

By: Senator(s) Carlton

To: Judiciary

SENATE BILL NO. 2626
(As Passed the Senate)

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; TO
26 CODIFY NEW CODE SECTION 75-77-6, MISSISSIPPI CODE OF 1972, TO
27 ENACT RULES FOR A WARRANTY CLAIM SUBMITTED TO A SUPPLIER BY A
28 RETAILER; TO AMEND SECTION 75-77-19, MISSISSIPPI CODE OF 1972, IN
29 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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34 Article 9 repealed in Section 2 of this act:

ARTICLE 9 - SECURED TRANSACTIONS

PART 1

GENERAL PROVISIONS

38 SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

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

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

42 (a) In this article:

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

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

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

73 (A) Authenticated by a secured party;

74 (B) Indicating the aggregate unpaid secured
75 obligations as of a date not more than thirty-five (35) days
76 earlier or thirty-five (35) days later than the date of the
77 record; and

78 (C) Identifying the components of the obligations
79 in reasonable detail.

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

82 (A) Which secures payment or performance of an
83 obligation for:

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

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

88 (B) Which is created by statute in favor of a
89 person that:

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

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

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

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

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

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

102 (ii) Attaches to the minerals as extracted;

103 or

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

107 (7) "Authenticate" means:

108 (A) To sign; or

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

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

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

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

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

137 an instrument or series of instruments, the group of records taken
138 together constitutes chattel paper.

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

141 (A) Proceeds to which a security interest
142 attaches;

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

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

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

148 (A) The claimant is an organization; or

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

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

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

154 (14) "Commodity account" means an account maintained by
155 a commodity intermediary in which a commodity contract is carried
156 for a commodity customer.

157 (15) "Commodity contract" means a commodity futures
158 contract, an option on a commodity futures contract, a commodity
159 option, or another contract if the contract or option is:

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

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

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

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

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

171 (B) In the ordinary course of its business
172 provides clearance or settlement services for a board of trade
173 that has been designated as a contract market pursuant to federal
174 commodities law.

175 (18) "Communicate" means:

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

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

179 (C) In the case of transmission of a record to or
180 by a filing office, to transmit a record by any means prescribed
181 by filing-office rule.

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

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

187 (A) The merchant:

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

190 (ii) Is not an auctioneer; and

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

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

196 (C) The goods are not consumer goods immediately
197 before delivery; and

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

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

202 (22) "Consumer debtor" means a debtor in a consumer
203 transaction.

204 (23) "Consumer goods" means goods that are used or
205 bought for use primarily for personal, family, or household
206 purposes.

207 (24) "Consumer-goods transaction" means a consumer
208 transaction in which:

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

211 (B) A security interest in consumer goods secures
212 the obligation.

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

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

223 (27) "Continuation statement" means an amendment of a
224 financing statement which:

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

227 (B) Indicates that it is a continuation statement
228 for, or that it is filed to continue the effectiveness of, the
229 identified financing statement.

230 (28) "Debtor" means:

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

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

236 (C) A consignee.

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

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

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

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

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

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

254 (A) Crops grown, growing, or to be grown,
255 including:

256 (i) Crops produced on trees, vines, and
257 bushes; and

258 (ii) Aquatic goods produced in aquacultural
259 operations;

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

262 (C) Supplies used or produced in a farming
263 operation; or

264 (D) Products of crops or livestock in their
265 unmanufactured states.

266 (35) "Farming operation" means raising, cultivating,
267 propagating, fattening, grazing, or any other farming, livestock
268 or aquacultural operation.

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

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

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

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

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

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

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

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

294 (44) "Goods" means all things that are movable when a
295 security interest attaches. The term includes (i) fixtures, (ii)
296 standing timber that is to be cut and removed under a conveyance
297 or contract for sale, (iii) the unborn young of animals, (iv)
298 crops grown, growing, or to be grown, even if the crops are

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

328 (45) "Governmental unit" means a subdivision, agency,
329 department, county, parish, municipality or other unit of the
330 government of the United States, a state, or a foreign country.
331 The term includes an organization having a separate corporate

332 existence if the organization is eligible to issue debt on which
333 interest is exempt from income taxation under the laws of the
334 United States.

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

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

348 (48) "Inventory" means goods, other than farm products,
349 which:

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

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

353 (C) Are furnished by a person under a contract of
354 service; or

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

357 (49) "Investment property" means a security, whether
358 certificated or uncertificated, security entitlement, securities
359 account, commodity contract or commodity account.

360 (50) "Jurisdiction of organization," with respect to a
361 registered organization, means the jurisdiction under whose law
362 the organization is organized.

363 (51) "Letter-of-credit right" means a right to payment
364 or performance under a letter of credit, whether or not the

365 beneficiary has demanded or is at the time entitled to demand
366 payment or performance. The term does not include the right of a
367 beneficiary to demand payment or performance under a letter of
368 credit.

369 (52) "Lien creditor" means:

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

372 (B) An assignee for benefit of creditors from the
373 time of assignment;

374 (C) A trustee in bankruptcy from the date of the
375 filing of the petition; or

376 (D) A receiver in equity from the time of
377 appointment.

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

393 (54) "Manufactured-home transaction" means a secured
394 transaction:

395 (A) That creates a purchase-money security
396 interest in a manufactured home, other than a manufactured home
397 held as inventory; or

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

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

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

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

412 (58) "Noncash proceeds" means proceeds other than cash
413 proceeds.

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

422 (60) "Original debtor," except as used in Section
423 75-9-310(c), means a person that, as debtor, entered into a
424 security agreement to which a new debtor has become bound under
425 Section 75-9-203(d).

426 (61) "Payment intangible" means a general intangible
427 under which the account debtor's principal obligation is a
428 monetary obligation.

429 (62) "Person related to," with respect to an
430 individual, means:

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

439 (63) "Person related to," with respect to an
440 organization, means:

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

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

445 (C) An officer or director of, or a person
446 performing similar functions with respect to, a person described
447 in subparagraph (A);

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

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

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

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

457 (B) Whatever is collected on, or distributed on
458 account of, collateral;

459 (C) Rights arising out of collateral;

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

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

469 (64A) "Production-money crops" means crops that secure
470 a production-money obligation incurred with respect to the
471 production of those crops.

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

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

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

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

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

492 (A) Debt securities are issued;

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

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

497 assignee of a secured obligation, or assignor or assignee of a
498 security interest is a state or a governmental unit of a state.

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

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

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

515 (71) "Secondary obligor" means an obligor to the extent
516 that:

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

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

521 (72) "Secured party" means:

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

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

526 (C) A consignor;

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

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

533 (F) A person that holds a security interest
534 arising under Section 75-2-401, 75-2-505, 75-2-711(3),
535 75-2A-508(5), 75-4-210, or 75-5-118.

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

538 (74) "Send," in connection with a record or
539 notification, means:

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

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

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

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

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

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

562 (79) "Termination statement" means an amendment of a
563 financing statement which:

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

566 (B) Indicates either that it is a termination
567 statement or that the identified financing statement is no longer
568 effective.

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

571 (A) Operating a railroad, subway, street railway,
572 or trolley bus;

573 (B) Transmitting communications electrically,
574 electromagnetically, or by light;

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

576 (D) Transmitting or producing and transmitting
577 electricity, steam, gas, or water.

578 (b) The following definitions in other articles apply to
579 this article:

580 "Applicant" Section 75-5-102.

581 "Beneficiary" Section 75-5-102.

582 "Broker" Section 75-8-102.

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

584 "Check" Section 75-3-104.

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

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

587 "Customer" Section 75-4-104.

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

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

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

591 "Issuer" (with respect to
592 a letter of credit or
593 letter-of-credit right) Section 75-5-102.

594 "Issuer" (with respect to a

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

620 (c) Article 1 contains general definitions and principles of
621 construction and interpretation applicable throughout this
622 article.

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

625 (a) In this section:

626 (1) "Purchase-money collateral" means goods or software
627 that secures a purchase-money obligation incurred with respect to
628 that collateral; and

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

633 (b) A security interest in goods is a purchase-money
634 security interest:

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

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

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

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

651 (1) The debtor acquired its interest in the software in
652 an integrated transaction in which it acquired an interest in the
653 goods; and

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

656 (d) The security interest of a consignor in goods that are
657 the subject of a consignment is a purchase-money security interest
658 in inventory.

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

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

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

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

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

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

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

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

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

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

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

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

692 from that limitation the nature of the proper rule in
693 consumer-goods transactions and may continue to apply established
694 approaches.

695 **SECTION 75-9-103A. "Production-money crops";**
696 **"production-money obligation"; production-money security interest;**
697 **burden of establishing.**

698 (a) A security interest in crops is a production-money
699 security interest to the extent that the crops are
700 production-money crops.

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

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

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

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

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

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

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

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

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

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

724 (d) A secured party claiming a production-money security
725 interest has the burden of establishing the extent to which the
726 security interest is a production-money security interest.

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

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

729 (1) The secured party is the bank with which the
730 deposit account is maintained;

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

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

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

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

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

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

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

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

755 (5) Each copy of the authoritative copy and any copy of
756 a copy is readily identifiable as a copy that is not the
757 authoritative copy; and

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

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

761 (a) A person has control of a certificated security,
762 uncertificated security, or security entitlement as provided in
763 Section 75-8-106.

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

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

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

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

776 **SECTION 75-9-107. Control of letter-of-credit right.** A
777 secured party has control of a letter-of-credit right to the
778 extent of any right to payment or performance by the issuer or any
779 nominated person if the issuer or nominated person has consented
780 to an assignment of proceeds of the letter of credit under Section
781 75-5-114(c) or otherwise applicable law or practice.

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

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

787 (b) Except as otherwise provided in subsection (d), a
788 description of collateral reasonably identifies the collateral if
789 it identifies the collateral by:

790 (1) Specific listing;

791 (2) Category;

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

794 (4) Quantity;

795 (5) Computational or allocational formula or procedure;

796 or

797 (6) Except as otherwise provided in subsection (c), any
798 other method, if the identity of the collateral is objectively
799 determinable.

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

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

806 (1) The collateral by those terms or as investment
807 property; or

808 (2) The underlying financial asset or commodity
809 contract.

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

812 (1) A commercial tort claim; or

813 (2) In a consumer transaction, consumer goods, a
814 security entitlement, a securities account, or a commodity
815 account.

816 SUBPART 2. APPLICABILITY OF ARTICLE

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

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

820 (1) A transaction, regardless of its form, that creates
821 a security interest in personal property or fixtures by contract;
822 (2) An agricultural lien;
823 (3) A sale of accounts, chattel paper, payment
824 intangibles, or promissory notes;
825 (4) A consignment;
826 (5) A security interest arising under Section 75-2-401,
827 75-2-505, 75-2-711(3), or 75-2A-508(5), as provided in Section
828 75-9-110; and
829 (6) A security interest arising under Section 75-4-210
830 or 75-5-118.

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

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

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

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

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

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

851 (d) This article does not apply to:

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

- 853 (2) A lien, other than an agricultural lien, given by
854 statute or other rule of law for services or materials, but
855 Section 75-9-333 applies with respect to priority of the lien;
- 856 (3) An assignment of a claim for wages, salary, or
857 other compensation of an employee;
- 858 (4) A sale of accounts, chattel paper, payment
859 intangibles, or promissory notes as part of a sale of the business
860 out of which they arose;
- 861 (5) An assignment of accounts, chattel paper, payment
862 intangibles, or promissory notes which is for the purpose of
863 collection only;
- 864 (6) An assignment of a right to payment under a
865 contract to an assignee that is also obligated to perform under
866 the contract;
- 867 (7) An assignment of a single account, payment
868 intangible, or promissory note to an assignee in full or partial
869 satisfaction of a preexisting indebtedness;
- 870 (8) A transfer of an interest in or an assignment of a
871 claim under a policy of insurance, other than an assignment by or
872 to a health-care provider of a health-care-insurance receivable
873 and any subsequent assignment of the right to payment, but
874 Sections 75-9-315 and 75-9-322 apply with respect to proceeds and
875 priorities in proceeds;
- 876 (9) An assignment of a right represented by a judgment,
877 other than a judgment taken on a right to payment that was
878 collateral;
- 879 (10) A right of recoupment or set-off, but:
- 880 (A) Section 75-9-340 applies with respect to the
881 effectiveness of rights of recoupment or set-off against deposit
882 accounts; and
- 883 (B) Section 75-9-404 applies with respect to
884 defenses or claims of an account debtor;

917 **SECTION 75-9-201. General effectiveness of security**
918 **agreement.**

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

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

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

937 (d) This article does not:

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

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

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

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

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

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

958 (1) Value has been given;

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

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

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

966 (B) The collateral is not a certificated security
967 and is in the possession of the secured party under Section
968 75-9-313 pursuant to the debtor's security agreement;

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

973 (D) The collateral is deposit accounts, electronic
974 chattel paper, investment property, or letter-of-credit rights,
975 and the secured party has control under Section 75-9-104,
976 75-9-105, 75-9-106 or 75-9-107 pursuant to the debtor's security
977 agreement.

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

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

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

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

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

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

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

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

1000 (f) The attachment of a security interest in collateral
1001 gives the secured party the rights to proceeds provided by Section
1002 75-9-315 and is also attachment of a security interest in a
1003 supporting obligation for the collateral.

1004 (g) The attachment of a security interest in a right to
1005 payment or performance secured by a security interest or other
1006 lien on personal or real property is also attachment of a security
1007 interest in the security interest, mortgage, or other lien.

1008 (h) The attachment of a security interest in a securities
1009 account is also attachment of a security interest in the security
1010 entitlements carried in the securities account.

1011 (i) The attachment of a security interest in a commodity
1012 account is also attachment of a security interest in the commodity
1013 contracts carried in the commodity account.

1014 **SECTION 75-9-204. After-acquired property; future advances.**

1015 (a) Except as otherwise provided in subsection (b), a
1016 security agreement may create or provide for a security interest
1017 in after-acquired collateral.

1018 (b) A security interest does not attach under a term
1019 constituting an after-acquired property clause to:

1020 (1) Consumer goods, other than an accession when given
1021 as additional security, unless the debtor acquires rights in them
1022 within ten (10) days after the secured party gives value; or

1023 (2) A commercial tort claim.

1024 (c) A security agreement may provide that collateral
1025 secures, or that accounts, chattel paper, payment intangibles, or
1026 promissory notes are sold in connection with, future advances or
1027 other value, whether or not the advances or value are given
1028 pursuant to commitment.

1029 **SECTION 75-9-205. Use or disposition of collateral**
1030 **permissible.**

1031 (a) A security interest is not invalid or fraudulent against
1032 creditors solely because:

1033 (1) The debtor has the right or ability to:

1034 (A) Use, commingle, or dispose of all or part of
1035 the collateral, including returned or repossessed goods;

1036 (B) Collect, compromise, enforce, or otherwise
1037 deal with collateral;

1038 (C) Accept the return of collateral or make
1039 repossessions; or

1040 (D) Use, commingle, or dispose of proceeds; or

1041 (2) The secured party fails to require the debtor to
1042 account for proceeds or replace collateral.

1043 (b) This section does not relax the requirements of
1044 possession if attachment, perfection, or enforcement of a security
1045 interest depends upon possession of the collateral by the secured
1046 party.

