other than
6210 a controlled substance, raw material or paraphernalia, is seized
6211 under the Uniform Controlled Substances Law, proceedings under
6212 this section shall be instituted within thirty (30) days from the
6213 date of seizure or the subject property shall be immediately
6214 returned to the party from whom seized.

6215 (2) A petition for forfeiture shall be filed in the name of
6216 the State of Mississippi, the county or the municipality and may
6217 be filed in the county in which the seizure is made, the county in
6218 which the criminal prosecution is brought or the county in which
6219 the owner of the seized property is found. Forfeiture proceedings
6220 may be brought in the circuit court or the county court if a
6221 county court exists in the county and the value of the seized
6222 property is within the jurisdictional limits of the county court
6223 as set forth in Section 9-9-21, Mississippi Code of 1972. A copy

6224 of such petition shall be served upon the following persons by
6225 service of process in the same manner as in civil cases:

6226 (a) The owner of the property, if address is known;

6227 (b) Any secured party who has registered his lien or
6228 filed a financing statement as provided by law, if the identity of
6229 such secured party can be ascertained by the Bureau of Narcotics
6230 or the local law enforcement agency by making a good faith effort
6231 to ascertain the identity of such secured party as described in
6232 subsections (3), (4), (5), (6) and (7) of this section;

6233 (c) Any other bona fide lienholder or secured party or
6234 other person holding an interest in the property in the nature of
6235 a security interest of whom the Mississippi Bureau of Narcotics or
6236 the local law enforcement agency has actual knowledge;

6237 (d) Any holder of a mortgage, deed of trust, lien or
6238 encumbrance of record, if the property is real estate, by making a
6239 good faith inquiry as described in subsection (8) of this section;
6240 and

6241 (e) Any person in possession of property subject to
6242 forfeiture at the time that it was seized.

6243 (3) If the property is a motor vehicle susceptible of
6244 titling under the Mississippi Motor Vehicle Title Law and if there
6245 is any reasonable cause to believe that the vehicle has been
6246 titled, the Bureau of Narcotics or the local law enforcement
6247 agency shall make inquiry of the State Tax Commission as to what
6248 the records of the State Tax Commission show as to who is the
6249 record owner of the vehicle and who, if anyone, holds any lien or
6250 security interest which affects the vehicle.

6251 (4) If the property is a motor vehicle and is not titled in
6252 the State of Mississippi, then the Bureau of Narcotics or the
6253 local law enforcement agency shall attempt to ascertain the name
6254 and address of the person in whose name the vehicle is licensed,
6255 and if the vehicle is licensed in a state which has in effect a
6256 certificate of title law, the bureau or the local law enforcement

6257 agency shall make inquiry of the appropriate agency of that state
6258 as to what the records of the agency show as to who is the record
6259 owner of the vehicle and who, if anyone, holds any lien, security
6260 interest or other instrument in the nature of a security device
6261 which affects the vehicle.

6262 (5) If the property is of a nature that a financing
6263 statement is required by the laws of this state to be filed to
6264 perfect a security interest affecting the property and if there is
6265 any reasonable cause to believe that a financing statement
6266 covering the security interest has been filed under the laws of
6267 this state, the Bureau of Narcotics or the local law enforcement
6268 agency shall make inquiry of the appropriate office designated in
6269 Section 75-9-501, Mississippi Code of 1972, as to what the records
6270 show as to who is the record owner of the property and who, if
6271 anyone, has filed a financing statement affecting the property.

6272 (6) If the property is an aircraft or part thereof and if
6273 there is any reasonable cause to believe that an instrument in the
6274 nature of a security device affects the property, then the Bureau
6275 of Narcotics or the local law enforcement agency shall make
6276 inquiry of the Mississippi Department of Transportation as to what
6277 the records of the Federal Aviation Administration show as to who
6278 is the record owner of the property and who, if anyone, holds an
6279 instrument in the nature of a security device which affects the
6280 property.

6281 (7) In the case of all other personal property subject to
6282 forfeiture, if there is any reasonable cause to believe that an
6283 instrument in the nature of a security device affects the
6284 property, then the Bureau of Narcotics or the local law
6285 enforcement agency shall make a good faith inquiry to identify the
6286 holder of any such instrument.

6287 (8) If the property is real estate, the Bureau of Narcotics
6288 or the local law enforcement agency shall make inquiry of the
6289 chancery clerk of the county wherein the property is located to

6290 determine who is the owner of record and who, if anyone, is a
6291 holder of a bona fide mortgage, deed of trust, lien or
6292 encumbrance.

6293 (9) In the event the answer to an inquiry states that the
6294 record owner of the property is any person other than the person
6295 who was in possession of it when it was seized, or states that any
6296 person holds any lien, encumbrance, security interest, other
6297 interest in the nature of a security interest, mortgage or deed of
6298 trust which affects the property, the Bureau of Narcotics or the
6299 local law enforcement agency shall cause any record owner and also
6300 any lienholder, secured party, other person who holds an interest
6301 in the property in the nature of a security interest, or holder of
6302 an encumbrance, mortgage or deed of trust which affects the
6303 property to be named in the petition of forfeiture and to be
6304 served with process in the same manner as in civil cases.

6305 (10) If the owner of the property cannot be found and served
6306 with a copy of the petition of forfeiture, or if no person was in
6307 possession of the property subject to forfeiture at the time that
6308 it was seized and the owner of the property is unknown, the Bureau
6309 of Narcotics or the local law enforcement agency shall file with
6310 the clerk of the court in which the proceeding is pending an
6311 affidavit to such effect, whereupon the clerk of the court shall
6312 publish notice of the hearing addressed to "the Unknown Owner of
6313 _____," filling in the blank space with a reasonably
6314 detailed description of the property subject to forfeiture.
6315 Service by publication shall contain the other requisites
6316 prescribed in Section 11-33-41, and shall be served as provided in
6317 Section 11-33-37, Mississippi Code of 1972, for publication of
6318 notice for attachments at law.

6319 (11) No proceedings instituted pursuant to the provisions of
6320 this article shall proceed to hearing unless the judge conducting
6321 the hearing is satisfied that this section has been complied with.
6322 Any answer received from an inquiry required by subsections (3)

6323 through (8) of this section shall be introduced into evidence at
6324 the hearing.

6325 SECTION 25. Section 49-7-251, Mississippi Code of 1972, is
6326 amended as follows:

6327 49-7-251. (1) Except as otherwise provided in Section
6328 49-7-257, when any property is seized pursuant to Section
6329 49-7-103, 49-15-21(2) or 59-21-33, Mississippi Code of 1972,
6330 proceedings under this section shall be instituted promptly.
6331 Provided, however, that the seizing law enforcement agency may, in
6332 the sound exercise of discretion, decide not to bring a forfeiture
6333 action if the interests of bona fide lienholders or secured
6334 creditors equal or exceed the value of the seized property, or if
6335 other factors would produce a negative economic result. Provided
6336 further, that no property shall be subject to forfeiture which has
6337 been stolen from its owner if the owner can be identified and
6338 prosecution for the theft has been initiated.