1047 **SECTION 75-9-206. Security interest arising in purchase or**
1048 **delivery of financial asset.**

1049 (a) A security interest in favor of a securities
1050 intermediary attaches to a person's security entitlement if:

1051 (1) The person buys a financial asset through the
1052 securities intermediary in a transaction in which the person is
1053 obligated to pay the purchase price to the securities intermediary
1054 at the time of the purchase; and

1055 (2) The securities intermediary credits the financial
1056 asset to the buyer's securities account before the buyer pays the
1057 securities intermediary.

1058 (b) The security interest described in subsection (a)
1059 secures the person's obligation to pay for the financial asset.

1060 (c) A security interest in favor of a person that delivers a
1061 certificated security or other financial asset represented by a
1062 writing attaches to the security or other financial asset if:

1063 (1) The security or other financial asset:

1064 (A) In the ordinary course of business is
1065 transferred by delivery with any necessary endorsement or
1066 assignment; and

1067 (B) Is delivered under an agreement between
1068 persons in the business of dealing with such securities or
1069 financial assets; and

1070 (2) The agreement calls for delivery against payment.

1071 (d) The security interest described in subsection (c)
1072 secures the obligation to make payment for the delivery.

1073 SUBPART 2. RIGHTS AND DUTIES

1074 **SECTION 75-9-207. Rights and duties of secured party having**
1075 **possession or control of collateral.**

1076 (a) Except as otherwise provided in subsection (d), a
1077 secured party shall use reasonable care in the custody and
1078 preservation of collateral in the secured party's possession. In
1079 the case of chattel paper or an instrument, reasonable care

1080 includes taking necessary steps to preserve rights against prior
1081 parties unless otherwise agreed.

1082 (b) Except as otherwise provided in subsection (d), if a
1083 secured party has possession of collateral:

1084 (1) Reasonable expenses, including the cost of
1085 insurance and payment of taxes or other charges, incurred in the
1086 custody, preservation, use, or operation of the collateral are
1087 chargeable to the debtor and are secured by the collateral;

1088 (2) The risk of accidental loss or damage is on the
1089 debtor to the extent of a deficiency in any effective insurance
1090 coverage;

1091 (3) The secured party shall keep the collateral
1092 identifiable, but fungible collateral may be commingled; and

1093 (4) The secured party may use or operate the
1094 collateral:

1095 (A) For the purpose of preserving the collateral
1096 or its value;

1097 (B) As permitted by an order of a court having
1098 competent jurisdiction; or

1099 (C) Except in the case of consumer goods, in the
1100 manner and to the extent agreed by the debtor.

1101 (c) Except as otherwise provided in subsection (d), a
1102 secured party having possession of collateral or control of
1103 collateral under Section 75-9-104, 75-9-105, 75-9-106, or
1104 75-9-107:

1105 (1) May hold as additional security any proceeds,
1106 except money or funds, received from the collateral;

1107 (2) Shall apply money or funds received from the
1108 collateral to reduce the secured obligation, unless remitted to
1109 the debtor; and

1110 (3) May create a security interest in the collateral.

1111 (d) If the secured party is a buyer of accounts, chattel
1112 paper, payment intangibles, or promissory notes or a consignor:

1113 (1) Subsection (a) does not apply unless the secured
1114 party is entitled under an agreement:

1115 (A) To charge back uncollected collateral; or

1116 (B) Otherwise to full or limited recourse against
1117 the debtor or a secondary obligor based on the nonpayment or other
1118 default of an account debtor or other obligor on the collateral;
1119 and

1120 (2) Subsections (b) and (c) do not apply.

1121 **SECTION 75-9-208. Additional duties of secured party having**
1122 **control of collateral.**

1123 (a) This section applies to cases in which there is no
1124 outstanding secured obligation and the secured party is not
1125 committed to make advances, incur obligations, or otherwise give
1126 value.

1127 (b) Within ten (10) days after receiving an authenticated
1128 demand by the debtor:

1129 (1) A secured party having control of a deposit account
1130 under Section 75-9-104(a)(2) shall send to the bank with which the
1131 deposit account is maintained an authenticated statement that
1132 releases the bank from any further obligation to comply with
1133 instructions originated by the secured party;

1134 (2) A secured party having control of a deposit account
1135 under Section 75-9-104(a)(3) shall:

1136 (A) Pay the debtor the balance on deposit in the
1137 deposit account; or

1138 (B) Transfer the balance on deposit into a deposit
1139 account in the debtor's name;

1140 (3) A secured party, other than a buyer, having control
1141 of electronic chattel paper under Section 75-9-105 shall:

1142 (A) Communicate the authoritative copy of the
1143 electronic chattel paper to the debtor or its designated
1144 custodian;

1145 (B) If the debtor designates a custodian that is
1146 the designated custodian with which the authoritative copy of the
1147 electronic chattel paper is maintained for the secured party,
1148 communicate to the custodian an authenticated record releasing the
1149 designated custodian from any further obligation to comply with
1150 instructions originated by the secured party and instructing the
1151 custodian to comply with instructions originated by the debtor;
1152 and

1153 (C) Take appropriate action to enable the debtor
1154 or its designated custodian to make copies of or revisions to the
1155 authoritative copy which add or change an identified assignee of
1156 the authoritative copy without the consent of the secured party;

1157 (4) A secured party having control of investment
1158 property under Section 75-8-106(d)(2) or 75-9-106(b) shall send to
1159 the securities intermediary or commodity intermediary with which
1160 the security entitlement or commodity contract is maintained an
1161 authenticated record that releases the securities intermediary or
1162 commodity intermediary from any further obligation to comply with
1163 entitlement orders or directions originated by the secured party;
1164 and

1165 (5) A secured party having control of a
1166 letter-of-credit right under Section 75-9-107 shall send to each
1167 person having an unfulfilled obligation to pay or deliver proceeds
1168 of the letter of credit to the secured party an authenticated
1169 release from any further obligation to pay or deliver proceeds of
1170 the letter of credit to the secured party.

1171 **SECTION 75-9-209. Duties of secured party if account debtor**
1172 **has been notified of assignment.**

1173 (a) Except as otherwise provided in subsection (c), this
1174 section applies if:

- 1175 (1) There is no outstanding secured obligation; and
1176 (2) The secured party is not committed to make
1177 advances, incur obligations, or otherwise give value.

1178 (b) Within ten (10) days after receiving an authenticated
1179 demand by the debtor, a secured party shall send to an account
1180 debtor that has received notification of an assignment to the
1181 secured party as assignee under Section 75-9-406(a) an
1182 authenticated record that releases the account debtor from any
1183 further obligation to the secured party.

1184 (c) This section does not apply to an assignment
1185 constituting the sale of an account, chattel paper, or payment
1186 intangible.

1187 **SECTION 75-9-210. Request for accounting; request regarding**
1188 **list of collateral or statement of account.**

1189 (a) In this section:

1190 (1) "Request" means a record of a type described in
1191 paragraph (2), (3), or (4).

1192 (2) "Request for an accounting" means a record
1193 authenticated by a debtor requesting that the recipient provide an
1194 accounting of the unpaid obligations secured by collateral and
1195 reasonably identifying the transaction or relationship that is the
1196 subject of the request.

1197 (3) "Request regarding a list of collateral" means a
1198 record authenticated by a debtor requesting that the recipient
1199 approve or correct a list of what the debtor believes to be the
1200 collateral securing an obligation and reasonably identifying the
1201 transaction or relationship that is the subject of the request.

1202 (4) "Request regarding a statement of account" means a
1203 record authenticated by a debtor requesting that the recipient
1204 approve or correct a statement indicating what the debtor believes
1205 to be the aggregate amount of unpaid obligations secured by
1206 collateral as of a specified date and reasonably identifying the
1207 transaction or relationship that is the subject of the request.

1208 (b) Subject to subsections (c), (d), (e), and (f), a secured
1209 party, other than a buyer of accounts, chattel paper, payment

1210 intangibles, or promissory notes or a consignor, shall comply with
1211 a request within fourteen (14) days after receipt:

1212 (1) In the case of a request for an accounting, by
1213 authenticating and sending to the debtor an accounting; and

1214 (2) In the case of a request regarding a list of
1215 collateral or a request regarding a statement of account, by
1216 authenticating and sending to the debtor an approval or
1217 correction.

1218 (c) A secured party that claims a security interest in all
1219 of a particular type of collateral owned by the debtor may comply
1220 with a request regarding a list of collateral by sending to the
1221 debtor an authenticated record including a statement to that
1222 effect within fourteen (14) days after receipt.

1223 (d) A person that receives a request regarding a list of
1224 collateral, claims no interest in the collateral when it receives
1225 the request, and claimed an interest in the collateral at an
1226 earlier time shall comply with the request within fourteen (14)
1227 days after receipt by sending to the debtor an authenticated
1228 record:

1229 (1) Disclaiming any interest in the collateral; and

1230 (2) If known to the recipient, providing the name and
1231 mailing address of any assignee of or successor to the recipient's
1232 interest in the collateral.

1233 (e) A person that receives a request for an accounting or a
1234 request regarding a statement of account, claims no interest in
1235 the obligations when it receives the request, and claimed an
1236 interest in the obligations at an earlier time shall comply with
1237 the request within fourteen (14) days after receipt by sending to
1238 the debtor an authenticated record:

1239 (1) Disclaiming any interest in the obligations; and

1240 (2) If known to the recipient, providing the name and
1241 mailing address of any assignee of or successor to the recipient's
1242 interest in the obligations.

1243 (f) A debtor is entitled without charge to one (1) response
1244 to a request under this section during any six-month period. The
1245 secured party may require payment of a charge not exceeding
1246 Twenty-five Dollars (\$25.00) for each additional response.

1247 **PART 3**

1248 **PERFECTION AND PRIORITY**

1249 **SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY**

1250 **SECTION 75-9-301. Law governing perfection and priority of**
1251 **security interests.** Except as otherwise provided in Sections
1252 75-9-303 through 75-9-306, the following rules determine the law
1253 governing perfection, the effect of perfection or nonperfection,
1254 and the priority of a security interest in collateral:

1255 (1) Except as otherwise provided in this section, while
1256 a debtor is located in a jurisdiction, the local law of that
1257 jurisdiction governs perfection, the effect of perfection or
1258 nonperfection, and the priority of a security interest in
1259 collateral.

1260 (2) While collateral is located in a jurisdiction, the
1261 local law of that jurisdiction governs perfection, the effect of
1262 perfection or nonperfection, and the priority of a possessory
1263 security interest in that collateral.

1264 (3) Except as otherwise provided in paragraph (4),
1265 while negotiable documents, goods, instruments, money, or tangible
1266 chattel paper is located in a jurisdiction, the local law of that
1267 jurisdiction governs:

1268 (A) Perfection of a security interest in the goods
1269 by filing a fixture filing;

1270 (B) Perfection of a security interest in timber to
1271 be cut; and

1272 (C) The effect of perfection or nonperfection and
1273 the priority of a nonpossessory security interest in the
1274 collateral.

1275 (4) The local law of the jurisdiction in which the
1276 wellhead or minehead is located governs perfection, the effect of
1277 perfection or nonperfection, and the priority of a security
1278 interest in as-extracted collateral.

1279 **SECTION 75-9-302. Law governing perfection and priority of**
1280 **agricultural liens.** While farm products are located in a
1281 jurisdiction, the local law of that jurisdiction governs
1282 perfection, the effect of perfection or nonperfection, and the
1283 priority of an agricultural lien on the farm products.

1284 **SECTION 75-9-303. Law governing perfection and priority of**
1285 **security interests in goods covered by a certificate of title.**

1286 (a) This section applies to goods covered by a certificate
1287 of title, even if there is no other relationship between the
1288 jurisdiction under whose certificate of title the goods are
1289 covered and the goods or the debtor.

1290 (b) Goods become covered by a certificate of title when a
1291 valid application for the certificate of title and the applicable
1292 fee are delivered to the appropriate authority. Goods cease to be
1293 covered by a certificate of title at the earlier of the time the
1294 certificate of title ceases to be effective under the law of the
1295 issuing jurisdiction or the time the goods become covered
1296 subsequently by a certificate of title issued by another
1297 jurisdiction.

1298 (c) The local law of the jurisdiction under whose
1299 certificate of title the goods are covered governs perfection, the
1300 effect of perfection or nonperfection, and the priority of a
1301 security interest in goods covered by a certificate of title from
1302 the time the goods become covered by the certificate of title
1303 until the goods cease to be covered by the certificate of title.

1304 **SECTION 75-9-304. Law governing perfection and priority of**
1305 **security interests in deposit accounts.**

1306 (a) The local law of a bank's jurisdiction governs
1307 perfection, the effect of perfection or nonperfection, and the

1308 priority of a security interest in a deposit account maintained
1309 with that bank.

1310 (b) The following rules determine a bank's jurisdiction for
1311 purposes of this part:

1312 (1) If an agreement between the bank and the debtor
1313 governing the deposit account expressly provides that a particular
1314 jurisdiction is the bank's jurisdiction for purposes of this part,
1315 this article, or the Uniform Commercial Code, that jurisdiction is
1316 the bank's jurisdiction.

1317 (2) If paragraph (1) does not apply and an agreement
1318 between the bank and its customer governing the deposit account
1319 expressly provides that the agreement is governed by the law of a
1320 particular jurisdiction, that jurisdiction is the bank's
1321 jurisdiction.

1322 (3) If neither paragraph (1) nor paragraph (2) applies
1323 and an agreement between the bank and its customer governing the
1324 deposit account expressly provides that the deposit account is
1325 maintained at an office in a particular jurisdiction, that
1326 jurisdiction is the bank's jurisdiction.

1327 (4) If none of the preceding paragraphs applies, the
1328 bank's jurisdiction is the jurisdiction in which the office
1329 identified in an account statement as the office serving the
1330 customer's account is located.

1331 (5) If none of the preceding paragraphs applies, the
1332 bank's jurisdiction is the jurisdiction in which the chief
1333 executive office of the bank is located.

1334 **SECTION 75-9-305. Law governing perfection and priority of**
1335 **security interests in investment property.**

1336 (a) Except as otherwise provided in subsection (c), the
1337 following rules apply:

1338 (1) While a security certificate is located in a
1339 jurisdiction, the local law of that jurisdiction governs
1340 perfection, the effect of perfection or nonperfection, and the

1341 priority of a security interest in the certificated security
1342 represented thereby.

1343 (2) The local law of the issuer's jurisdiction as
1344 specified in Section 75-8-110(d) governs perfection, the effect of
1345 perfection or nonperfection, and the priority of a security
1346 interest in an uncertificated security.

1347 (3) The local law of the securities intermediary's
1348 jurisdiction as specified in Section 75-8-110(e) governs
1349 perfection, the effect of perfection or nonperfection, and the
1350 priority of a security interest in a security entitlement or
1351 securities account.

1352 (4) The local law of the commodity intermediary's
1353 jurisdiction governs perfection, the effect of perfection or
1354 nonperfection, and the priority of a security interest in a
1355 commodity contract or commodity account.

1356 (b) The following rules determine a commodity intermediary's
1357 jurisdiction for purposes of this part:

1358 (1) If an agreement between the commodity intermediary
1359 and commodity customer governing the commodity account expressly
1360 provides that a particular jurisdiction is the commodity
1361 intermediary's jurisdiction for purposes of this part, this
1362 article, or the Uniform Commercial Code, that jurisdiction is the
1363 commodity intermediary's jurisdiction.

1364 (2) If paragraph (1) does not apply and an agreement
1365 between the commodity intermediary and commodity customer
1366 governing the commodity account expressly provides that the
1367 agreement is governed by the law of a particular jurisdiction,
1368 that jurisdiction is the commodity intermediary's jurisdiction.

1369 (3) If neither paragraph (1) nor paragraph (2) applies
1370 and an agreement between the commodity intermediary and commodity
1371 customer governing the commodity account expressly provides that
1372 the commodity account is maintained at an office in a particular

1373 jurisdiction, that jurisdiction is the commodity intermediary's
1374 jurisdiction.

1375 (4) If none of the preceding paragraphs applies, the
1376 commodity intermediary's jurisdiction is the jurisdiction in which
1377 the office identified in an account statement as the office
1378 serving the commodity customer's account is located.

1379 (5) If none of the preceding paragraphs applies, the
1380 commodity intermediary's jurisdiction is the jurisdiction in which
1381 the chief executive office of the commodity intermediary is
1382 located.

1383 (c) The local law of the jurisdiction in which the debtor is
1384 located governs:

1385 (1) Perfection of a security interest in investment
1386 property by filing;

1387 (2) Automatic perfection of a security interest in
1388 investment property created by a broker or securities
1389 intermediary; and

1390 (3) Automatic perfection of a security interest in a
1391 commodity contract or commodity account created by a commodity
1392 intermediary.

1393 **SECTION 75-9-306. Law governing perfection and priority of**
1394 **security interests in letter-of-credit rights.**

1395 (a) Subject to subsection (c), the local law of the issuer's
1396 jurisdiction or a nominated person's jurisdiction governs
1397 perfection, the effect of perfection or nonperfection, and the
1398 priority of a security interest in a letter-of-credit right if the
1399 issuer's jurisdiction or nominated person's jurisdiction is a
1400 state.

1401 (b) For purposes of this part, an issuer's jurisdiction or
1402 nominated person's jurisdiction is the jurisdiction whose law
1403 governs the liability of the issuer or nominated person with
1404 respect to the letter-of-credit right as provided in Section
1405 75-5-116.

1406 (c) This section does not apply to a security interest that
1407 is perfected only under Section 75-9-308(d).

1408 **SECTION 75-9-307. Location of debtor.**

1409 (a) In this section, "place of business" means a place where
1410 a debtor conducts its affairs.

1411 (b) Except as otherwise provided in this section, the
1412 following rules determine a debtor's location:

1413 (1) A debtor who is an individual is located at the
1414 individual's principal residence.

1415 (2) A debtor that is an organization and has only one
1416 (1) place of business is located at its place of business.

1417 (3) A debtor that is an organization and has more than
1418 one (1) place of business is located at its chief executive
1419 office.

1420 (c) Subsection (b) applies only if a debtor's residence,
1421 place of business, or chief executive office, as applicable, is
1422 located in a jurisdiction whose law generally requires information
1423 concerning the existence of a nonpossessory security interest to
1424 be made generally available in a filing, recording, or
1425 registration system as a condition or result of the security
1426 interest's obtaining priority over the rights of a lien creditor
1427 with respect to the collateral. If subsection (b) does not apply,
1428 the debtor is located in the District of Columbia.

1429 (d) A person that ceases to exist, have a residence, or have
1430 a place of business continues to be located in the jurisdiction
1431 specified by subsections (b) and (c).

1432 (e) A registered organization that is organized under the
1433 law of a state is located in that state.

1434 (f) Except as otherwise provided in subsection (i), a
1435 registered organization that is organized under the law of the
1436 United States and a branch or agency of a bank that is not
1437 organized under the law of the United States or a state are
1438 located:

1439 (1) In the state that the law of the United States
1440 designates, if the law designates a state of location;

1441 (2) In the state that the registered organization,
1442 branch or agency designates, if the law of the United States
1443 authorizes the registered organization, branch, or agency to
1444 designate its state of location; or

1445 (3) In the District of Columbia, if neither paragraph
1446 (1) nor paragraph (2) applies.

1447 (g) A registered organization continues to be located in the
1448 jurisdiction specified by subsection (e) or (f) notwithstanding:

1449 (1) The suspension, revocation, forfeiture, or lapse of
1450 the registered organization's status as such in its jurisdiction
1451 of organization; or

1452 (2) The dissolution, winding up, or cancellation of the
1453 existence of the registered organization.

1454 (h) The United States is located in the District of
1455 Columbia.

1456 (i) A branch or agency of a bank that is not organized under
1457 the law of the United States or a state is located in the state in
1458 which the branch or agency is licensed, if all branches and
1459 agencies of the bank are licensed in only one (1) state.

1460 (j) A foreign air carrier under the Federal Aviation Act of
1461 1958, as amended, is located at the designated office of the agent
1462 upon which service of process may be made on behalf of the
1463 carrier.

1464 (k) This section applies only for purposes of this part.

1465 SUBPART 2. PERFECTION

1466 **SECTION 75-9-308. When security interest or agricultural**
1467 **lien is perfected; continuity of perfection.**

1468 (a) Except as otherwise provided in this section and Section
1469 75-9-309, a security interest is perfected if it has attached and
1470 all of the applicable requirements for perfection in Sections
1471 75-9-310 through 75-9-316 have been satisfied. A security

1472 interest is perfected when it attaches if the applicable
1473 requirements are satisfied before the security interest attaches.

1474 (b) An agricultural lien is perfected if it has become
1475 effective and all of the applicable requirements for perfection in
1476 Section 75-9-310 have been satisfied. An agricultural lien is
1477 perfected when it becomes effective if the applicable requirements
1478 are satisfied before the agricultural lien becomes effective.

1479 (c) A security interest or agricultural lien is perfected
1480 continuously if it is originally perfected by one method under
1481 this article and is later perfected by another method under this
1482 article, without an intermediate period when it was unperfected.

1483 (d) Perfection of a security interest in collateral also
1484 perfects a security interest in a supporting obligation for the
1485 collateral.

1486 (e) Perfection of a security interest in a right to payment
1487 or performance also perfects a security interest in a security
1488 interest, mortgage, or other lien on personal or real property
1489 securing the right.

1490 (f) Perfection of a security interest in a securities
1491 account also perfects a security interest in the security
1492 entitlements carried in the securities account.

1493 (g) Perfection of a security interest in a commodity account
1494 also perfects a security interest in the commodity contracts
1495 carried in the commodity account.

1496 **SECTION 75-9-309. Security interest perfected upon**
1497 **attachment.** The following security interests are perfected when
1498 they attach:

1499 (1) A purchase-money security interest in consumer
1500 goods, except as otherwise provided in Section 75-9-311(b) with
1501 respect to consumer goods that are subject to a statute or treaty
1502 described in Section 75-9-311(a);

1503 (2) An assignment of accounts or payment intangibles
1504 which does not by itself or in conjunction with other assignments

1505 to the same assignee transfer a significant part of the assignor's
1506 outstanding accounts or payment intangibles;

1507 (3) A sale of a payment intangible;

1508 (4) A sale of a promissory note;

1509 (5) A security interest created by the assignment of a
1510 health-care-insurance receivable to the provider of the
1511 health-care goods or services;

1512 (6) A security interest arising under Section 75-2-401,
1513 75-2-505, 75-2-711(3), or 75-2A-508(5), until the debtor obtains
1514 possession of the collateral;

1515 (7) A security interest of a collecting bank arising
1516 under Section 75-4-210;

1517 (8) A security interest of an issuer or nominated
1518 person arising under Section 75-5-118;

1519 (9) A security interest arising in the delivery of a
1520 financial asset under Section 75-9-206(c);

1521 (10) A security interest in investment property created
1522 by a broker or securities intermediary;

1523 (11) A security interest in a commodity contract or a
1524 commodity account created by a commodity intermediary;

1525 (12) An assignment for the benefit of all creditors of
1526 the transferor and subsequent transfers by the assignee
1527 thereunder; and

1528 (13) A security interest created by an assignment of a
1529 beneficial interest in a decedent's estate.

1530 **SECTION 75-9-310. When filing required to perfect security**
1531 **interest or agricultural lien; security interests and agricultural**
1532 **liens to which filing provisions do not apply.**

1533 (a) Except as otherwise provided in subsection (b) and
1534 Section 75-9-312(b), a financing statement must be filed to
1535 perfect all security interests and agricultural liens.

1536 (b) The filing of a financing statement is not necessary to
1537 perfect a security interest:

1538 (1) That is perfected under Section 75-9-308(d), (e),
1539 (f), or (g);

1540 (2) That is perfected under Section 75-9-309 when it
1541 attaches;

1542 (3) In property subject to a statute, regulation, or
1543 treaty described in Section 75-9-311(a);

1544 (4) In goods in possession of a bailee which is
1545 perfected under Section 75-9-312(d)(1) or (2);

1546 (5) In certificated securities, documents, goods or
1547 instruments which is perfected without filing or possession under
1548 Section 75-9-312(e), (f), or (g);

1549 (6) In collateral in the secured party's possession
1550 under Section 75-9-313;

1551 (7) In a certificated security which is perfected by
1552 delivery of the security certificate to the secured party under
1553 Section 75-9-313;

1554 (8) In deposit accounts, electronic chattel paper,
1555 investment property, or letter-of-credit rights which is perfected
1556 by control under Section 75-9-314;

1557 (9) In proceeds which is perfected under Section
1558 75-9-315; or

1559 (10) That is perfected under Section 75-9-316.

1560 (c) If a secured party assigns a perfected security interest
1561 or agricultural lien, a filing under this article is not required
1562 to continue the perfected status of the security interest against
1563 creditors of and transferees from the original debtor.

1564 **SECTION 75-9-311. Perfection of security interests in**
1565 **property subject to certain statutes, regulations, and treaties.**

1566 (a) Except as otherwise provided in subsection (d), the
1567 filing of a financing statement is not necessary or effective to
1568 perfect a security interest in property subject to:

1569 (1) A statute, regulation, or treaty of the United
1570 States whose requirements for a security interest's obtaining

1571 priority over the rights of a lien creditor with respect to the
1572 property preempt Section 75-9-310(a);

1573 (2) Sections 63-21-1 through 63-21-77 (the Mississippi
1574 Motor Vehicle and Manufactured Housing Title Law) or a certificate
1575 of title issued pursuant to Sections 59-25-1 through 59-25-17
1576 (Certificates of Title for Boats and Other Vessels); or

1577 (3) A certificate-of-title statute of another
1578 jurisdiction which provides for a security interest to be
1579 indicated on the certificate as a condition or result of the
1580 security interest's obtaining priority over the rights of a lien
1581 creditor with respect to the property.

1582 (b) Compliance with the requirements of a statute,
1583 regulation, or treaty described in subsection (a) for obtaining
1584 priority over the rights of a lien creditor is equivalent to the
1585 filing of a financing statement under this article. Except as
1586 otherwise provided in subsection (d) and Sections 75-9-313 and
1587 75-9-316(d) and (e) for goods covered by a certificate of title, a
1588 security interest in property subject to a statute, regulation, or
1589 treaty described in subsection (a) may be perfected only by
1590 compliance with those requirements, and a security interest so
1591 perfected remains perfected notwithstanding a change in the use or
1592 transfer of possession of the collateral.

1593 (c) Except as otherwise provided in subsection (d) and
1594 Section 75-9-316(d) and (e), duration and renewal of perfection of
1595 a security interest perfected by compliance with the requirements
1596 prescribed by a statute, regulation, or treaty described in
1597 subsection (a) are governed by the statute, regulation, or treaty.
1598 In other respects, the security interest is subject to this
1599 article.

1600 (d) During any period in which collateral subject to a
1601 statute specified in subsection (a)(2) is inventory held for sale
1602 or lease by a person or leased by that person as lessor and that
1603 person is in the business of selling goods of that kind, this

1604 section does not apply to a security interest in that collateral
1605 created by that person.

1606 **SECTION 75-9-312. Perfection of security interests in**
1607 **chattel paper, deposit accounts, documents, goods covered by**
1608 **documents, instruments, investment property, letter-of-credit**
1609 **rights, and money; perfection by permissive filing; temporary**
1610 **perfection without filing or transfer of possession.**

1611 (a) A security interest in chattel paper, negotiable
1612 documents, instruments, or investment property may be perfected by
1613 filing.

1614 (b) Except as otherwise provided in Section 75-9-315(c) and
1615 (d) for proceeds:

1616 (1) A security interest in a deposit account may be
1617 perfected only by control under Section 75-9-314;

1618 (2) And except as otherwise provided in Section
1619 75-9-308(d), a security interest in a letter-of-credit right may
1620 be perfected only by control under Section 75-9-314; and

1621 (3) A security interest in money may be perfected only
1622 by the secured party's taking possession under Section 75-9-313.

1623 (c) While goods are in the possession of a bailee that has
1624 issued a negotiable document covering the goods:

1625 (1) A security interest in the goods may be perfected
1626 by perfecting a security interest in the document; and

1627 (2) A security interest perfected in the document has
1628 priority over any security interest that becomes perfected in the
1629 goods by another method during that time.

1630 (d) While goods are in the possession of a bailee that has
1631 issued a nonnegotiable document covering the goods, a security
1632 interest in the goods may be perfected by:

1633 (1) Issuance of a document in the name of the secured
1634 party;

1635 (2) The bailee's receipt of notification of the secured
1636 party's interest; or

1637 (3) Filing as to the goods.

1638 (e) A security interest in certificated securities,
1639 negotiable documents, or instruments is perfected without filing
1640 or the taking of possession for a period of twenty (20) days from
1641 the time it attaches to the extent that it arises for new value
1642 given under an authenticated security agreement.

1643 (f) A perfected security interest in a negotiable document
1644 or goods in possession of a bailee, other than one that has issued
1645 a negotiable document for the goods, remains perfected for twenty
1646 (20) days without filing if the secured party makes available to
1647 the debtor the goods or documents representing the goods for the
1648 purpose of:

1649 (1) Ultimate sale or exchange; or

1650 (2) Loading, unloading, storing, shipping,
1651 transshipping, manufacturing, processing, or otherwise dealing
1652 with them in a manner preliminary to their sale or exchange.

1653 (g) A perfected security interest in a certificated security
1654 or instrument remains perfected for twenty (20) days without
1655 filing if the secured party delivers the security certificate or
1656 instrument to the debtor for the purpose of:

1657 (1) Ultimate sale or exchange; or

1658 (2) Presentation, collection, enforcement, renewal, or
1659 registration of transfer.

1660 (h) After the twenty-day period specified in subsection (e),
1661 (f), or (g) expires, perfection depends upon compliance with this
1662 article.

1663 **SECTION 75-9-313. When possession by or delivery to secured**
1664 **party perfects security interest without filing.**

1665 (a) Except as otherwise provided in subsection (b), a
1666 secured party may perfect a security interest in negotiable
1667 documents, goods, instruments, money, or tangible chattel paper by
1668 taking possession of the collateral. A secured party may perfect

1669 a security interest in certificated securities by taking delivery
1670 of the certificated securities under Section 75-8-301.

1671 (b) With respect to goods covered by a certificate of title
1672 issued by this state, a secured party may perfect a security
1673 interest in the goods by taking possession of the goods only in
1674 the circumstances described in Section 75-9-316(d).