6339 (2) A petition for forfeiture shall be filed promptly in the
6340 name of the State of Mississippi, the county or the municipality
6341 and may be filed in the county in which the seizure is made, the
6342 county in which the criminal prosecution is brought or the county
6343 in which the owner of the seized property is found. Forfeiture
6344 proceedings may be brought in the circuit court or the county
6345 court if a county court exists in the county and the value of the
6346 seized property is within the jurisdictional limits of the county
6347 court as set forth in Section 9-9-21, Mississippi Code of 1972. A
6348 copy of such petition shall be served upon the following persons
6349 by service of process in the same manner as in civil cases:

6350 (a) The owner of the property, if address is known;

6351 (b) Any secured party who has registered his lien or
6352 filed a financing statement as provided by law, if the identity of
6353 such secured party can be ascertained by the Department of
6354 Wildlife Conservation or the local law enforcement agency by
6355 making a good faith effort to ascertain the identity of such

6356 secured party as described in subsections (3), (4), (5), (6) and
6357 (7) of this section;

6358 (c) Any other bona fide lienholder or secured party or
6359 other person holding an interest in the property in the nature of
6360 a security interest of whom the Department of Wildlife
6361 Conservation or the local law enforcement agency has actual
6362 knowledge; and

6363 (d) Any person in possession of property subject to
6364 forfeiture at the time that it was seized.

6365 (3) If the property is a motor vehicle susceptible of
6366 titling under the Mississippi Motor Vehicle Title Law and if there
6367 is any reasonable cause to believe that the vehicle has been
6368 titled, the Department of Wildlife Conservation or the local law
6369 enforcement agency shall make inquiry of the State Tax Commission
6370 as to what the records of the State Tax Commission show as to who
6371 is the record owner of the vehicle and who, if anyone, holds any
6372 lien or security interest which affects the vehicle.

6373 (4) If the property is a motor vehicle and is not titled in
6374 the State of Mississippi, then the Department of Wildlife
6375 Conservation or the local law enforcement agency shall attempt to
6376 ascertain the name and address of the person in whose name the
6377 vehicle is licensed, and if the vehicle is licensed in a state
6378 which has in effect a certificate of title law, the Department of
6379 Wildlife Conservation or the local law enforcement agency shall
6380 make inquiry of the appropriate agency of that state as to what
6381 the records of the agency show as to who is the record owner of
6382 the vehicle and who, if anyone, holds any lien, security interest
6383 or other instrument in the nature of a security device which
6384 affects the vehicle.

6385 (5) If the property is of a nature that a financing
6386 statement is required by the laws of this state to be filed to
6387 perfect a security interest affecting the property and if there is
6388 any reasonable cause to believe that a financing statement

6389 covering the security interest has been filed under the laws of
6390 this state, the Department of Wildlife Conservation or the local
6391 law enforcement agency shall make inquiry of the appropriate
6392 office designated in Section 75-9-501, Mississippi Code of 1972,
6393 as to what the records show as to who is the record owner of the
6394 property and who, if anyone, has filed a financing statement
6395 affecting the property.

6396 (6) If the property is an aircraft or part thereof and if
6397 there is any reasonable cause to believe that an instrument in the
6398 nature of a security device affects the property, then the
6399 Department of Wildlife Conservation or the local law enforcement
6400 agency shall make inquiry of the Administrator of the Mississippi
6401 Aeronautics Commission as to what the records of the Federal
6402 Aviation Administration show as to who is the record owner of the
6403 property and who, if anyone, holds an instrument in the nature of
6404 a security device which affects the property.

6405 (7) In the case of all other personal property subject to
6406 forfeiture, if there is any reasonable cause to believe that an
6407 instrument in the nature of a security device affects the
6408 property, then the Department of Wildlife Conservation or the
6409 local law enforcement agency shall make a good faith inquiry to
6410 identify the holder of any such instrument.

6411 (8) In the event the answer to an inquiry states that the
6412 record owner of the property is any person other than the person
6413 who was in possession of it when it was seized, or states that any
6414 person holds any lien, encumbrance, security interest, other
6415 interest in the nature of a security interest, mortgage or deed of
6416 trust which affects the property, the Department of Wildlife
6417 Conservation or the local law enforcement agency shall cause any
6418 record owner and also any lienholder, secured party, other person
6419 who holds an interest in the property in the nature of a security
6420 interest which affects the property to be named in the petition of

6421 forfeiture and to be served with process in the same manner as in
6422 civil cases.

6423 (9) If the owner of the property cannot be found and served
6424 with a copy of the petition of forfeiture, or if no person was in
6425 possession of the property subject to forfeiture at the time that
6426 it was seized and the owner of the property is unknown, the
6427 Department of Wildlife Conservation or the local law enforcement
6428 agency shall file with the clerk of the court in which the
6429 proceeding is pending an affidavit to such effect, whereupon the
6430 clerk of the court shall publish notice of the hearing addressed
6431 to "the Unknown Owner of _____," filling in the blank
6432 space with a reasonably detailed description of the property
6433 subject to forfeiture. Service by publication shall contain the
6434 other requisites prescribed in Section 11-33-41, Mississippi Code
6435 of 1972, and shall be served as provided in Section 11-33-37,
6436 Mississippi Code of 1972, for publication of notice for
6437 attachments at law.

6438 (10) No proceedings instituted pursuant to the provisions of
6439 this section shall proceed to hearing unless the judge conducting
6440 the hearing is satisfied that this section has been complied with.
6441 Any answer received from an inquiry required by subsections (3)
6442 through (7) of this section shall be introduced into evidence at
6443 the hearing.

6444 SECTION 26. Section 67-1-93, Mississippi Code of 1972, is
6445 amended as follows:

6446 67-1-93. (1) Except as otherwise provided in Section
6447 67-1-99, when any property, other than an alcoholic beverage or
6448 raw material, is seized under this chapter or Chapter 31 of Title
6449 97, Mississippi Code of 1972, proceedings under this section shall
6450 be instituted promptly.

6451 (2) A petition for forfeiture shall be filed promptly in the
6452 name of the State of Mississippi with the clerk of the circuit or
6453 county court of the county in which the seizure is made. A copy

6454 of such petition shall be served upon the following persons by
6455 service of process in the same manner as in civil cases:

6456 (a) The owner of the property, if address is known;

6457 (b) Any secured party who has registered his lien or
6458 filed a financing statement as provided by law, if the identity of
6459 such secured party can be ascertained by the agent or agency which
6460 seized the property making a good faith effort to ascertain the
6461 identity of such secured party as described in subsections (3),
6462 (4), (5), (6) and (7) of this section;

6463 (c) Any other bona fide lienholder or secured party or
6464 other person holding an interest in the property in the nature of
6465 a security interest of whom the agent or agency has actual
6466 knowledge; and

6467 (d) Any person in possession of property subject to
6468 forfeiture at the time that it was seized.

6469 (3) If the property is a motor vehicle susceptible of
6470 titling under the Mississippi Motor Vehicle Title Law and if there
6471 is any reasonable cause to believe that the vehicle has been
6472 titled, the agent or agency shall make inquiry of the State Tax
6473 Commission as to what the records of the State Tax Commission show
6474 as to who is the record owner of the vehicle and who, if anyone,
6475 holds any lien or security interest which affects the vehicle.