1675 (c) With respect to collateral other than certificated
1676 securities and goods covered by a document, a secured party takes
1677 possession of collateral in the possession of a person other than
1678 the debtor, the secured party, or a lessee of the collateral from
1679 the debtor in the ordinary course of the debtor's business, when:

1680 (1) The person in possession authenticates a record
1681 acknowledging that it holds possession of the collateral for the
1682 secured party's benefit; or

1683 (2) The person takes possession of the collateral after
1684 having authenticated a record acknowledging that it will hold
1685 possession of collateral for the secured party's benefit.

1686 (d) If perfection of a security interest depends upon
1687 possession of the collateral by a secured party, perfection occurs
1688 no earlier than the time the secured party takes possession and
1689 continues only while the secured party retains possession.

1690 (e) A security interest in a certificated security in
1691 registered form is perfected by delivery when delivery of the
1692 certificated security occurs under Section 75-8-301 and remains
1693 perfected by delivery until the debtor obtains possession of the
1694 security certificate.

1695 (f) A person in possession of collateral is not required to
1696 acknowledge that it holds possession for a secured party's
1697 benefit.

1698 (g) If a person acknowledges that it holds possession for
1699 the secured party's benefit:

1700 (1) The acknowledgment is effective under subsection
1701 (c) or Section 75-8-301(a), even if the acknowledgment violates
1702 the rights of a debtor; and

1703 (2) Unless the person otherwise agrees or law other
1704 than this article otherwise provides, the person does not owe any
1705 duty to the secured party and is not required to confirm the
1706 acknowledgment to another person.

1707 (h) A secured party having possession of collateral does not
1708 relinquish possession by delivering the collateral to a person
1709 other than the debtor or a lessee of the collateral from the
1710 debtor in the ordinary course of the debtor's business if the
1711 person was instructed before the delivery or is instructed
1712 contemporaneously with the delivery:

1713 (1) To hold possession of the collateral for the
1714 secured party's benefit; or

1715 (2) A secured party does not relinquish possession,
1716 even if a delivery under subsection (h) violates the rights of a
1717 debtor. A person to which collateral is delivered under
1718 subsection (h) does not owe any duty to the secured party and is
1719 not required to confirm the delivery to another person unless the
1720 person otherwise agrees or law other than this article otherwise
1721 provides.

1722 **SECTION 75-9-314. Perfection by control.**

1723 (a) A security interest in investment property, deposit
1724 accounts, letter-of-credit rights, or electronic chattel paper may
1725 be perfected by control of the collateral under Section 75-9-104,
1726 75-9-105, 75-9-106, or 75-9-107.

1727 (b) A security interest in deposit accounts, electronic
1728 chattel paper or letter-of-credit rights is perfected by control
1729 under Section 75-9-104, 75-9-105, or 75-9-107 when the secured
1730 party obtains control and remains perfected by control only while
1731 the secured party retains control.

1732 (c) A security interest in investment property is perfected
1733 by control under Section 75-9-106 from the time the secured party
1734 obtains control and remains perfected by control until:

1735 (1) The secured party does not have control; and

1736 (2) One (1) of the following occurs:

1737 (A) If the collateral is a certificated security,
1738 the debtor has or acquires possession of the security certificate;

1739 (B) If the collateral is an uncertificated
1740 security, the issuer has registered or registers the debtor as the
1741 registered owner; or

1742 (C) If the collateral is a security entitlement,
1743 the debtor is or becomes the entitlement holder.

1744 **SECTION 75-9-315. Secured party's rights on disposition of**
1745 **collateral and in proceeds.**

1746 (a) Except as otherwise provided in this article and in
1747 Section 75-2-403(2):

1748 (1) A security interest or agricultural lien continues
1749 in collateral notwithstanding sale, lease, license, exchange, or
1750 other disposition thereof unless the secured party authorized the
1751 disposition free of the security interest or agricultural lien;
1752 and

1753 (2) A security interest attaches to any identifiable
1754 proceeds of collateral.

1755 (b) Proceeds that are commingled with other property are
1756 identifiable proceeds:

1757 (1) If the proceeds are goods, to the extent provided
1758 by Section 75-9-336; and

1759 (2) If the proceeds are not goods, to the extent that
1760 the secured party identifies the proceeds by a method of tracing,
1761 including application of equitable principles, that is permitted
1762 under law other than this article with respect to commingled
1763 property of the type involved.

1764 (c) A security interest in proceeds is a perfected security
1765 interest if the security interest in the original collateral was
1766 perfected.

1767 (d) A perfected security interest in proceeds becomes
1768 unperfected on the twenty-first day after the security interest
1769 attaches to the proceeds unless:

1770 (1) The following conditions are satisfied:

1771 (A) A filed financing statement covers the
1772 original collateral;

1773 (B) The proceeds are collateral in which a
1774 security interest may be perfected by filing in the office in
1775 which the financing statement has been filed; and

1776 (C) The proceeds are not acquired with cash
1777 proceeds;

1778 (2) The proceeds are identifiable cash proceeds; or

1779 (3) The security interest in the proceeds is perfected
1780 other than under subsection (c) when the security interest
1781 attaches to the proceeds or within twenty (20) days thereafter.

1782 (e) If a filed financing statement covers the original
1783 collateral, a security interest in proceeds which remains
1784 perfected under subsection (d)(1) becomes unperfected at the later
1785 of:

1786 (1) When the effectiveness of the filed financing
1787 statement lapses under Section 75-9-515 or is terminated under
1788 Section 75-9-513; or

1789 (2) The twenty-first day after the security interest
1790 attaches to the proceeds.

1791 **SECTION 75-9-316. Continued perfection of security interest**
1792 **following change in governing law.**

1793 (a) A security interest perfected pursuant to the law of the
1794 jurisdiction designated in Section 75-9-301(1) or 75-9-305(c)
1795 remains perfected until the earliest of:

1796 (1) The time perfection would have ceased under the law
1797 of that jurisdiction;

1798 (2) The expiration of four (4) months after a change of
1799 the debtor's location to another jurisdiction; or

1800 (3) The expiration of one (1) year after a transfer of
1801 collateral to a person that thereby becomes a debtor and is
1802 located in another jurisdiction.

1803 (b) If a security interest described in subsection (a)
1804 becomes perfected under the law of the other jurisdiction before
1805 the earliest time or event described in that subsection, it
1806 remains perfected thereafter. If the security interest does not
1807 become perfected under the law of the other jurisdiction before
1808 the earliest time or event, it becomes unperfected and is deemed
1809 never to have been perfected as against a purchaser of the
1810 collateral for value.

1811 (c) A possessory security interest in collateral, other than
1812 goods covered by a certificate of title and as-extracted
1813 collateral consisting of goods, remains continuously perfected if:

1814 (1) The collateral is located in one (1) jurisdiction
1815 and subject to a security interest perfected under the law of that
1816 jurisdiction;

1817 (2) Thereafter the collateral is brought into another
1818 jurisdiction; and

1819 (3) Upon entry into the other jurisdiction, the
1820 security interest is perfected under the law of the other
1821 jurisdiction.

1822 (d) Except as otherwise provided in subsection (e), a
1823 security interest in goods covered by a certificate of title which
1824 is perfected by any method under the law of another jurisdiction
1825 when the goods become covered by a certificate of title from this
1826 state remains perfected until the security interest would have
1827 become unperfected under the law of the other jurisdiction had the
1828 goods not become so covered.

1829 (e) A security interest described in subsection (d) becomes
1830 unperfected as against a purchaser of the goods for value and is
1831 deemed never to have been perfected as against a purchaser of the
1832 goods for value if the applicable requirements for perfection
1833 under Section 75-9-311(b) or 75-9-313 are not satisfied before the
1834 earlier of:

1835 (1) The time the security interest would have become
1836 unperfected under the law of the other jurisdiction had the goods
1837 not become covered by a certificate of title from this state; or

1838 (2) The expiration of four (4) months after the goods
1839 had become so covered.

1840 (f) A security interest in deposit accounts,
1841 letter-of-credit rights, or investment property which is perfected
1842 under the law of the bank's jurisdiction, the issuer's
1843 jurisdiction, a nominated person's jurisdiction, the securities
1844 intermediary's jurisdiction, or the commodity intermediary's
1845 jurisdiction, as applicable, remains perfected until the earlier
1846 of:

1847 (1) The time the security interest would have become
1848 unperfected under the law of that jurisdiction; or

1849 (2) The expiration of four (4) months after a change of
1850 the applicable jurisdiction to another jurisdiction.

1851 (g) If a security interest described in subsection (f)
1852 becomes perfected under the law of the other jurisdiction before
1853 the earlier of the time or the end of the period described in that
1854 subsection, it remains perfected thereafter. If the security
1855 interest does not become perfected under the law of the other
1856 jurisdiction before the earlier of that time or the end of that
1857 period, it becomes unperfected and is deemed never to have been
1858 perfected as against a purchaser of the collateral for value.

1859 SUBPART 3. PRIORITY

1860 **SECTION 75-9-317. Interests that take priority over or take**
1861 **free of security interest or agricultural lien.**

1862 (a) A security interest or agricultural lien is subordinate
1863 to the rights of:

1864 (1) A person entitled to priority under Section
1865 75-9-322; and

1866 (2) Except as otherwise provided in subsection (e), a
1867 person that becomes a lien creditor before the earlier of the
1868 time:

1869 (A) The security interest or agricultural lien is
1870 perfected; or

1871 (B) One (1) of the conditions specified in Section
1872 75-9-203(b)(3) is met and a financing statement covering the
1873 collateral is filed.

1874 (b) Except as otherwise provided in subsection (e), a buyer,
1875 other than a secured party, of tangible chattel paper, documents,
1876 goods, instruments, or a security certificate takes free of a
1877 security interest or agricultural lien if the buyer gives value
1878 and receives delivery of the collateral without knowledge of the
1879 security interest or agricultural lien and before it is perfected.

1880 (c) Except as otherwise provided in subsection (e), a lessee
1881 of goods takes free of a security interest or agricultural lien if
1882 the lessee gives value and receives delivery of the collateral
1883 without knowledge of the security interest or agricultural lien
1884 and before it is perfected.

1885 (d) A licensee of a general intangible or a buyer, other
1886 than a secured party, of accounts, electronic chattel paper,
1887 general intangibles, or investment property other than a
1888 certificated security takes free of a security interest if the
1889 licensee or buyer gives value without knowledge of the security
1890 interest and before it is perfected.

1891 (e) Except as otherwise provided in Sections 75-9-320 and
1892 75-9-321, if a person files a financing statement with respect to
1893 a purchase-money security interest before or within twenty (20)
1894 days after the debtor receives delivery of the collateral, the

1895 security interest takes priority over the rights of a buyer,
1896 lessee, or lien creditor which arise between the time the security
1897 interest attaches and the time of filing.

1898 **SECTION 75-9-318. No interest retained in right to payment**
1899 **that is sold; rights and title of seller of account or chattel**
1900 **paper with respect to creditors and purchasers.**

1901 (a) A debtor that has sold an account, chattel paper,
1902 payment intangible, or promissory note does not retain a legal or
1903 equitable interest in the collateral sold.

1904 (b) For purposes of determining the rights of creditors of,
1905 and purchasers for value of an account or chattel paper from, a
1906 debtor that has sold an account or chattel paper, while the
1907 buyer's security interest is unperfected, the debtor is deemed to
1908 have rights and title to the account or chattel paper identical to
1909 those the debtor sold.

1910 **SECTION 75-9-319. Rights and title of consignee with respect**
1911 **to creditors and purchasers.**

1912 (a) Except as otherwise provided in subsection (b), for
1913 purposes of determining the rights of creditors of, and purchasers
1914 for value of goods from, a consignee, while the goods are in the
1915 possession of the consignee, the consignee is deemed to have
1916 rights and title to the goods identical to those the consignor had
1917 or had power to transfer.

1918 (b) For purposes of determining the rights of a creditor of
1919 a consignee, law other than this article determines the rights and
1920 title of a consignee while goods are in the consignee's possession
1921 if, under this part, a perfected security interest held by the
1922 consignor would have priority over the rights of the creditor.

1923 **SECTION 75-9-320. Buyer of goods.**

1924 (a) Except as otherwise provided in subsection (e), a buyer
1925 in ordinary course of business, other than a person buying farm
1926 products from a person engaged in farming operations, takes free
1927 of a security interest created by the buyer's seller, even if the

1928 security interest is perfected and the buyer knows of its
1929 existence.

1930 (b) Except as otherwise provided in subsection (e), a buyer
1931 of goods from a person who used or bought the goods for use
1932 primarily for personal, family, or household purposes takes free
1933 of a security interest, even if perfected, if the buyer buys:

1934 (1) Without knowledge of the security interest;

1935 (2) For value;

1936 (3) Primarily for the buyer's personal, family, or
1937 household purposes; and

1938 (4) Before the filing of a financing statement covering
1939 the goods.

1940 (c) To the extent that it affects the priority of a security
1941 interest over a buyer of goods under subsection (b), the period of
1942 effectiveness of a filing made in the jurisdiction in which the
1943 seller is located is governed by Section 75-9-316(a) and (b).

1944 (d) A buyer in ordinary course of business buying oil, gas,
1945 or other minerals at the wellhead or minehead or after extraction
1946 takes free of an interest arising out of an encumbrance.

1947 (e) Subsections (a) and (b) do not affect a security
1948 interest in goods in the possession of the secured party under
1949 Section 75-9-313.

1950 (f) Notwithstanding subsection (a), a secured party may not
1951 enforce a security interest in farm products against a buyer,
1952 commission merchant or selling agent who purchases or sells farm
1953 products in the ordinary course of business from or for a person
1954 engaged in farming operations unless the secured party has
1955 complied with the regulations issued by the Secretary of state
1956 under subsection (g) or unless the buyer, commission merchant or
1957 selling agent has received from the secured party or seller
1958 written notice of the security interest which complies with the
1959 requirements of Section 1324 of the Food Security Act of 1985, as
1960 now enacted or as hereafter may be amended.

1961 (g) The Secretary of State shall issue regulations
1962 implementing a central filing system relating to farm products
1963 which conforms with the requirements of Section 1324 of the Food
1964 Security Act of 1985, as now enacted or as hereafter may be
1965 amended. The Secretary of State is authorized to set reasonable
1966 fees to defray the costs of the central filing system established
1967 pursuant to this section. At least thirty (30) days prior to the
1968 promulgation of such regulations or any amendments thereto, the
1969 Secretary of State shall give notice of such regulations and/or
1970 amendments to all licensed attorneys in the State of Mississippi.

1971 **SECTION 75-9-321. Licensee of general intangible and lessee**
1972 **of goods in ordinary course of business.**

1973 (a) In this section, "licensee in ordinary course of
1974 business" means a person that becomes a licensee of a general
1975 intangible in good faith, without knowledge that the license
1976 violates the rights of another person in the general intangible,
1977 and in the ordinary course from a person in the business of
1978 licensing general intangibles of that kind. A person becomes a
1979 licensee in the ordinary course if the license to the person
1980 comports with the usual or customary practices in the kind of
1981 business in which the licensor is engaged or with the licensor's
1982 own usual or customary practices.

1983 (b) A licensee in ordinary course of business takes its
1984 rights under a nonexclusive license free of a security interest in
1985 the general intangible created by the licensor, even if the
1986 security interest is perfected and the licensee knows of its
1987 existence.

1988 (c) A lessee in ordinary course of business takes its
1989 leasehold interest free of a security interest in the goods
1990 created by the lessor, even if the security interest is perfected
1991 and the lessee knows of its existence.