6476 (4) If the property is a motor vehicle and is not titled in
6477 the State of Mississippi then the agent or agency shall attempt to
6478 ascertain the name and address of the person in whose name the
6479 vehicle is licensed, and if the vehicle is licensed in a state
6480 which has in effect a certificate of title law, the agent or
6481 agency shall make inquiry of the appropriate agency of that state
6482 to determine through such agency's records the name of the record
6483 owner of the vehicle and who, if anyone, holds any lien, security
6484 interest or other instrument in the nature of a security device
6485 which affects the vehicle.

6486 (5) If the property is of a nature that a financing
6487 statement is required by the laws of this state to be filed to
6488 perfect a security interest affecting the property and if there is
6489 any reasonable cause to believe that a financing statement
6490 covering the security interest has been filed under the laws of
6491 this state, the agent or agency shall make inquiry of the
6492 appropriate office designated in Section 75-9-501 to determine
6493 through the records of such office the name of the record owner of
6494 the property and who, if anyone, has filed a financing statement
6495 affecting the property.

6496 (6) If the property is an aircraft or part thereof and if
6497 there is any reasonable cause to believe that an instrument in the
6498 nature of a security device affects the property, then the agent
6499 or agency shall make inquiry of the Administrator of the Federal
6500 Aviation Administration to determine through records of the
6501 administrator the name of the record owner of the property and
6502 who, if anyone, holds an instrument in the name of a security
6503 device which affects the property.

6504 (7) In the case of all other property other than an
6505 alcoholic beverage or raw material subject to forfeiture, if there
6506 is any reasonable cause to believe that an instrument in the
6507 nature of a security device affects the property, then the agent
6508 or agency shall make a good faith inquiry to identify the holder
6509 of any such instrument.

6510 (8) In the event the answer to an inquiry states that the
6511 record owner of the property is any person other than the person
6512 who was in possession of it when it was seized, or states that any
6513 person holds any lien, security interest or other interest in the
6514 nature of a security interest which affects the property, the
6515 agent or agency shall cause any record owner and also any
6516 lienholder, secured party or other person who holds an interest in
6517 the property in the nature of a security interest which affects

6518 the property to be named in the petition of forfeiture and to be
6519 served with process in the same manner as in civil cases.

6520 (9) If the owner of the property cannot be found and served
6521 with a copy of the petition of forfeiture, or if no person was in
6522 possession of the property subject to forfeiture at the time that
6523 it was seized and the owner of the property is unknown, the agent
6524 or agency shall file with the clerk of the court in which the
6525 proceeding is pending an affidavit to such effect, whereupon the
6526 clerk of the court shall publish notice of the hearing addressed
6527 to "the Unknown Owner of _____," filling in the blank
6528 space with a reasonably detailed description of the property
6529 subject to forfeiture. Service by publication shall be made in
6530 accordance with the Mississippi Rules of Civil Procedure.

6531 (10) No proceedings instituted pursuant to the provisions of
6532 this chapter shall proceed to hearing unless the judge conducting
6533 the hearing is satisfied that this section has been complied with.
6534 Any answer received from an inquiry required by subsections (3)
6535 through (7) of this section shall be introduced into evidence at
6536 the hearing.

6537 SECTION 27. Section 97-17-4, Mississippi Code of 1972, is
6538 amended as follows:

6539 97-17-4. (1) All property, real or personal, including
6540 money, used in the course of, intended for use in the course of,
6541 derived from, or realized through, conduct in violation of a
6542 provision of Section 97-17-1 or 97-17-3 is subject to civil
6543 forfeiture to the state pursuant to the provisions of this
6544 section; provided, however, that a forfeiture of personal property
6545 encumbered by a bona fide security interest or real property
6546 encumbered by a bona fide mortgage, deed of trust, lien or
6547 encumbrance of record shall be subject to the interest of the
6548 secured party or subject to the interest of the holder of the
6549 mortgage deed of trust, lien of encumbrance of record if such

6550 secured party or holder neither had knowledge of or consented to
6551 the act or omission.

6552 (2) Property subject to forfeiture may be seized by law
6553 enforcement officers upon process issued by any appropriate court
6554 having jurisdiction over the property. Seizure without process
6555 may be made if:

6556 (a) The seizure is incident to an arrest or a search
6557 under a search warrant or an inspection under a lawful
6558 administrative inspection;

6559 (b) The property subject to seizure has been the
6560 subject of a prior judgment in favor of the state in a criminal
6561 injunction or forfeiture proceeding based upon this section.

6562 (3) When any property is seized pursuant to this section,
6563 proceedings under this section shall be instituted promptly.

6564 (4) (a) A petition for forfeiture shall be filed promptly
6565 in the name of the State of Mississippi with the clerk of the
6566 circuit court of the county in which the seizure is made. A copy
6567 of such petition shall be served upon the following persons by
6568 service of process in the same manner as in civil cases:

6569 (i) The owner of the property, if address is
6570 known;

6571 (ii) Any secured party who has registered his lien
6572 or filed a financing statement as provided by law, if the identity
6573 of such secured party can be ascertained by the state by making a
6574 good faith effort to ascertain the identity of such secured party
6575 as described in paragraphs (b), (c), (d), (e) and (f) of this
6576 subsection;

6577 (iii) Any other bona fide lienholder or secured
6578 party or other person holding an interest in the property in the
6579 nature of a security interest of whom the state has actual
6580 knowledge;

6581 (iv) A holder of a mortgage, deed of trust, lien
6582 or encumbrance of record, if the property is real estate by making

6583 a good faith inquiry as described in paragraph (g) of this
6584 section; and

6585 (v) Any person in possession of property subject
6586 to forfeiture at the time that it was seized.

6587 (b) If the property is a motor vehicle susceptible of
6588 titling under the Mississippi Motor Vehicle Title Law and if there
6589 is any reasonable cause to believe that the vehicle has been
6590 titled, the state shall make inquiry of the State Tax Commission
6591 as to what the records of the State Tax Commission show as to who
6592 is the record owner of the vehicle and who, if anyone, holds any
6593 lien or security interest which affects the vehicle.

6594 (c) If the property is a motor vehicle and is not
6595 titled in the State of Mississippi, then the state shall attempt
6596 to ascertain the name and address of the person in whose name the
6597 vehicle is licensed, and if the vehicle is licensed in a state
6598 which has in effect a certificate of title law, the state shall
6599 make inquiry of the appropriate agency of that state as to what
6600 the records of the agency show as to who is the record owner of
6601 the vehicle and who, if anyone, holds any lien, security interest,
6602 or other instrument in the nature of a security device which
6603 affects the vehicle.

6604 (d) If the property is of a nature that a financing
6605 statement is required by the laws of this state to be filed to
6606 perfect a security interest affecting the property and if there is
6607 any reasonable cause to believe that a financing statement
6608 covering the security interest has been filed under the laws of
6609 this state, the state shall make inquiry of the appropriate office
6610 designated in Section 75-9-501 as to what the records show as to
6611 who is the record owner of the property and who, if anyone, has
6612 filed a financing statement affecting the property.

6613 (e) If the property is an aircraft or part thereof and
6614 if there is any reasonable cause to believe that an instrument in
6615 the nature of a security device affects the property, then the

6616 state shall make inquiry of the administrator of the Federal
6617 Aviation Administration as to what the records of the
6618 administrator show as to who is the record owner of the property
6619 and who, if anyone, holds an instrument in the nature of a
6620 security device which affects the property.

6621 (f) In the case of all other personal property subject
6622 to forfeiture, if there is any reasonable cause to believe that an
6623 instrument in the nature of a security device affects the
6624 property, then the state shall make a good faith inquiry to
6625 identify the holder of any such instrument.

6626 (g) If the property is real estate, the state shall
6627 make inquiry at the appropriate places to determine who is the
6628 owner of record and who, if anyone is a holder of a bona fide
6629 mortgage, deed of trust, lien or encumbrance.

6630 (h) In the event the answer to an inquiry states that
6631 the record owner of the property is any person other than the
6632 person who was in possession of it when it was seized, or states
6633 that any person holds any lien, encumbrance, security interest,
6634 other interest in the nature of a security interest, mortgage or
6635 deed of trust which affects the property, the state shall cause
6636 any record owner and also any lienholder, secured party, other
6637 person who holds an interest in the property in the nature of a
6638 security interest, or holder of an encumbrance, mortgage or deed
6639 of trust which affects the property to be named in the petition of
6640 forfeiture and to be served with process in the same manner as in
6641 civil cases.

6642 (i) If the owner of the property cannot be found and
6643 served with a copy of the petition of forfeiture, or if no person
6644 was in possession of the property subject to forfeiture at the
6645 time that it was seized and the owner of the property is unknown,
6646 the state shall file with the clerk of the court in which the
6647 proceeding is pending an affidavit to such effect, whereupon the
6648 clerk of the court shall publish notice of the hearing addressed

6649 to "the Unknown Owner of _____," filling in the blank
6650 space with a reasonably detailed description of the property
6651 subject to forfeiture. Service by publication shall contain the
6652 other requisites prescribed in Section 11-33-41, and shall be
6653 served as provided in Section 11-33-37 for publication of notice
6654 for attachments at law.

6655 (j) No proceedings instituted pursuant to the
6656 provisions of this article shall proceed to hearing unless the
6657 judge conducting the hearing is satisfied that this section has
6658 been complied with. Any answer received from an inquiry required
6659 by paragraphs (b) through (g) of this section shall be introduced
6660 into evidence at the hearing.

6661 (5) (a) An owner of property that has been seized shall
6662 file a verified answer within twenty (20) days after the
6663 completion of service of process. If no answer is filed, the
6664 court shall hear evidence that the property is subject to
6665 forfeiture and forfeit the property to the state. If an answer is
6666 filed, a time for hearing on forfeiture shall be set within thirty
6667 (30) days of filing the answer or at the succeeding term of court
6668 if court would not be in progress within thirty (30) days after
6669 filing the answer. Provided, however, that upon request by the
6670 state or the owner of the property, the court may postpone said
6671 forfeiture hearing to a date past the time any criminal action is
6672 pending against said owner.

6673 (b) If the owner of the property has filed a verified
6674 answer denying that the property is subject to forfeiture, then
6675 the burden is on the state to prove that the property is subject
6676 to forfeiture. The burden of proof placed upon the state shall be
6677 clear and convincing proof. However, if no answer has been filed
6678 by the owner of the property, the petition for forfeiture may be
6679 introduced into evidence and is prima facie evidence that the
6680 property is subject to forfeiture.

6681 (c) At the hearing any claimant of any right, title or
6682 interest in the property may prove his lien, encumbrance, security
6683 interest, other interest in the nature of a security interest,
6684 mortgage or deed of trust to be bona fide and created without
6685 knowledge or consent that the property was to be used so as to
6686 cause the property to be subject to forfeiture.

6687 (d) If it is found that the property is subject to
6688 forfeiture, then the judge shall forfeit the property to the
6689 state. However, if proof at the hearing discloses that the
6690 interest of any bona fide lienholder, secured party, other person
6691 holding an interest in the property in the nature of a security
6692 interest or any holder of a bona fide encumbrance, mortgage or
6693 deed of trust is greater than or equal to the present value of the
6694 property, the court shall order the property released to him. If
6695 such interest is less than the present value of the property and
6696 if the proof shows that the property is subject to forfeiture, the
6697 court shall order the property forfeited to the state.

6698 (6) (a) All personal property, including money, which is
6699 forfeited to the state and is not capable of being sold at public
6700 auction shall be liquidated and the proceeds, after deduction of
6701 all storage and court costs, shall be forwarded to the State
6702 Treasurer and deposited in the General Fund of the state.

6703 (b) All real estate which is forfeited to the state
6704 shall be sold to the highest bidder at a public auction to be
6705 conducted by the state at such place, on such notice and in
6706 accordance with the same procedure, as far as practicable, as is
6707 required in the case of sales of land under execution of law. The
6708 proceeds of such sale shall first be applied to the cost and
6709 expense in administering and conducting such sale, then to the
6710 satisfaction of all mortgages, deeds of trusts, liens and
6711 encumbrances of record on such property. All proceeds in excess
6712 of the amount necessary for the cost of the sale of such land and

6713 the satisfaction of any liens thereon shall be deposited in the
6714 General Fund of the State Treasury.

6715 (c) All other property that has been seized by the
6716 state and that has been forfeited shall, except as otherwise
6717 provided, be sold at a public auction for cash by the state to the
6718 highest and best bidder after advertising the sale for at least
6719 once each week for three (3) consecutive weeks, the last notice to
6720 appear not more than ten (10) days nor less than five (5) days
6721 prior to such sale, in a newspaper having a general circulation
6722 throughout the State of Mississippi. Such notices shall contain a
6723 description of the property to be sold and a statement of the time
6724 and place of sale. It shall not be necessary to the validity of
6725 such sale either to have the property present at the place of sale
6726 or to have the name of the owner thereof stated in such notice.
6727 The proceeds of the sale shall be delivered to the circuit clerk
6728 and shall be disposed of as follows:

6729 (i) To any bona fide lienholder, secured party, or
6730 other party holding an interest in the property in the nature of a
6731 security interest, to the extent of his interest; and

6732 (ii) The balance, if any, after deduction of all
6733 storage and court costs, shall be forwarded to the State Treasurer
6734 and deposited with and used as general funds of the state.

6735 (d) The State Tax Commission shall issue a certificate
6736 of title to any person who purchases property under the provisions
6737 of this section when a certificate of title is required under the
6738 laws of this state.

6739 SECTION 28. Section 97-43-11, Mississippi Code of 1972, is
6740 amended as follows:

6741 97-43-11. (1) When any property is seized pursuant to
6742 Section 97-43-9, proceedings under this section shall be
6743 instituted promptly.