1992 **SECTION 75-9-322. Priorities among conflicting security**
1993 **interests in and agricultural liens on same collateral.**

1994 (a) Except as otherwise provided in this section, priority
1995 among conflicting security interests and agricultural liens in the
1996 same collateral is determined according to the following rules:

1997 (1) Conflicting perfected security interests and
1998 agricultural liens rank according to priority in time of filing or
1999 perfection. Priority dates from the earlier of the time a filing
2000 covering the collateral is first made or the security interest or
2001 agricultural lien is first perfected, if there is no period
2002 thereafter when there is neither filing nor perfection.

2003 (2) A perfected security interest or agricultural lien
2004 has priority over a conflicting unperfected security interest or
2005 agricultural lien.

2006 (3) The first security interest or agricultural lien to
2007 attach or become effective has priority if conflicting security
2008 interests and agricultural liens are unperfected.

2009 (b) For the purposes of subsection (a)(1):

2010 (1) The time of filing or perfection as to a security
2011 interest in collateral is also the time of filing or perfection as
2012 to a security interest in proceeds; and

2013 (2) The time of filing or perfection as to a security
2014 interest in collateral supported by a supporting obligation is
2015 also the time of filing or perfection as to a security interest in
2016 the supporting obligation.

2017 (c) Except as otherwise provided in subsection (f), a
2018 security interest in collateral which qualifies for priority over
2019 a conflicting security interest under Section 75-9-327, 75-9-328,
2020 75-9-329, 75-9-330, or 75-9-331 also has priority over a
2021 conflicting security interest in:

2022 (1) Any supporting obligation for the collateral; and

2023 (2) Proceeds of the collateral if:

2024 (A) The security interest in proceeds is
2025 perfected;

2026 (B) The proceeds are cash proceeds or of the same
2027 type as the collateral; and

2028 (C) In the case of proceeds that are proceeds of
2029 proceeds, all intervening proceeds are cash proceeds, proceeds of
2030 the same type as the collateral, or an account relating to the
2031 collateral.

2032 (d) Subject to subsection (e) and except as otherwise
2033 provided in subsection (f), if a security interest in chattel
2034 paper, deposit accounts, negotiable documents, instruments,
2035 investment property, or letter-of-credit rights is perfected by a
2036 method other than filing, conflicting perfected security interests
2037 in proceeds of the collateral rank according to priority in time
2038 of filing.

2039 (e) Subsection (d) applies only if the proceeds of the
2040 collateral are not cash proceeds, chattel paper, negotiable
2041 documents, instruments, investment property, or letter-of-credit
2042 rights.

2043 (f) Subsections (a) through (e) are subject to:

2044 (1) Subsection (g) and the other provisions of this
2045 part;

2046 (2) Section 75-4-210 with respect to a security
2047 interest of a collecting bank;

2048 (3) Section 75-5-118 with respect to a security
2049 interest of an issuer or nominated person; and

2050 (4) Section 75-9-110 with respect to a security
2051 interest arising under Article 2 or 2A.

2052 (g) A perfected agricultural lien on collateral has priority
2053 over a conflicting security interest in or agricultural lien on
2054 the same collateral if the statute creating the agricultural lien
2055 so provides.

2056 **SECTION 75-9-323. Future advances.**

2057 (a) Except as otherwise provided in subsection (c), for
2058 purposes of determining the priority of a perfected security

2059 interest under Section 75-9-322(a)(1), perfection of the security
2060 interest dates from the time an advance is made to the extent that
2061 the security interest secures an advance that:

2062 (1) Is made while the security interest is perfected
2063 only:

2064 (A) Under Section 75-9-309 when it attaches; or

2065 (B) Temporarily under Section 75-9-312(e), (f), or
2066 (g); and

2067 (2) Is not made pursuant to a commitment entered into
2068 before or while the security interest is perfected by a method
2069 other than under Section 75-9-309 or 75-9-312(e), (f), or (g).

2070 (b) Except as otherwise provided in subsection (c), a
2071 security interest is subordinate to the rights of a person that
2072 becomes a lien creditor to the extent that the security interest
2073 secures an advance made more than forty-five (45) days after the
2074 person becomes a lien creditor unless the advance is made:

2075 (1) Without knowledge of the lien; or

2076 (2) Pursuant to a commitment entered into without
2077 knowledge of the lien.

2078 (c) Subsections (a) and (b) do not apply to a security
2079 interest held by a secured party that is a buyer of accounts,
2080 chattel paper, payment intangibles, or promissory notes or a
2081 consignor.

2082 (d) Except as otherwise provided in subsection (e), a buyer
2083 of goods other than a buyer in ordinary course of business takes
2084 free of a security interest to the extent that it secures advances
2085 made after the earlier of:

2086 (1) The time the secured party acquires knowledge of
2087 the buyer's purchase; or

2088 (2) Forty-five (45) days after the purchase.

2089 (e) Subsection (d) does not apply if the advance is made
2090 pursuant to a commitment entered into without knowledge of the

2091 buyer's purchase and before the expiration of the forty-five-day
2092 period.

2093 (f) Except as otherwise provided in subsection (g), a lessee
2094 of goods, other than a lessee in ordinary course of business,
2095 takes the leasehold interest free of a security interest to the
2096 extent that it secures advances made after the earlier of:

2097 (1) The time the secured party acquires knowledge of
2098 the lease; or

2099 (2) Forty-five (45) days after the lease contract
2100 becomes enforceable.

2101 (g) Subsection (f) does not apply if the advance is made
2102 pursuant to a commitment entered into without knowledge of the
2103 lease and before the expiration of the forty-five-day period.

2104 **SECTION 75-9-324. Priority of purchase-money security**
2105 **interests.**

2106 (a) Except as otherwise provided in subsection (g), a
2107 perfected purchase-money security interest in goods other than
2108 inventory or livestock has priority over a conflicting security
2109 interest in the same goods, and, except as otherwise provided in
2110 Section 75-9-327, a perfected security interest in its
2111 identifiable proceeds also has priority, if the purchase-money
2112 security interest is perfected when the debtor receives possession
2113 of the collateral or within twenty (20) days thereafter.

2114 (b) Subject to subsection (c) and except as otherwise
2115 provided in subsection (g), a perfected purchase-money security
2116 interest in inventory has priority over a conflicting security
2117 interest in the same inventory, has priority over a conflicting
2118 security interest in chattel paper or an instrument constituting
2119 proceeds of the inventory and in proceeds of the chattel paper, if
2120 so provided in Section 75-9-330, and, except as otherwise provided
2121 in Section 75-9-327, also has priority in identifiable cash
2122 proceeds of the inventory to the extent the identifiable cash

2123 proceeds are received on or before the delivery of the inventory
2124 to a buyer, if:

2125 (1) The purchase-money security interest is perfected
2126 when the debtor receives possession of the inventory;

2127 (2) The purchase-money secured party sends an
2128 authenticated notification to the holder of the conflicting
2129 security interest;

2130 (3) The holder of the conflicting security interest
2131 receives the notification within five (5) years before the debtor
2132 receives possession of the inventory; and

2133 (4) The notification states that the person sending the
2134 notification has or expects to acquire a purchase-money security
2135 interest in inventory of the debtor and describes the inventory.

2136 (c) Subsections (b)(2) through (4) apply only if the holder
2137 of the conflicting security interest had filed a financing
2138 statement covering the same types of inventory:

2139 (1) If the purchase-money security interest is
2140 perfected by filing, before the date of the filing; or

2141 (2) If the purchase-money security interest is
2142 temporarily perfected without filing or possession under Section
2143 75-9-312(f), before the beginning of the twenty-day period
2144 thereunder.

2145 (d) Subject to subsection (e) and except as otherwise
2146 provided in subsection (g), a perfected purchase-money security
2147 interest in livestock that are farm products has priority over a
2148 conflicting security interest in the same livestock, and, except
2149 as otherwise provided in Section 75-9-327, a perfected security
2150 interest in their identifiable proceeds and identifiable products
2151 in their unmanufactured states also has priority, if:

2152 (1) The purchase-money security interest is perfected
2153 when the debtor receives possession of the livestock;

2154 (2) The purchase-money secured party sends an
2155 authenticated notification to the holder of the conflicting
2156 security interest;

2157 (3) The holder of the conflicting security interest
2158 receives the notification within six (6) months before the debtor
2159 receives possession of the livestock; and

2160 (4) The notification states that the person sending the
2161 notification has or expects to acquire a purchase-money security
2162 interest in livestock of the debtor and describes the livestock.

2163 (e) Subsections (d)(2) through (4) apply only if the holder
2164 of the conflicting security interest had filed a financing
2165 statement covering the same types of livestock:

2166 (1) If the purchase-money security interest is
2167 perfected by filing, before the date of the filing; or

2168 (2) If the purchase-money security interest is
2169 temporarily perfected without filing or possession under Section
2170 75-9-312(f), before the beginning of the twenty-day period
2171 thereunder.

2172 (f) Except as otherwise provided in subsection (g), a
2173 perfected purchase-money security interest in software has
2174 priority over a conflicting security interest in the same
2175 collateral, and, except as otherwise provided in Section 75-9-327,
2176 a perfected security interest in its identifiable proceeds also
2177 has priority, to the extent that the purchase-money security
2178 interest in the goods in which the software was acquired for use
2179 has priority in the goods and proceeds of the goods under this
2180 section.

2181 (g) If more than one (1) security interest qualifies for
2182 priority in the same collateral under subsection (a), (b), (d), or
2183 (f):

2184 (1) A security interest securing an obligation incurred
2185 as all or part of the price of the collateral has priority over a
2186 security interest securing an obligation incurred for value given

2187 to enable the debtor to acquire rights in or the use of
2188 collateral; and

2189 (2) In all other cases, Section 75-9-322(a) applies to
2190 the qualifying security interests.

2191 **SECTION 75-9-324A. Priority of production-money security**
2192 **interests and agricultural liens.**

2193 (a) Except as otherwise provided in subsections (c), (d),
2194 and (e), if the requirements of subsection (b) are satisfied, a
2195 perfected production-money security interest in production-money
2196 crops has priority over a conflicting security interest in the
2197 same crops and, except as otherwise provided in Section 75-9-327,
2198 also has priority in their identifiable proceeds.

2199 (b) A production-money security interest has priority under
2200 subsection (a) if:

2201 (1) The production-money security interest is perfected
2202 by filing when the production-money secured party first gives new
2203 value to enable the debtor to produce the crops;

2204 (2) The production-money secured party sends an
2205 authenticated notification to the holder of the conflicting
2206 security interest not less than ten (10) or more than thirty (30)
2207 days before the production-money secured party first gives new
2208 value to enable the debtor to produce the crops if the holder had
2209 filed a financing statement covering the crops before the date of
2210 the filing made by the production-money secured party; and

2211 (3) The notification states that the production-money
2212 secured party has or expects to acquire a production-money
2213 security interest in the debtor's crops and provides a description
2214 of the crops.

2215 (c) Except as otherwise provided in subsection (d) or (e),
2216 if more than one (1) security interest qualifies for priority in
2217 the same collateral under subsection (a), the security interests
2218 rank according to priority in time of filing under Section
2219 75-9-322(a).

2220 (d) To the extent that a person holding a perfected security
2221 interest in production-money crops that are the subject of a
2222 production-money security interest gives new value to enable the
2223 debtor to produce the production-money crops and the value is in
2224 fact used for the production of the production-money crops, the
2225 security interests rank according to priority in time of filing
2226 under Section 75-9-322(a).

2227 (e) To the extent that a person holds both an agricultural
2228 lien and a production-money security interest in the same
2229 collateral securing the same obligations, the rules of priority
2230 applicable to agricultural liens govern priority.

2231 **SECTION 75-9-325. Priority of security interests in**
2232 **transferred collateral.**

2233 (a) Except as otherwise provided in subsection (b), a
2234 security interest created by a debtor is subordinate to a security
2235 interest in the same collateral created by another person if:

2236 (1) The debtor acquired the collateral subject to the
2237 security interest created by the other person;

2238 (2) The security interest created by the other person
2239 was perfected when the debtor acquired the collateral; and

2240 (3) There is no period thereafter when the security
2241 interest is unperfected.

2242 (b) Subsection (a) subordinates a security interest only if
2243 the security interest:

2244 (1) Otherwise would have priority solely under Section
2245 75-9-322(a) or 75-9-324; or

2246 (2) Arose solely under Section 75-2-711(3) or
2247 75-2A-508(5).

2248 **SECTION 75-9-326. Priority of security interests created by**
2249 **new debtor.**

2250 (a) Subject to subsection (b), a security interest created
2251 by a new debtor which is perfected by a filed financing statement
2252 that is effective solely under Section 75-9-508 in collateral in

2253 which a new debtor has or acquires rights is subordinate to a
2254 security interest in the same collateral which is perfected other
2255 than by a filed financing statement that is effective solely under
2256 Section 75-9-508.

2257 (b) The other provisions of this part determine the priority
2258 among conflicting security interests in the same collateral
2259 perfected by filed financing statements that are effective solely
2260 under Section 75-9-508. However, if the security agreements to
2261 which a new debtor became bound as debtor were not entered into by
2262 the same original debtor, the conflicting security interests rank
2263 according to priority in time of the new debtor's having become
2264 bound.

2265 **SECTION 75-9-327. Priority of security interests in deposit**
2266 **account.** The following rules govern priority among conflicting
2267 security interests in the same deposit account:

2268 (1) A security interest held by a secured party having
2269 control of the deposit account under Section 75-9-104 has priority
2270 over a conflicting security interest held by a secured party that
2271 does not have control.

2272 (2) Except as otherwise provided in paragraphs (3) and
2273 (4), security interests perfected by control under Section
2274 75-9-314 rank according to priority in time of obtaining control.

2275 (3) Except as otherwise provided in paragraph (4), a
2276 security interest held by the bank with which the deposit account
2277 is maintained has priority over a conflicting security interest
2278 held by another secured party.

2279 (4) A security interest perfected by control under
2280 Section 75-9-104(a)(3) has priority over a security interest held
2281 by the bank with which the deposit account is maintained.

2282 **SECTION 75-9-328. Priority of security interests in**
2283 **investment property.** The following rules govern priority among
2284 conflicting security interests in the same investment property:

2285 (1) A security interest held by a secured party having
2286 control of investment property under Section 75-9-106 has priority
2287 over a security interest held by a secured party that does not
2288 have control of the investment property.

2289 (2) Except as otherwise provided in paragraphs (3) and
2290 (4), conflicting security interests held by secured parties each
2291 of which has control under Section 75-9-106 rank according to
2292 priority in time of:

2293 (A) If the collateral is a security, obtaining
2294 control;

2295 (B) If the collateral is a security entitlement
2296 carried in a securities account and:

2297 (i) If the secured party obtained control
2298 under Section 75-8-106(d)(1), the secured party's becoming the
2299 person for which the securities account is maintained;

2300 (ii) If the secured party obtained control
2301 under Section 75-8-106(d)(2), the securities intermediary's
2302 agreement to comply with the secured party's entitlement orders
2303 with respect to security entitlements carried or to be carried in
2304 the securities account; or

2305 (iii) If the secured party obtained control
2306 through another person under Section 75-8-106(d)(3), the time on
2307 which priority would be based under this paragraph if the other
2308 person were the secured party; or

2309 (C) If the collateral is a commodity contract
2310 carried with a commodity intermediary, the satisfaction of the
2311 requirement for control specified in Section 75-9-106(b)(2) with
2312 respect to commodity contracts carried or to be carried with the
2313 commodity intermediary.