6744 (2) (a) A petition for forfeiture shall be filed promptly
6745 in the name of the State of Mississippi with the clerk of the

6746 circuit court of the county in which the seizure is made. A copy
6747 of such petition shall be served upon the following persons by
6748 service of process in the same manner as in civil cases:

6749 (i) The owner of the property, if address is
6750 known;

6751 (ii) Any secured party who has registered his lien
6752 or filed a financing statement as provided by law, if the identity
6753 of such secured party can be ascertained by the state by making a
6754 good faith effort to ascertain the identity of such secured party
6755 as described in paragraphs (b), (c), (d), (e) and (f) of this
6756 subsection;

6757 (iii) Any other bona fide lienholder or secured
6758 party or other person holding an interest in the property in the
6759 nature of a security interest of whom the state has actual
6760 knowledge;

6761 (iv) A holder of a mortgage, deed of trust, lien
6762 or encumbrance of record, if the property is real estate by making
6763 a good faith inquiry as described in paragraph (g) of this
6764 section; and

6765 (v) Any person in possession of property subject
6766 to forfeiture at the time that it was seized.

6767 (b) If the property is a motor vehicle susceptible of
6768 titling under the Mississippi Motor Vehicle Title Law and if there
6769 is any reasonable cause to believe that the vehicle has been
6770 titled, the state shall make inquiry of the State Tax Commission
6771 as to what the records of the State Tax Commission show as to who
6772 is the record owner of the vehicle and who, if anyone, holds any
6773 lien or security interest which affects the vehicle.

6774 (c) If the property is a motor vehicle and is not
6775 titled in the State of Mississippi, then the state shall attempt
6776 to ascertain the name and address of the person in whose name the
6777 vehicle is licensed, and if the vehicle is licensed in a state
6778 which has in effect a certificate of title law, the state shall

6779 make inquiry of the appropriate agency of that state as to what
6780 the records of the agency show as to who is the record owner of
6781 the vehicle and who, if anyone, holds any lien, security interest,
6782 or other instrument in the nature of a security device which
6783 affects the vehicle.

6784 (d) If the property is of a nature that a financing
6785 statement is required by the laws of this state to be filed to
6786 perfect a security interest affecting the property and if there is
6787 any reasonable cause to believe that a financing statement
6788 covering the security interest has been filed under the laws of
6789 this state, the state shall make inquiry of the appropriate office
6790 designated in Section 75-9-501 as to what the records show as to
6791 who is the record owner of the property and who, if anyone, has
6792 filed a financing statement affecting the property.

6793 (e) If the property is an aircraft or part thereof and
6794 if there is any reasonable cause to believe that an instrument in
6795 the nature of a security device affects the property, then the
6796 state shall make inquiry of the administrator of the Federal
6797 Aviation Administration as to what the records of the
6798 administrator show as to who is the record owner of the property
6799 and who, if anyone, holds an instrument in the nature of a
6800 security device which affects the property.

6801 (f) In the case of all other personal property subject
6802 to forfeiture, if there is any reasonable cause to believe that an
6803 instrument in the nature of a security device affects the
6804 property, then the state shall make a good faith inquiry to
6805 identify the holder of any such instrument.

6806 (g) If the property is real estate, the state shall
6807 make inquiry at the appropriate places to determine who is the
6808 owner of record and who, if anyone is a holder of a bona fide
6809 mortgage, deed of trust, lien or encumbrance.

6810 (h) In the event the answer to an inquiry states that
6811 the record owner of the property is any person other than the

6812 person who was in possession of it when it was seized, or states
6813 that any person holds any lien, encumbrance, security interest,
6814 other interest in the nature of a security interest, mortgage or
6815 deed of trust which affects the property, the state shall cause
6816 any record owner and also any lienholder, secured party, other
6817 person who holds an interest in the property in the nature of a
6818 security interest, or holder of an encumbrance, mortgage or deed
6819 of trust which affects the property to be named in the petition of
6820 forfeiture and to be served with process in the same manner as in
6821 civil cases.

6822 (i) If the owner of the property cannot be found and
6823 served with a copy of the petition of forfeiture, or if no person
6824 was in possession of the property subject to forfeiture at the
6825 time that it was seized and the owner of the property is unknown,
6826 the state shall file with the clerk of the court in which the
6827 proceeding is pending an affidavit to such effect, whereupon the
6828 clerk of the court shall publish notice of the hearing addressed
6829 to "the Unknown Owner of _____," filling in the blank
6830 space with a reasonably detailed description of the property
6831 subject to forfeiture. Service by publication shall contain the
6832 other requisites prescribed in Section 11-33-41, and shall be
6833 served as provided in Section 11-33-37 for publication of notice
6834 for attachments at law.

6835 (j) No proceedings instituted pursuant to the
6836 provisions of this article shall proceed to hearing unless the
6837 judge conducting the hearing is satisfied that this section has
6838 been complied with. Any answer received from an inquiry required
6839 by paragraphs (b) through (g) of this section shall be introduced
6840 into evidence at the hearing.

6841 (3) (a) An owner of property that has been seized shall
6842 file a verified answer within twenty (20) days after the
6843 completion of service of process. If no answer is filed, the
6844 court shall hear evidence that the property is subject to

6845 forfeiture and forfeit the property to the state. If an answer is
6846 filed, a time for hearing on forfeiture shall be set within thirty
6847 (30) days of filing the answer or at the succeeding term of court
6848 if court would not be in progress within thirty (30) days after
6849 filing the answer. Provided, however, that upon request by the
6850 state or the owner of the property, the court may postpone said
6851 forfeiture hearing to a date past the time any criminal action is
6852 pending against said owner.

6853 (b) If the owner of the property has filed a verified
6854 answer denying that the property is subject to forfeiture, then
6855 the burden is on the state to prove that the property is subject
6856 to forfeiture. The burden of proof placed upon the state shall be
6857 clear and convincing proof. However, if no answer has been filed
6858 by the owner of the property, the petition for forfeiture may be
6859 introduced into evidence and is prima facie evidence that the
6860 property is subject to forfeiture.

6861 (c) At the hearing any claimant of any right, title, or
6862 interest in the property may prove his lien, encumbrance, security
6863 interest, other interest in the nature of a security interest,
6864 mortgage or deed of trust to be bona fide and created without
6865 knowledge or consent that the property was to be used so as to
6866 cause the property to be subject to forfeiture.

6867 (d) If it is found that the property is subject to
6868 forfeiture, then the judge shall forfeit the property to the
6869 state. However, if proof at the hearing discloses that the
6870 interest of any bona fide lienholder, secured party, other person
6871 holding an interest in the property in the nature of a security
6872 interest or any holder of a bona fide encumbrance, mortgage or
6873 deed of trust is greater than or equal to the present value of the
6874 property, the court shall order the property released to him. If
6875 such interest is less than the present value of the property and
6876 if the proof shows that the property is subject to forfeiture, the
6877 court shall order the property forfeited to the state.

6878 (4) (a) All personal property, including money, which is
6879 forfeited to the state and is not capable of being sold at public
6880 auction shall be liquidated and the proceeds, after deduction of
6881 all storage and court costs, shall be forwarded to the State
6882 Treasurer and deposited in the General Fund of the state.

6883 (b) All real estate which is forfeited to the state
6884 shall be sold to the highest bidder at a public auction to be
6885 conducted by the state at such place, on such notice and in
6886 accordance with the same procedure, as far as practicable, as is
6887 required in the case of sales of land under execution of law. The
6888 proceeds of such sale shall first be applied to the cost and
6889 expense in administering and conducting such sale, then to the
6890 satisfaction of all mortgages, deeds of trusts, liens and
6891 encumbrances of record on such property. All proceeds in excess
6892 of the amount necessary for the cost of the sale of such land and
6893 the satisfaction of any liens thereon shall be deposited in the
6894 General Fund of the State Treasury.

6895 (c) All other property that has been seized by the
6896 state and that has been forfeited shall, except as otherwise
6897 provided, be sold at a public auction for cash by the state to the
6898 highest and best bidder after advertising the sale for at least
6899 once each week for three (3) consecutive weeks, the last notice to
6900 appear not more than ten (10) days nor less than five (5) days
6901 prior to such sale, in a newspaper having a general circulation
6902 throughout the State of Mississippi. Such notices shall contain a
6903 description of the property to be sold and a statement of the time
6904 and place of sale. It shall not be necessary to the validity of
6905 such sale either to have the property present at the place of sale
6906 or to have the name of the owner thereof stated in such notice.
6907 The proceeds of the sale shall be delivered to the circuit clerk
6908 and shall be disposed of as follows:

6909 (i) To any bona fide lienholder, secured party or
6910 other party holding an interest in the property in the nature of a
6911 security interest, to the extent of his interest; and

6912 (ii) The balance, if any, after deduction of all
6913 storage and court costs, shall be forwarded to the State Treasurer
6914 and deposited with and used as general funds of the state.

6915 (d) The State Tax Commission shall issue a certificate
6916 of title to any person who purchases property under the provisions
6917 of this section when a certificate of title is required under the
6918 laws of this state.

6919 SECTION 29. Section 53-3-41, Mississippi Code of 1972, is
6920 amended as follows:

6921 53-3-41. (1) For the purposes of this section, the
6922 following terms shall have the meanings ascribed herein:

6923 (a) "Oil and gas production" means any oil, natural
6924 gas, condensate of either, natural gas liquids, other gaseous,
6925 liquid or dissolved hydrocarbons, sulfur or helium, or other
6926 substance produced as a by-product or adjunct to their production,
6927 or any combination of these, which is severed, extracted or
6928 produced from the ground, the seabed or other submerged lands
6929 within the jurisdiction of the State of Mississippi. Any such
6930 substance, including recoverable or recovered natural gas liquids,
6931 which is transported to or in a natural gas pipeline or natural
6932 gas gathering system, or otherwise transported or sold for use as
6933 natural gas, or is transported or sold for the extraction of
6934 helium or natural gas liquids is gas production. Any such
6935 substance which is transported or sold to persons and for purposes
6936 not included in the foregoing natural gas definition is oil
6937 production.

6938 (b) "Interest owner" means a person owning an entire or
6939 fractional interest of any kind or nature in oil or gas production
6940 at the time of severance, or a person who has an express, implied

6941 or constructive right to receive a monetary payment determined by
6942 the value of oil or gas production or by the amount of production.

6943 (c) "Royalty owner" means any person who possesses an
6944 interest in the production, but who is not an owner as defined in
6945 Section 53-1-3(g).

6946 (d) "Disbursing agent" shall mean that person who,
6947 pursuant to an oil and gas lease, operating agreement, purchase
6948 contract, or otherwise, assumes the responsibility of paying
6949 royalty proceeds derived from a well's oil and gas production to
6950 the royalty owner or owners legally entitled thereto. A first
6951 purchaser shall not be deemed to be the disbursing agent unless
6952 the first purchaser expressly assumes such responsibility in the
6953 purchase contract.

6954 (e) "First purchaser" means the first person who
6955 purchases oil or gas production from the interest owners after the
6956 production is severed and may include the operator if the operator
6957 acts as a purchaser of production attributable to other interest
6958 owners.

6959 (f) An "operator" is a person engaged in the business
6960 of severing oil or gas production from the ground, whether for
6961 himself alone, for other persons alone or for himself and others.

6962 (2) Whenever a disbursing agent has not disbursed the
6963 royalty proceeds derived from the well's production to the royalty
6964 owner within one hundred twenty (120) days following the date of
6965 first sale of oil or gas in the event the disbursing agent is a
6966 first purchaser of oil or gas, or within one hundred twenty (120)
6967 days following the date the disbursing agent receives the proceeds
6968 from such production if the disbursing agent is not the first
6969 purchaser, such royalty owner shall have a lien to secure the
6970 payment of the royalty proceeds. The lien shall attach to the
6971 proceeds from such production received by the disbursing agent
6972 attributable to the royalty owner's interest.

6973 (3) The lien provided by this section shall be effective
6974 against a third party only from the time a financing statement
6975 evidencing such lien is filed in the same manner as financing
6976 statements evidencing security interests in minerals are filed in
6977 accordance with the provisions of Section 75-9-501.

6978 (4) The lien provided by this section shall expire one (1)
6979 year after it becomes effective against a third party, unless
6980 judicial proceedings have been commenced to assert it or unless
6981 insolvency proceedings have been commenced by or against the
6982 disbursing agent, in which event the lien shall remain effective
6983 until termination of the insolvency proceedings or until
6984 expiration of the one-year period, whichever occurs later.

6985 (5) Whenever there is a conflict between a lien under this
6986 section and a security interest under Title 75, Chapter 9, the
6987 lien or security interest first to be filed has priority. Liens
6988 provided for in this section shall have priorities among
6989 themselves according to priority in time of filing of such liens.

6990 (6) The filing required by this section shall be a financing
6991 statement as provided for in Section 75-9-310 and shall be subject
6992 to the provisions of Part 5 of Article 9 of the Uniform Commercial
6993 Code, except that in order for the filing to be sufficient, it
6994 shall not be necessary for the debtor to sign the financing
6995 statement, and the filing shall be effective for a period of only
6996 one (1) year from the date of filing.

6997 (7) This section does not impair an operator's right to set
6998 off or withhold funds from other interest owners as security for
6999 or in satisfaction of any debt or security interest. This section
7000 does not impair a disbursing agent's right to withhold funds in
7001 the event a question is raised concerning the title or ownership
7002 of, or right to sell, the oil or gas production. In case of a
7003 dispute between interest owners, a good-faith tender by the
7004 disbursing agent of funds to the person the interest owners shall
7005 agree on, or to a court of competent jurisdiction in the event of

7006 litigation or bankruptcy, shall operate as a tender of the funds
7007 to both.

7008 (8) Nothing in this section shall be construed to enlarge or
7009 diminish the rights and obligations provided to or imposed on
7010 interest owners, royalty owners, disbursing agents, first
7011 purchasers, or operators by contract or otherwise by law. The
7012 sole purpose of this section is to provide royalty owners a lien
7013 under the conditions provided herein.