2314 (3) A security interest held by a securities
2315 intermediary in a security entitlement or a securities account
2316 maintained with the securities intermediary has priority over a
2317 conflicting security interest held by another secured party.

2318 (4) A security interest held by a commodity
2319 intermediary in a commodity contract or a commodity account
2320 maintained with the commodity intermediary has priority over a
2321 conflicting security interest held by another secured party.

2322 (5) A security interest in a certificated security in
2323 registered form which is perfected by taking delivery under
2324 Section 75-9-313(a) and not by control under Section 75-9-314 has
2325 priority over a conflicting security interest perfected by a
2326 method other than control.

2327 (6) Conflicting security interests created by a broker,
2328 securities intermediary, or commodity intermediary which are
2329 perfected without control under Section 75-9-106 rank equally.

2330 (7) In all other cases, priority among conflicting
2331 security interests in investment property is governed by Sections
2332 75-9-322 and 75-9-323.

2333 **SECTION 75-9-329. Priority of security interests in**
2334 **letter-of-credit right.** The following rules govern priority among
2335 conflicting security interests in the same letter-of-credit right:

2336 (1) A security interest held by a secured party having
2337 control of the letter-of-credit right under Section 75-9-107 has
2338 priority to the extent of its control over a conflicting security
2339 interest held by a secured party that does not have control.

2340 (2) Security interests perfected by control under
2341 Section 75-9-314 rank according to priority in time of obtaining
2342 control.

2343 **SECTION 75-9-330. Priority of purchaser of chattel paper or**
2344 **instrument.**

2345 (a) A purchaser of chattel paper has priority over a
2346 security interest in the chattel paper which is claimed merely as
2347 proceeds of inventory subject to a security interest if:

2348 (1) In good faith and in the ordinary course of the
2349 purchaser's business, the purchaser gives new value and takes

2350 possession of the chattel paper or obtains control of the chattel
2351 paper under Section 75-9-105; and

2352 (2) The chattel paper does not indicate that it has
2353 been assigned to an identified assignee other than the purchaser.

2354 (b) A purchaser of chattel paper has priority over a
2355 security interest in the chattel paper which is claimed other than
2356 merely as proceeds of inventory subject to a security interest if
2357 the purchaser gives new value and takes possession of the chattel
2358 paper or obtains control of the chattel paper under Section
2359 75-9-105 in good faith, in the ordinary course of the purchaser's
2360 business, and without knowledge that the purchase violates the
2361 rights of the secured party.

2362 (c) Except as otherwise provided in Section 75-9-327, a
2363 purchaser having priority in chattel paper under subsection (a) or
2364 (b) also has priority in proceeds of the chattel paper to the
2365 extent that:

2366 (1) Section 75-9-322 provides for priority in the
2367 proceeds; or

2368 (2) The proceeds consist of the specific goods covered
2369 by the chattel paper or cash proceeds of the specific goods, even
2370 if the purchaser's security interest in the proceeds is
2371 unperfected.

2372 (d) Except as otherwise provided in Section 75-9-331(a), a
2373 purchaser of an instrument has priority over a security interest
2374 in the instrument perfected by a method other than possession if
2375 the purchaser gives value and takes possession of the instrument
2376 in good faith and without knowledge that the purchase violates the
2377 rights of the secured party.

2378 (e) For purposes of subsections (a) and (b), the holder of a
2379 purchase-money security interest in inventory gives new value for
2380 chattel paper constituting proceeds of the inventory.

2381 (f) For purposes of subsections (b) and (d), if chattel
2382 paper or an instrument indicates that it has been assigned to an

2383 identified secured party other than the purchaser, a purchaser of
2384 the chattel paper or instrument has knowledge that the purchase
2385 violates the rights of the secured party.

2386 **SECTION 75-9-331. Priority of rights of purchasers of**
2387 **instruments, documents, and securities under other articles;**
2388 **priority of interests in financial assets and security**
2389 **entitlements under Article 8.**

2390 (a) This article does not limit the rights of a holder in
2391 due course of a negotiable instrument, a holder to which a
2392 negotiable document of title has been duly negotiated, or a
2393 protected purchaser of a security. These holders or purchasers
2394 take priority over an earlier security interest, even if
2395 perfected, to the extent provided in Articles 3, 7 and 8.

2396 (b) This article does not limit the rights of or impose
2397 liability on a person to the extent that the person is protected
2398 against the assertion of a claim under Article 8.

2399 (c) Filing under this article does not constitute notice of
2400 a claim or defense to the holders, or purchasers, or persons
2401 described in subsections (a) and (b).

2402 **SECTION 75-9-332. Transfer of money; transfer of funds from**
2403 **deposit account.**

2404 (a) A transferee of money takes the money free of a security
2405 interest unless the transferee acts in collusion with the debtor
2406 in violating the rights of the secured party.

2407 (b) A transferee of funds from a deposit account takes the
2408 funds free of a security interest in the deposit account unless
2409 the transferee acts in collusion with the debtor in violating the
2410 rights of the secured party.

2411 **SECTION 75-9-333. Priority of certain liens arising by**
2412 **operation of law.**

2413 (a) In this section, "possessory lien" means an interest,
2414 other than a security interest or an agricultural lien:

2415 (1) Which secures payment or performance of an
2416 obligation for services or materials furnished with respect to
2417 goods by a person in the ordinary course of the person's business;

2418 (2) Which is created by statute or rule of law in favor
2419 of the person; and

2420 (3) Whose effectiveness depends on the person's
2421 possession of the goods.

2422 (b) A possessory lien on goods has priority over a security
2423 interest in the goods unless the lien is created by a statute that
2424 expressly provides otherwise.

2425 **SECTION 75-9-334. Priority of security interests in fixtures**
2426 **and crops.**

2427 (a) A security interest under this article may be created in
2428 goods that are fixtures or may continue in goods that become
2429 fixtures. A security interest does not exist under this article
2430 in ordinary building materials incorporated into an improvement on
2431 land.

2432 (b) This article does not prevent creation of an encumbrance
2433 upon fixtures under real property law.

2434 (c) In cases not governed by subsections (d) through (h), a
2435 security interest in fixtures is subordinate to a conflicting
2436 interest of an encumbrancer or owner of the related real property
2437 other than the debtor.

2438 (d) Except as otherwise provided in subsection (h), a
2439 perfected security interest in fixtures has priority over a
2440 conflicting interest of an encumbrancer or owner of the real
2441 property if the debtor has an interest of record in or is in
2442 possession of the real property and:

2443 (1) The security interest is a purchase-money security
2444 interest;

2445 (2) The interest of the encumbrancer or owner arises
2446 before the goods become fixtures; and

2447 (3) The security interest is perfected by a fixture
2448 filing before the goods become fixtures or within twenty (20) days
2449 thereafter.

2450 (e) A perfected security interest in fixtures has priority
2451 over a conflicting interest of an encumbrancer or owner of the
2452 real property if:

2453 (1) The debtor has an interest of record in the real
2454 property or is in possession of the real property and the security
2455 interest:

2456 (A) Is perfected by a fixture filing before the
2457 interest of the encumbrancer or owner is of record; and

2458 (B) Has priority over any conflicting interest of
2459 a predecessor in title of the encumbrancer or owner;

2460 (2) Before the goods become fixtures, the security
2461 interest is perfected by any method permitted by this article and
2462 the fixtures are readily removable:

2463 (A) Factory or office machines;

2464 (B) Equipment that is not primarily used or leased
2465 for use in the operation of the real property; or

2466 (C) Replacements of domestic appliances that are
2467 consumer goods;

2468 (3) The conflicting interest is a lien on the real
2469 property obtained by legal or equitable proceedings after the
2470 security interest was perfected by any method permitted by this
2471 article; or

2472 (4) The security interest is:

2473 (A) Created in a manufactured home in a
2474 manufactured-home transaction; and

2475 (B) Perfected pursuant to a statute described in
2476 Section 75-9-311(a)(2).

2477 (f) A security interest in fixtures, whether or not
2478 perfected, has priority over a conflicting interest of an
2479 encumbrancer or owner of the real property if:

2480 (1) The encumbrancer or owner has, in an authenticated
2481 record, consented to the security interest or disclaimed an
2482 interest in the goods as fixtures; or

2483 (2) The debtor has a right to remove the goods as
2484 against the encumbrancer or owner.

2485 (g) The priority of the security interest under paragraph
2486 (f)(2) continues for a reasonable time if the debtor's right to
2487 remove the goods as against the encumbrancer or owner terminates.

2488 (h) A mortgage is a construction mortgage to the extent that
2489 it secures an obligation incurred for the construction of an
2490 improvement on land, including the acquisition cost of the land,
2491 if a recorded record of the mortgage so indicates. Except as
2492 otherwise provided in subsections (e) and (f), a security interest
2493 in fixtures is subordinate to a construction mortgage if a record
2494 of the mortgage is recorded before the goods become fixtures and
2495 the goods become fixtures before the completion of the
2496 construction. A mortgage has this priority to the same extent as
2497 a construction mortgage to the extent that it is given to
2498 refinance a construction mortgage.

2499 (i) A perfected security interest in crops growing on real
2500 property has priority over a conflicting interest of an
2501 encumbrancer or owner of the real property if the debtor has an
2502 interest of record in or is in possession of the real property.

2503 **SECTION 75-9-335. Accessions.**

2504 (a) A security interest may be created in an accession and
2505 continues in collateral that becomes an accession.

2506 (b) If a security interest is perfected when the collateral
2507 becomes an accession, the security interest remains perfected in
2508 the collateral.

2509 (c) Except as otherwise provided in subsection (d), the
2510 other provisions of this part determine the priority of a security
2511 interest in an accession.

2512 (d) A security interest in an accession is subordinate to a
2513 security interest in the whole which is perfected by compliance
2514 with the requirements of a certificate-of-title statute under
2515 Section 75-9-311(b).

2516 (e) After default, subject to Part 6, a secured party may
2517 remove an accession from other goods if the security interest in
2518 the accession has priority over the claims of every person having
2519 an interest in the whole.

2520 (f) A secured party that removes an accession from other
2521 goods under subsection (e) shall promptly reimburse any holder of
2522 a security interest or other lien on, or owner of, the whole or of
2523 the other goods, other than the debtor, for the cost of repair of
2524 any physical injury to the whole or the other goods. The secured
2525 party need not reimburse the holder or owner for any diminution in
2526 value of the whole or the other goods caused by the absence of the
2527 accession removed or by any necessity for replacing it. A person
2528 entitled to reimbursement may refuse permission to remove until
2529 the secured party gives adequate assurance for the performance of
2530 the obligation to reimburse.

2531 **SECTION 75-9-336. Commingled goods.**

2532 (a) In this section, "commingled goods" means goods that are
2533 physically united with other goods in such a manner that their
2534 identity is lost in a product or mass.

2535 (b) A security interest does not exist in commingled goods
2536 as such. However, a security interest may attach to a product or
2537 mass that results when goods become commingled goods.

2538 (c) If collateral becomes commingled goods, a security
2539 interest attaches to the product or mass.

2540 (d) If a security interest in collateral is perfected before
2541 the collateral becomes commingled goods, the security interest
2542 that attaches to the product or mass under subsection (c) is
2543 perfected.

2544 (e) Except as otherwise provided in subsection (f), the
2545 other provisions of this part determine the priority of a security
2546 interest that attaches to the product or mass under subsection
2547 (c).

2548 (f) If more than one (1) security interest attaches to the
2549 product or mass under subsection (c), the following rules
2550 determine priority:

2551 (1) A security interest that is perfected under
2552 subsection (d) has priority over a security interest that is
2553 unperfected at the time the collateral becomes commingled goods.

2554 (2) If more than one (1) security interest is perfected
2555 under subsection (d), the security interests rank equally in
2556 proportion to the value of the collateral at the time it became
2557 commingled goods.

2558 **SECTION 75-9-337. Priority of security interests in goods**
2559 **covered by certificate of title.** If, while a security interest in
2560 goods is perfected by any method under the law of another
2561 jurisdiction, this state issues a certificate of title that does
2562 not show that the goods are subject to the security interest or
2563 contain a statement that they may be subject to security interests
2564 not shown on the certificate:

2565 (1) A buyer of the goods, other than a person in the
2566 business of selling goods of that kind, takes free of the security
2567 interest if the buyer gives value and receives delivery of the
2568 goods after issuance of the certificate and without knowledge of
2569 the security interest; and

2570 (2) The security interest is subordinate to a
2571 conflicting security interest in the goods that attaches, and is
2572 perfected under Section 75-9-311(b), after issuance of the
2573 certificate and without the conflicting secured party's knowledge
2574 of the security interest.

2575 **SECTION 75-9-338. Priority of security interest or**
2576 **agricultural lien perfected by filed financing statement providing**

2577 **certain incorrect information.** If a security interest or
2578 agricultural lien is perfected by a filed financing statement
2579 providing information described in Section 75-9-516(b)(5) which is
2580 incorrect at the time the financing statement is filed:

2581 (1) The security interest or agricultural lien is
2582 subordinate to a conflicting perfected security interest in the
2583 collateral to the extent that the holder of the conflicting
2584 security interest gives value in reasonable reliance upon the
2585 incorrect information; and

2586 (2) A purchaser, other than a secured party, of the
2587 collateral takes free of the security interest or agricultural
2588 lien to the extent that, in reasonable reliance upon the incorrect
2589 information, the purchaser gives value and, in the case of chattel
2590 paper, documents, goods, instruments, or a security certificate,
2591 receives delivery of the collateral.

2592 **SECTION 75-9-339. Priority subject to subordination.** This
2593 article does not preclude subordination by agreement by a person
2594 entitled to priority.

2595 SUBPART 4. RIGHTS OF BANK

2596 **SECTION 75-9-340. Effectiveness of right of recoupment or**
2597 **set-off against deposit account.**

2598 (a) Except as otherwise provided in subsection (c), a bank
2599 with which a deposit account is maintained may exercise any right
2600 of recoupment or set-off against a secured party that holds a
2601 security interest in the deposit account.

2602 (b) Except as otherwise provided in subsection (c), the
2603 application of this article to a security interest in a deposit
2604 account does not affect a right of recoupment or set-off of the
2605 secured party as to a deposit account maintained with the secured
2606 party.

2607 (c) The exercise by a bank of a set-off against a deposit
2608 account is ineffective against a secured party that holds a
2609 security interest in the deposit account which is perfected by

2643 agricultural lien, or authority given to a debtor to dispose of or
2644 use collateral, without more, does not subject a secured party to
2645 liability in contract or tort for the debtor's acts or omissions.

2646 **SECTION 75-9-403. Agreement not to assert defenses against**
2647 **assignee.**

2648 (a) In this section, "value" has the meaning provided in
2649 Section 75-3-303(a).

2650 (b) Except as otherwise provided in this section, an
2651 agreement between an account debtor and an assignor not to assert
2652 against an assignee any claim or defense that the account debtor
2653 may have against the assignor is enforceable by an assignee that
2654 takes an assignment:

2655 (1) For value;

2656 (2) In good faith;

2657 (3) Without notice of a claim of a property or
2658 possessory right to the property assigned; and

2659 (4) Without notice of a defense or claim in recoupment
2660 of the type that may be asserted against a person entitled to
2661 enforce a negotiable instrument under Section 75-3-305(a).