7014 SECTION 30. Section 75-11-106, Mississippi Code of 1972, is
7015 amended as follows:

7016 75-11-106. (1) If a security interest is perfected or has
7017 priority on April 1, 1978, as to all persons or as to certain
7018 persons without any filing or recording, and if the filing of a
7019 financing statement would be required for the perfection or
7020 priority of the security interest against those persons under the
7021 revised Uniform Commercial Code, the perfection and priority
7022 rights of the security interest shall continue until three (3)
7023 years after April 1, 1978. The perfection will then lapse unless
7024 a financing statement is filed as provided in Section 75-11-104 or
7025 unless the security interests is perfected otherwise than by
7026 filing.

7027 (2) A financing statement may be filed within six (6) months
7028 before the perfection of a security interest would otherwise
7029 lapse. Any such financing statement may be signed by either the
7030 debtor or the secured party. It must identify the security
7031 agreement, statement or notice (however denominated in any statute
7032 or other law repealed or modified by Chapter 452, Laws of 1977),
7033 state the office where and the date when the last filing, refiling
7034 or recording, if any, was made with respect thereto, and the
7035 filing number, if any, or book and page, if any, of recording and
7036 further state that the security agreement, statement or notice,
7037 however denominated, in another filing office under the old
7038 Uniform Commercial Code or under any statute or other law repealed

7039 or modified by Chapter 452, Laws of 1977, is still effective.
7040 Section 75-9-501 * * * determines the proper place to file such a
7041 financing statement. Except as specified in this subsection, the
7042 provisions of Section 75-9-510 for continuation statements apply
7043 to such a financing statement.

7044 SECTION 31. Section 85-8-9, Mississippi Code of 1972, is
7045 amended as follows:

7046 85-8-9. (1) If a notice of federal lien, a refiling of a
7047 notice of federal lien, or a notice of revocation of any
7048 certificate described in subsection (2) of this section is
7049 presented to the filing officer who is:

7050 (a) The Secretary of State, he shall cause the notice
7051 to be marked, held and indexed in accordance with the provisions
7052 of subsection (4) of Section 75-9-501, Mississippi Code of 1972,
7053 of the Uniform Commercial Code as if the notice were a financing
7054 statement within the meaning of that code; or

7055 (b) Chancery clerk, he shall endorse thereon his
7056 identification and the date and time of receipt and forthwith file
7057 it alphabetically or enter it in an alphabetical index showing the
7058 name and address of the person named in the notice, the date and
7059 time of receipt, the title and address of the official party
7060 certifying the lien, and the total amount appearing on the notice
7061 of lien.

7062 (2) If a certificate of release, nonattachment, discharge or
7063 subordination of any lien is presented to the Secretary of State
7064 for filing he shall:

7065 (a) Cause a certificate of release or nonattachment to
7066 be marked, held and indexed as if the certificate were a
7067 termination statement within the meaning of the Uniform Commercial
7068 Code, but the notice of lien to which the certificate relates may
7069 not be removed from the files; and

7070 (b) Cause a certificate of discharge or subordination
7071 to be held, marked and indexed as if the certificate were a

7072 release of collateral within the meaning of the Uniform Commercial
7073 Code.

7074 (3) If a refiled notice of federal lien referred to in
7075 subsection (1) of this section or any of the certificates or
7076 notices referred to in subsection (2) of this section is presented
7077 for filing with the chancery clerk, he shall permanently attach
7078 the refiled notice or the certificate to the original notice of
7079 lien and enter the refiled notice of the certificate with the date
7080 of filing in any alphabetical lien index on the line where the
7081 original notice of lien is entered.

7082 (4) Upon request of any person, the filing officer shall
7083 issue his certificate showing whether there is on file, on the
7084 date and hour stated therein, any notice of lien or certificate or
7085 notice affecting any lien, filed under this act, naming a
7086 particular person, and if a notice or certificate is on file,
7087 giving the date and hour of its filing. The fee for a certificate
7088 is Five Dollars (\$5.00). Upon request the filing officer shall
7089 furnish a copy of any notice of federal lien or notice or
7090 certificate affecting a federal lien for a fee of Two Dollars
7091 (\$2.00) per page.

7092 SECTION 32. Section 99-41-23, Mississippi Code of 1972, is
7093 amended as follows:

7094 99-41-23. (1) Compensation for work loss may not
7095 exceed Four Hundred Fifty Dollars (\$450.00) per week, not to
7096 exceed fifty-two (52) weeks; the total amount of the award may not
7097 exceed the aggregate limitation of this section.

7098 (2) Compensation for economic loss of a dependent may not
7099 exceed Four Hundred Fifty Dollars (\$450.00) per week not to exceed
7100 fifty-two (52) weeks; provided, however, if there is more than one
7101 (1) dependent per victim the amount of compensation awarded shall
7102 be prorated among the dependents and the total amount of the award
7103 may not exceed the aggregate limitation of this section.

7104 (3) In the event of the victim's death, compensation for
7105 work loss of claimant may not exceed Four Hundred Fifty Dollars
7106 (\$450.00) per week not to exceed one (1) week; provided, however,
7107 if there is more than one (1) claimant per victim, the amount of
7108 compensation awarded shall be prorated among the claimants and the
7109 total amount of the award may not exceed Four Hundred Fifty
7110 Dollars (\$450.00).

7111 (4) Compensation payable to a victim and to all other
7112 claimants sustaining economic loss because of injury to or death
7113 of that victim may not exceed Ten Thousand Dollars (\$10,000.00) in
7114 the aggregate.

7115 (5) A determination that compensation shall be awarded may
7116 provide for payment to a claimant in a lump sum or in
7117 installments. All medical bills may be paid directly to affected
7118 health care providers. At the request of the claimant, the
7119 director may convert future economic loss, other than allowable
7120 expense, to a lump sum, but only upon a finding of either of the
7121 following:

7122 (a) That the award in a lump sum will promote the
7123 interests of the claimant; or

7124 (b) That the present value of all future economic loss,
7125 other than allowable expense, does not exceed One Thousand Dollars
7126 (\$1,000.00).

7127 (6) An award payable in installments for future economic
7128 loss may be made only for a period as to which the future economic
7129 loss can reasonably be determined. An award payable in
7130 installments for future economic loss may be modified upon
7131 findings that a material and substantial change of circumstances
7132 has occurred.

7133 (7) An award shall not be subject to execution, attachment,
7134 garnishment or other process, except that an award shall not be
7135 exempt from orders for the withholding of support for minor
7136 children, and except that an award for allowable expense shall not

7137 be exempt from a claim of a creditor to the extent that such
7138 creditor has provided products, services or accommodations, the
7139 costs of which are included in the award.

7140 (8) An assignment by the claimant to any future award under
7141 the provisions of this chapter is unenforceable, except:

7142 (a) An assignment of any award for work loss to assure
7143 payment of court-ordered alimony, maintenance or child support; or

7144 (b) An assignment for any award for allowable expense
7145 to the extent that the benefits are for the cost of products,
7146 services or accommodations necessitated by the injury or death on
7147 which the claim is based and which are provided or are to be
7148 provided by the assignee.