2662 (c) Subsection (b) does not apply to defenses of a type that
2663 may be asserted against a holder in due course of a negotiable
2664 instrument under Section 75-3-305(b).

2665 (d) In a consumer transaction, if a record evidences the
2666 account debtor's obligation, law other than this article requires
2667 that the record include a statement to the effect that the rights
2668 of an assignee are subject to claims or defenses that the account
2669 debtor could assert against the original obligee, and the record
2670 does not include such a statement:

2671 (1) The record has the same effect as if the record
2672 included such a statement; and

2673 (2) The account debtor may assert against an assignee
2674 those claims and defenses that would have been available if the
2675 record included such a statement.

2676 (e) This section is subject to law other than this article
2677 which establishes a different rule for an account debtor who is an
2678 individual and who incurred the obligation primarily for personal,
2679 family, or household purposes.

2680 (f) Except as otherwise provided in subsection (d), this
2681 section does not displace law other than this article which gives
2682 effect to an agreement by an account debtor not to assert a claim
2683 or defense against an assignee.

2684 **SECTION 75-9-404. Rights acquired by assignee; claims and**
2685 **defenses against assignee.**

2686 (a) Unless an account debtor has made an enforceable
2687 agreement not to assert defenses or claims, and subject to
2688 subsections (b) through (e), the rights of an assignee are subject
2689 to:

2690 (1) All terms of the agreement between the account
2691 debtor and assignor and any defense or claim in recoupment arising
2692 from the transaction that gave rise to the contract; and

2693 (2) Any other defense or claim of the account debtor
2694 against the assignor which accrues before the account debtor
2695 receives a notification of the assignment authenticated by the
2696 assignor or the assignee.

2697 (b) Subject to subsection (c) and except as otherwise
2698 provided in subsection (d), the claim of an account debtor against
2699 an assignor may be asserted against an assignee under subsection
2700 (a) only to reduce the amount the account debtor owes.

2701 (c) This section is subject to law other than this article
2702 which establishes a different rule for an account debtor who is an
2703 individual and who incurred the obligation primarily for personal,
2704 family, or household purposes.

2705 (d) In a consumer transaction, if a record evidences the
2706 account debtor's obligation, law other than this article requires
2707 that the record include a statement to the effect that the account
2708 debtor's recovery against an assignee with respect to claims and

2709 defenses against the assignor may not exceed amounts paid by the
2710 account debtor under the record, and the record does not include
2711 such a statement, the extent to which a claim of an account debtor
2712 against the assignor may be asserted against an assignee is
2713 determined as if the record included such a statement.

2714 (e) This section does not apply to an assignment of a
2715 health-care-insurance receivable.

2716 **SECTION 75-9-405. Modification of assigned contract.**

2717 (a) A modification of or substitution for an assigned
2718 contract is effective against an assignee if made in good faith.
2719 The assignee acquires corresponding rights under the modified or
2720 substituted contract. The assignment may provide that the
2721 modification or substitution is a breach of contract by the
2722 assignor. This subsection is subject to subsections (b) through
2723 (d).

2724 (b) Subsection (a) applies to the extent that:

2725 (1) The right to payment or a part thereof under an
2726 assigned contract has not been fully earned by performance; or

2727 (2) The right to payment or a part thereof has been
2728 fully earned by performance and the account debtor has not
2729 received notification of the assignment under Section 75-9-406(a).

2730 (c) This section is subject to law other than this article
2731 which establishes a different rule for an account debtor who is an
2732 individual and who incurred the obligation primarily for personal,
2733 family, or household purposes.

2734 (d) This section does not apply to an assignment of a
2735 health-care-insurance receivable.

2736 **SECTION 75-9-406. Discharge of account debtor; notification**
2737 **of assignment; identification and proof of assignment;**
2738 **restrictions on assignment of accounts, chattel paper, payment**
2739 **intangibles, and promissory notes ineffective.**

2740 (a) Subject to subsections (b) through (i), an account
2741 debtor on an account, chattel paper, or a payment intangible may

2742 discharge its obligation by paying the assignor until, but not
2743 after, the account debtor receives a notification, authenticated
2744 by the assignor or the assignee, that the amount due or to become
2745 due has been assigned and that payment is to be made to the
2746 assignee. After receipt of the notification, the account debtor
2747 may discharge its obligation by paying the assignee and may not
2748 discharge the obligation by paying the assignor.

2749 (b) Subject to subsection (h), notification is ineffective
2750 under subsection (a):

2751 (1) If it does not reasonably identify the rights
2752 assigned;

2753 (2) To the extent that an agreement between an account
2754 debtor and a seller of a payment intangible limits the account
2755 debtor's duty to pay a person other than the seller and the
2756 limitation is effective under law other than this article; or

2757 (3) At the option of an account debtor, if the
2758 notification notifies the account debtor to make less than the
2759 full amount of any installment or other periodic payment to the
2760 assignee, even if:

2761 (A) Only a portion of the account, chattel paper,
2762 or payment intangible has been assigned to that assignee;

2763 (B) A portion has been assigned to another
2764 assignee; or

2765 (C) The account debtor knows that the assignment
2766 to that assignee is limited.

2767 (c) Subject to subsection (h), if requested by the account
2768 debtor, an assignee shall seasonably furnish reasonable proof that
2769 the assignment has been made. Unless the assignee complies, the
2770 account debtor may discharge its obligation by paying the
2771 assignor, even if the account debtor has received a notification
2772 under subsection (a).

2773 (d) Except as otherwise provided in subsection (e) and
2774 Sections 75-2A-303 and 75-9-407, and subject to subsection (h), a

2775 term in an agreement between an account debtor and an assignor or
2776 in a promissory note is ineffective to the extent that it:

2777 (1) Prohibits, restricts, or requires the consent of
2778 the account debtor or person obligated on the promissory note to
2779 the assignment or transfer of, or the creation, attachment,
2780 perfection or enforcement of a security interest in, the account,
2781 chattel paper, payment intangible, or promissory note; or

2782 (2) Provides that the assignment or transfer or the
2783 creation, attachment, perfection, or enforcement of the security
2784 interest may give rise to a default, breach, right of recoupment,
2785 claim, defense, termination, right of termination, or remedy under
2786 the account, chattel paper, payment intangible, or promissory
2787 note.

2788 (e) Subsection (d) does not apply to the sale of a payment
2789 intangible or promissory note.

2790 (f) Except as otherwise provided in Sections 75-2A-303 and
2791 75-9-407 and subject to subsections (h) and (i), a rule of law,
2792 statute or regulation that prohibits, restricts, or requires the
2793 consent of a government, governmental body or official, or account
2794 debtor to the assignment or transfer of, or creation of a security
2795 interest in, an account or chattel paper is ineffective to the
2796 extent that the rule of law, statute, or regulation:

2797 (1) Prohibits, restricts, or requires the consent of
2798 the government, governmental body or official, or account debtor
2799 to the assignment or transfer of, or the creation, attachment,
2800 perfection, or enforcement of a security interest in the account
2801 or chattel paper; or

2802 (2) Provides that the assignment or transfer or the
2803 creation, attachment, perfection, or enforcement of the security
2804 interest may give rise to a default, breach, right of recoupment,
2805 claim, defense, termination, right of termination, or remedy under
2806 the account or chattel paper.

2807 (g) Subject to subsection (h), an account debtor may not
2808 waive or vary its option under subsection (b)(3).

2809 (h) This section is subject to law other than this article
2810 which establishes a different rule for an account debtor who is an
2811 individual and who incurred the obligation primarily for personal,
2812 family, or household purposes.

2813 (i) This section does not apply to an assignment of a
2814 health-care-insurance receivable.

2815 (j) This section prevails over any inconsistent provision of
2816 an existing or future statute, rule or regulation of this state
2817 unless the provision is contained in a statute of this state,
2818 refers expressly to this section, and states that the provision
2819 prevails over this section.

2820 **SECTION 75-9-407. Restrictions on creation or enforcement of**
2821 **security interest in leasehold interest or in lessor's residual**
2822 **interest.**

2823 (a) Except as otherwise provided in subsection (b), a term
2824 in a lease agreement is ineffective to the extent that it:

2825 (1) Prohibits, restricts, or requires the consent of a
2826 party to the lease to the assignment or transfer of, or the
2827 creation, attachment, perfection, or enforcement of a security
2828 interest in, an interest of a party under the lease contract or in
2829 the lessor's residual interest in the goods; or

2830 (2) Provides that the assignment or transfer or the
2831 creation, attachment, perfection, or enforcement of the security
2832 interest may give rise to a default, breach, right of recoupment,
2833 claim, defense, termination, right of termination, or remedy under
2834 the lease.

2835 (b) Except as otherwise provided in Section 75-2A-303(7), a
2836 term described in subsection (a)(2) is effective to the extent
2837 that there is:

2838 (1) A transfer by the lessee of the lessee's right of
2839 possession or use of the goods in violation of the term; or

2840 (2) A delegation of a material performance of either
2841 party to the lease contract in violation of the term.

2842 (c) The creation, attachment, perfection, or enforcement of
2843 a security interest in the lessor's interest under the lease
2844 contract or the lessor's residual interest in the goods is not a
2845 transfer that materially impairs the lessee's prospect of
2846 obtaining return performance or materially changes the duty of or
2847 materially increases the burden or risk imposed on the lessee
2848 within the purview of Section 75-2A-303(4) unless, and then only
2849 to the extent that, enforcement actually results in a delegation
2850 of material performance of the lessor.

2851 **SECTION 75-9-408. Restrictions on assignment of promissory**
2852 **notes, health-care-insurance receivables, and certain general**
2853 **intangibles ineffective.**

2854 (a) Except as otherwise provided in subsection (b), a term
2855 in a promissory note or in an agreement between an account debtor
2856 and a debtor which relates to a health-care-insurance receivable
2857 or a general intangible, including a contract, permit, license, or
2858 franchise, and which term prohibits, restricts, or requires the
2859 consent of the person obligated on the promissory note or the
2860 account debtor to, the assignment or transfer of, or creation,
2861 attachment, or perfection of a security interest in, the
2862 promissory note, health-care-insurance receivable, or general
2863 intangible, is ineffective to the extent that the term:

2864 (1) Would impair the creation, attachment, or
2865 perfection of a security interest; or

2866 (2) Provides that the assignment or transfer or the
2867 creation, attachment, or perfection of the security interest may
2868 give rise to a default, breach, right of recoupment, claim,
2869 defense, termination, right of termination, or remedy under the
2870 promissory note, health-care-insurance receivable, or general
2871 intangible.

2872 (b) Subsection (a) applies to a security interest in a
2873 payment intangible or promissory note only if the security
2874 interest arises out of a sale of the payment intangible or
2875 promissory note.

2876 (c) A rule of law, statute, or regulation that prohibits,
2877 restricts, or requires the consent of a government, governmental
2878 body or official, person obligated on a promissory note, or
2879 account debtor to the assignment or transfer of, or creation of a
2880 security interest in, a promissory note, health-care-insurance
2881 receivable, or general intangible, including a contract, permit,
2882 license, or franchise between an account debtor and a debtor, is
2883 ineffective to the extent that the rule of law, statute, or
2884 regulation:

2885 (1) Would impair the creation, attachment, or
2886 perfection of a security interest; or

2887 (2) Provides that the assignment or transfer or the
2888 creation, attachment, or perfection of the security interest may
2889 give rise to a default, breach, right of recoupment, claim,
2890 defense, termination, right of termination, or remedy under the
2891 promissory note, health-care-insurance receivable, or general
2892 intangible.

2893 (d) To the extent that a term in a promissory note or in an
2894 agreement between an account debtor and a debtor which relates to
2895 a health-care-insurance receivable or general intangible or a rule
2896 of law, statute, or regulation described in subsection (c) would
2897 be effective under law other than this article but is ineffective
2898 under subsection (a) or (c), the creation, attachment, or
2899 perfection of a security interest in the promissory note,
2900 health-care-insurance receivable, or general intangible:

2901 (1) Is not enforceable against the person obligated on
2902 the promissory note or the account debtor;

2903 (2) Does not impose a duty or obligation on the person
2904 obligated on the promissory note or the account debtor;

2905 (3) Does not require the person obligated on the
2906 promissory note or the account debtor to recognize the security
2907 interest, pay or render performance to the secured party, or
2908 accept payment or performance from the secured party;

2909 (4) Does not entitle the secured party to use or assign
2910 the debtor's rights under the promissory note,
2911 health-care-insurance receivable, or general intangible, including
2912 any related information or materials furnished to the debtor in
2913 the transaction giving rise to the promissory note,
2914 health-care-insurance receivable, or general intangible;

2915 (5) Does not entitle the secured party to use, assign,
2916 possess, or have access to any trade secrets or confidential
2917 information of the person obligated on the promissory note or the
2918 account debtor; and

2919 (6) Does not entitle the secured party to enforce the
2920 security interest in the promissory note, health-care-insurance
2921 receivable, or general intangible.

2922 (e) This section prevails over any inconsistent provision of
2923 an existing or future statute, rule or regulation of this state
2924 unless the provision is contained in a statute of this state,
2925 refers expressly to this section, and states that the provision
2926 prevails over this section.

2927 **SECTION 75-9-409. Restrictions on assignment of**
2928 **letter-of-credit rights ineffective.**

2929 (a) A term in a letter of credit or a rule of law, statute,
2930 regulation, custom, or practice applicable to the letter of credit
2931 which prohibits, restricts, or requires the consent of an
2932 applicant, issuer, or nominated person to a beneficiary's
2933 assignment of or creation of a security interest in a
2934 letter-of-credit right is ineffective to the extent that the term
2935 or rule of law, statute, regulation, custom, or practice:

2936 (1) Would impair the creation, attachment, or
2937 perfection of a security interest in the letter-of-credit right;
2938 or

2939 (2) Provides that the assignment or the creation,
2940 attachment, or perfection of the security interest may give rise
2941 to a default, breach, right of recoupment, claim, defense,
2942 termination, right of termination, or remedy under the
2943 letter-of-credit right.

2944 (b) To the extent that a term in a letter of credit is
2945 ineffective under subsection (a) but would be effective under law
2946 other than this article or a custom or practice applicable to the
2947 letter of credit, to the transfer of a right to draw or otherwise
2948 demand performance under the letter of credit, or to the
2949 assignment of a right to proceeds of the letter of credit, the
2950 creation, attachment, or perfection of a security interest in the
2951 letter-of-credit right:

2952 (1) Is not enforceable against the applicant, issuer,
2953 nominated person, or transferee beneficiary;

2954 (2) Imposes no duties or obligations on the applicant,
2955 issuer, nominated person, or transferee beneficiary; and

2956 (3) Does not require the applicant, issuer, nominated
2957 person, or transferee beneficiary to recognize the security
2958 interest, pay or render performance to the secured party, or
2959 accept payment or other performance from the secured party.

2960 **PART 5**

2961 **FILING**

2962 **SUBPART 1. FILING OFFICE; CONTENTS AND**

2963 **EFFECTIVENESS OF FINANCING STATEMENT**

2964 **SECTION 75-9-501. Filing office.**

2965 (a) Except as otherwise provided in subsection (b), if the
2966 local law of this state governs perfection of a security interest
2967 or agricultural lien, the office in which to file a financing

2968 statement to perfect the security interest or agricultural lien
2969 is:

2970 (1) The office designated for the filing or recording
2971 of a record of a mortgage on the related real property, if:

2972 (A) The collateral is as-extracted collateral or
2973 timber to be cut; or

2974 (B) The financing statement is filed as a fixture
2975 filing and the collateral is goods that are or are to become
2976 fixtures; or

2977 (2) The Office of the Secretary of State in all other
2978 cases, including a case in which the collateral is goods that are
2979 or are to become fixtures and the financing statement is not filed
2980 as a fixture filing.