7149 (9) Subsections (7) and (8) of this section prevail over
7150 Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform
7151 Commercial Code to the extent, if any, that Sections 75-9-406 and
7152 75-9-408 may otherwise be applicable.

7153 SECTION 33. Section 85-7-1, Mississippi Code of 1972, is
7154 amended as follows:

7155 85-7-1. (1) Every employer shall have a lien on the share
7156 or interest of his employee in any crop made under such
7157 employment, for all advances of money, and for the fair market
7158 value of other things advanced by him, or anyone at his request,
7159 for supplies for himself, his family and business during the
7160 existence of such employment, which lien the employer may offset,
7161 recoup, or otherwise assert and maintain.

7162 (2) Every employee, laborer, cropper, part owner, overseer
7163 or manager, or other person who may aid by his labor to make,
7164 gather, or prepare for sale or market any crop, shall have a lien
7165 on the interest of the person who contracts with him for such
7166 labor for his wages, share or interest in such crop, whatever may
7167 be the kind of wages or the nature of the interest, which lien
7168 such employee, laborer, cropper, part owner, overseer or manager,

7169 or other person may offset, recoup or otherwise assert and
7170 maintain.

7171 (3) Except as provided in subsection (4) of this section,
7172 any lien arising under the provisions of this section shall be
7173 paramount to all liens and encumbrances or rights of any kind
7174 created by or against the person so contracting for such
7175 assistance when perfected in accordance with Uniform Commercial
7176 Code Article 9 - Secured Transactions (Section 75-9-101 et seq.),
7177 except the lien of the lessor of the land on which the crop is
7178 made, for rent and supplies furnished, as provided in the chapter
7179 on "Landlord and Tenant," appearing as Chapter 7 of Title 89,
7180 Mississippi Code of 1972.

7181 (4) Any lien arising under the provisions of subsection (2)
7182 of this section in favor of any person other than an employee,
7183 laborer, cropper, part owner, overseer or manager as to crops or
7184 the proceeds thereof shall be effective against a third party only
7185 for a period of twenty-one (21) days from and after the time the
7186 labor is completed, unless within such period of time * * * the
7187 lien is perfected in accordance with * * * Uniform Commercial Code
7188 Article 9 - Secured Transactions (Section 75-9-101 et seq.). Any
7189 such lien in favor of any person other than an employee, laborer,
7190 cropper, overseer or manager * * * which * * * has not been
7191 perfected within the twenty-one-day period as herein provided
7192 shall, upon * * * subsequent perfection of such lien, have the
7193 priority as against a third party to which a perfected security
7194 interest may be entitled under Uniform Commercial Code Article 9 -
7195 Secured Transactions (Section 75-9-101 et seq.).

7196 SECTION 34. Section 89-7-51, Mississippi Code of 1972, is
7197 amended as follows:

7198 89-7-51. (1) Every lessor of land shall have a lien on the
7199 agricultural products of the leased premises, however and by
7200 whomsoever produced, to secure the payment of the rent and of
7201 money advanced to the tenant, and the fair market value of all

7202 advances made by him to his tenant for supplies for the tenant and
7203 others for whom he may contract, and for his business carried on
7204 upon the leased premises. This lien shall be paramount to all
7205 other liens, claims, or demands upon such products when perfected
7206 in accordance with Uniform Commercial Code Article 9 - Secured
7207 Transactions (Section 75-9-101, et seq.). The claim of the lessor
7208 for supplies furnished may be enforced in the same manner and
7209 under the same circumstances as his claim for rent may be; and all
7210 the provisions of law as to attachment for rent and proceedings
7211 under it shall be applicable to a claim for supplies furnished,
7212 and such attachment may be levied on any goods and chattels liable
7213 for rent, as well as on the agricultural products.

7214 (2) All articles of personal property, except a stock of
7215 merchandise sold in the normal course of business, owned by the
7216 lessee of real property and situated on the leased premises shall
7217 be subject to a lien in favor of the lessor to secure the payment
7218 of rent for such premises as has been contracted to be paid,
7219 whether or not then due. Such lien shall be subject to all prior
7220 liens or other security interests perfected according to law. No
7221 such articles of personal property may be removed from the leased
7222 premises until such rent is paid except with the written consent
7223 of the lessor. All of the provisions of law as to attachment for
7224 rent and proceedings thereunder shall be applicable with reference
7225 to the lessor's lien under this subsection.

7226 SECTION 35. Section 89-7-53, Mississippi Code of 1972, is
7227 amended as follows:

7228 89-7-53. A landlord shall have, for one (1) year, a lien for
7229 the reasonable value of all live stock, farming tools, implements
7230 and vehicles furnished by him to his tenant, upon the property so
7231 furnished and, as an additional security therefor, upon all the
7232 agricultural products raised upon the leased premises. The said
7233 property so furnished shall be considered as supplies and the lien
7234 therefor may be enforced accordingly. Such lien shall be a

7235 superior and first lien when perfected in accordance with Uniform
7236 Commercial Code Article 9 - Secured Transactions (Section 75-9-101
7237 et seq.), and need not otherwise be evidenced by writing * * *.

7238 SECTION 36. The following provision shall be codified as
7239 Section 7-3-59, Mississippi Code of 1972:

7240 7-3-59. (1) All fees collected by the office of the
7241 Secretary of State under Section 75-9-525 shall be deposited in a
7242 special fund which is hereby created in the State Treasury to be
7243 designated as the UCC Article 9 Fund. Money in this fund shall be
7244 used to operate the activities of the office of the Secretary of
7245 State as necessary to administer the filing and research
7246 provisions of Revised Article 9 of the Uniform Commercial Code and
7247 to pay to each chancery clerk such amounts as that clerk shall be
7248 owed under subsection (2) of this section. The expenditure of the
7249 funds deposited in this fund shall be paid by the State Treasurer
7250 upon requisition signed by the office of the Secretary of State.

7251 (2) For each filing and indexing of a financing statement
7252 under Part 5 (Filing) of Title 75, Chapter 9 (Uniform Commercial
7253 Code Revised Article 9 - Secured Transactions), the Secretary of
7254 State shall remit the following fee to the chancery clerk of the
7255 Mississippi county, if any, indicated on the face of the financing
7256 statement by county code or county name as the domicile of the
7257 debtor, or, if no county is so indicated, the Mississippi county
7258 of the address of the debtor stated on the financing statement.

7259 (a) Five Dollars (\$5.00), when the financing statement
7260 is communicated in writing, either in the standard form prescribed
7261 by the Secretary of State or not in the standard form so
7262 prescribed, plus Two Dollars (\$2.00) for each additional debtor
7263 name more than one (1) required to be indexed.

7264 (b) Five Dollars (\$5.00) if the financing statement is
7265 communicated by another medium authorized by filing-office rule.

7266 (3) The Secretary of State shall remit to each chancery
7267 clerk not less than quarterly the amount owed under subsection (2)
7268 of this section.

7269 SECTION 37. This act shall take effect and be in force from
7270 and after July 1, 2001.