2981 (b) The office in which to file a financing statement to
2982 perfect a security interest in collateral, including fixtures, of
2983 a transmitting utility is the Office of the Secretary of State.
2984 The financing statement also constitutes a fixture filing as to
2985 the collateral indicated in the financing statement which is or is
2986 to become fixtures.

2987 **SECTION 75-9-502. Contents of financing statement; record of**
2988 **mortgage as financing statement; time of filing financing**
2989 **statement.**

2990 (a) Subject to subsection (b), a financing statement is
2991 sufficient only if it:

2992 (1) Provides the name of the debtor;

2993 (2) Provides the name of the secured party or a
2994 representative of the secured party; and

2995 (3) Indicates the collateral covered by the financing
2996 statement.

2997 (b) Except as otherwise provided in Section 75-9-501(b), to
2998 be sufficient, a financing statement that covers as-extracted
2999 collateral or timber to be cut, or which is filed as a fixture

3000 filing and covers goods that are or are to become fixtures, must
3001 satisfy subsection (a) and also:

3002 (1) Indicate that it covers this type of collateral;

3003 (2) Indicate that it is to be filed for record in the
3004 real property records;

3005 (3) Provide a description of the real property to which
3006 the collateral is related sufficient to give constructive notice
3007 of a mortgage under the law of this state if the description were
3008 contained in a record of the mortgage of the real property; and

3009 (4) If the debtor does not have an interest of record
3010 in the real property, provide the name of a record owner.

3011 (c) A record of a mortgage is effective, from the date of
3012 recording, as a financing statement filed as a fixture filing or
3013 as a financing statement covering as-extracted collateral or
3014 timber to be cut only if:

3015 (1) The record indicates the goods or accounts that it
3016 covers;

3017 (2) The goods are or are to become fixtures related to
3018 the real property described in the record or the collateral is
3019 related to the real property described in the record and is
3020 as-extracted collateral or timber to be cut;

3021 (3) The record satisfies the requirements for a
3022 financing statement in this section other than an indication that
3023 it is to be filed in the real property records; and

3024 (4) The record is duly recorded.

3025 (d) A financing statement may be filed before a security
3026 agreement is made or a security interest otherwise attaches.

3027 **SECTION 75-9-503. Name of debtor and secured party.**

3028 (a) A financing statement sufficiently provides the name of
3029 the debtor:

3030 (1) If the debtor is a registered organization, only if
3031 the financing statement provides the name of the debtor indicated

3032 on the public record of the debtor's jurisdiction of organization
3033 which shows the debtor to have been organized;

3034 (2) If the debtor is a decedent's estate, only if the
3035 financing statement provides the name of the decedent and
3036 indicates that the debtor is an estate;

3037 (3) If the debtor is a trust or a trustee acting with
3038 respect to property held in trust, only if the financing
3039 statement:

3040 (A) Provides the name specified for the trust in
3041 its organic documents or, if no name is specified, provides the
3042 name of the settlor and additional information sufficient to
3043 distinguish the debtor from other trusts having one or more of the
3044 same settlors; and

3045 (B) Indicates, in the debtor's name or otherwise,
3046 that the debtor is a trust or is a trustee acting with respect to
3047 property held in trust; and

3048 (4) In other cases:

3049 (A) If the debtor has a name, only if it provides
3050 the individual or organizational name of the debtor; and

3051 (B) If the debtor does not have a name, only if it
3052 provides the names of the partners, members, associates, or other
3053 persons comprising the debtor.

3054 (b) A financing statement that provides the name of the
3055 debtor in accordance with subsection (a) is not rendered
3056 ineffective by the absence of:

3057 (1) A trade name or other name of the debtor; or

3058 (2) Unless required under subsection (a)(4)(B), names
3059 of partners, members, associates, or other persons comprising the
3060 debtor.

3061 (c) A financing statement that provides only the debtor's
3062 trade name does not sufficiently provide the name of the debtor.

3063 (d) Failure to indicate the representative capacity of a
3064 secured party or representative of a secured party does not affect
3065 the sufficiency of a financing statement.

3066 (e) A financing statement may provide the name of more than
3067 one (1) debtor and the name of more than one (1) secured party.

3068 **SECTION 75-9-504. Indication of collateral.** A financing
3069 statement sufficiently indicates the collateral that it covers if
3070 the financing statement provides:

3071 (1) A description of the collateral pursuant to Section
3072 75-9-108; or

3073 (2) An indication that the financing statement covers
3074 all assets or all personal property.

3075 **SECTION 75-9-505. Filing and compliance with other statutes**
3076 **and treaties for consignments, leases, other bailments, and other**
3077 **transactions.**

3078 (a) A consignor, lessor, or other bailor of goods, a
3079 licensor, or a buyer of a payment intangible or promissory note
3080 may file a financing statement, or may comply with a statute or
3081 treaty described in Section 75-9-311(a), using the terms
3082 "consignor," "consignee," "lessor," "lessee," "bailor," "bailee,"
3083 "licensor," "licensee," "owner," "registered owner," "buyer,"
3084 "seller," or words of similar import, instead of the terms
3085 "secured party" and "debtor."

3086 (b) This part applies to the filing of a financing statement
3087 under subsection (a) and, as appropriate, to compliance that is
3088 equivalent to filing a financing statement under Section
3089 75-9-311(b), but the filing or compliance is not of itself a
3090 factor in determining whether the collateral secures an
3091 obligation. If it is determined for another reason that the
3092 collateral secures an obligation, a security interest held by the
3093 consignor, lessor, bailor, licensor, owner, or buyer which
3094 attaches to the collateral is perfected by the filing or
3095 compliance.

3096 **SECTION 75-9-506. Effect of errors or omissions.**

3097 (a) A financing statement substantially satisfying the
3098 requirements of this part is effective, even if it has minor
3099 errors or omissions, unless the errors or omissions make the
3100 financing statement seriously misleading.

3101 (b) Except as otherwise provided in subsection (c), a
3102 financing statement that fails sufficiently to provide the name of
3103 the debtor in accordance with Section 75-9-503(a) is seriously
3104 misleading.

3105 (c) If a search of the records of the filing office under
3106 the debtor's correct name, using the filing office's standard
3107 search logic, if any, would disclose a financing statement that
3108 fails sufficiently to provide the name of the debtor in accordance
3109 with Section 75-9-503(a), the name provided does not make the
3110 financing statement seriously misleading.

3111 (d) For purposes of Section 75-9-508(b), the "debtor's
3112 correct name" in subsection (c) means the correct name of the new
3113 debtor.

3114 **SECTION 75-9-507. Effect of certain events on effectiveness**
3115 **of financing statement.**

3116 (a) A filed financing statement remains effective with
3117 respect to collateral that is sold, exchanged, leased, licensed,
3118 or otherwise disposed of and in which a security interest or
3119 agricultural lien continues, even if the secured party knows of or
3120 consents to the disposition.

3121 (b) Except as otherwise provided in subsection (c) and
3122 Section 75-9-508, a financing statement is not rendered
3123 ineffective if, after the financing statement is filed, the
3124 information provided in the financing statement becomes seriously
3125 misleading under Section 75-9-506.

3126 (c) If a debtor so changes its name that a filed financing
3127 statement becomes seriously misleading under Section 75-9-506:

3128 (1) The financing statement is effective to perfect a
3129 security interest in collateral acquired by the debtor before, or
3130 within four (4) months after, the change; and

3131 (2) The financing statement is not effective to perfect
3132 a security interest in collateral acquired by the debtor more than
3133 four (4) months after the change, unless an amendment to the
3134 financing statement which renders the financing statement not
3135 seriously misleading is filed within four (4) months after the
3136 change.

3137 **SECTION 75-9-508. Effectiveness of financing statement if**
3138 **new debtor becomes bound by security agreement.**

3139 (a) Except as otherwise provided in this section, a filed
3140 financing statement naming an original debtor is effective to
3141 perfect a security interest in collateral in which a new debtor
3142 has or acquires rights to the extent that the financing statement
3143 would have been effective had the original debtor acquired rights
3144 in the collateral.

3145 (b) If the difference between the name of the original
3146 debtor and that of the new debtor causes a filed financing
3147 statement that is effective under subsection (a) to be seriously
3148 misleading under Section 75-9-506:

3149 (1) The financing statement is effective to perfect a
3150 security interest in collateral acquired by the new debtor before,
3151 and within four (4) months after, the new debtor becomes bound
3152 under Section 75-9-203(d); and

3153 (2) The financing statement is not effective to perfect
3154 a security interest in collateral acquired by the new debtor more
3155 than four (4) months after the new debtor becomes bound under
3156 Section 75-9-203(d) unless an initial financing statement
3157 providing the name of the new debtor is filed before the
3158 expiration of that time.

3159 (c) This section does not apply to collateral as to which a
3160 filed financing statement remains effective against the new debtor
3161 under Section 75-9-507(a).

3162 **SECTION 75-9-509. Persons entitled to file a record.**

3163 (a) A person may file an initial financing statement,
3164 amendment that adds collateral covered by a financing statement,
3165 or amendment that adds a debtor to a financing statement only if:

3166 (1) The debtor authorizes the filing in an
3167 authenticated record or pursuant to subsection (b) or (c); or

3168 (2) The person holds an agricultural lien that has
3169 become effective at the time of filing and the financing statement
3170 covers only collateral in which the person holds an agricultural
3171 lien.

3172 (b) By authenticating or becoming bound as debtor by a
3173 security agreement, a debtor or new debtor authorizes the filing
3174 of an initial financing statement, and an amendment, covering:

3175 (1) The collateral described in the security agreement;
3176 and

3177 (2) Property that becomes collateral under Section
3178 75-9-315(a)(2), whether or not the security agreement expressly
3179 covers proceeds.

3180 (c) By acquiring collateral in which a security interest or
3181 agricultural lien continues under Section 75-9-315(a)(1), a debtor
3182 authorizes the filing of an initial financing statement, and an
3183 amendment, covering the collateral and property that becomes
3184 collateral under Section 75-9-315(a)(2).

3185 (d) A person may file an amendment other than an amendment
3186 that adds collateral covered by a financing statement or an
3187 amendment that adds a debtor to a financing statement only if:

3188 (1) The secured party of record authorizes the filing;
3189 or

3190 (2) The amendment is a termination statement for a
3191 financing statement as to which the secured party of record has

3192 failed to file or send a termination statement as required by
3193 Section 75-9-513(a) or (c), the debtor authorizes the filing, and
3194 the termination statement indicates that the debtor authorized it
3195 to be filed.

3196 (e) If there is more than one (1) secured party of record
3197 for a financing statement, each secured party of record may
3198 authorize the filing of an amendment under subsection (d).

3199 **SECTION 75-9-510. Effectiveness of filed record.**

3200 (a) A filed record is effective only to the extent that it
3201 was filed by a person that may file it under Section 75-9-509.

3202 (b) A record authorized by one (1) secured party of record
3203 does not affect the financing statement with respect to another
3204 secured party of record.

3205 (c) A continuation statement that is not filed within the
3206 six-month period prescribed by Section 75-9-515(d) is ineffective.

3207 **SECTION 75-9-511. Secured party of record.**

3208 (a) A secured party of record with respect to a financing
3209 statement is a person whose name is provided as the name of the
3210 secured party or a representative of the secured party in an
3211 initial financing statement that has been filed. If an initial
3212 financing statement is filed under Section 75-9-514(a), the
3213 assignee named in the initial financing statement is the secured
3214 party of record with respect to the financing statement.

3215 (b) If an amendment of a financing statement which provides
3216 the name of a person as a secured party or a representative of a
3217 secured party is filed, the person named in the amendment is a
3218 secured party of record. If an amendment is filed under Section
3219 75-9-514(b), the assignee named in the amendment is a secured
3220 party of record.

3221 (c) A person remains a secured party of record until the
3222 filing of an amendment of the financing statement which deletes
3223 the person.

3224 **SECTION 75-9-512. Amendment of financing statement.**

3225 (a) Subject to Section 75-9-509, a person may add or delete
3226 collateral covered by, continue or terminate the effectiveness of,
3227 or, subject to subsection (e), otherwise amend the information
3228 provided in, a financing statement by filing an amendment that:

3229 (1) Identifies, by its file number, the initial
3230 financing statement to which the amendment relates; and

3231 (2) If the amendment relates to an initial financing
3232 statement filed for record in a filing office described in Section
3233 75-9-501(a)(1), provides the date that the initial financing
3234 statement was filed for record and the information specified in
3235 Section 75-9-502(b).

3236 (b) Except as otherwise provided in Section 75-9-515, the
3237 filing of an amendment does not extend the period of effectiveness
3238 of the financing statement.

3239 (c) A financing statement that is amended by an amendment
3240 that adds collateral is effective as to the added collateral only
3241 from the date of the filing of the amendment.

3242 (d) A financing statement that is amended by an amendment
3243 that adds a debtor is effective as to the added debtor only from
3244 the date of the filing of the amendment.

3245 (e) An amendment is ineffective to the extent it:

3246 (1) Purports to delete all debtors and fails to provide
3247 the name of a debtor to be covered by the financing statement; or

3248 (2) Purports to delete all secured parties of record
3249 and fails to provide the name of a new secured party of record.

3250 **SECTION 75-9-513. Termination statement.**

3251 (a) A secured party shall cause the secured party of record
3252 for a financing statement to file a termination statement for the
3253 financing statement if the financing statement covers consumer
3254 goods and:

3255 (1) There is no obligation secured by the collateral
3256 covered by the financing statement and no commitment to make an
3257 advance, incur an obligation, or otherwise give value; or

3258 (2) The debtor did not authorize the filing of the
3259 initial financing statement.

3260 (b) To comply with subsection (a), a secured party shall
3261 cause the secured party of record to file the termination
3262 statement:

3263 (1) Within one (1) month after there is no obligation
3264 secured by the collateral covered by the financing statement and
3265 no commitment to make an advance, incur an obligation, or
3266 otherwise give value; or

3267 (2) If earlier, within twenty (20) days after the
3268 secured party receives an authenticated demand from a debtor.

3269 (c) In cases not governed by subsection (a), within twenty
3270 (20) days after a secured party receives an authenticated demand
3271 from a debtor, the secured party shall cause the secured party of
3272 record for a financing statement to send to the debtor a
3273 termination statement for the financing statement or file the
3274 termination statement in the filing office if:

3275 (1) Except in the case of a financing statement
3276 covering accounts or chattel paper that has been sold or goods
3277 that are the subject of a consignment, there is no obligation
3278 secured by the collateral covered by the financing statement and
3279 no commitment to make an advance, incur an obligation, or
3280 otherwise give value;

3281 (2) The financing statement covers accounts or chattel
3282 paper that has been sold but as to which the account debtor or
3283 other person obligated has discharged its obligation;

3284 (3) The financing statement covers goods that were the
3285 subject of a consignment to the debtor but are not in the debtor's
3286 possession; or

3287 (4) The debtor did not authorize the filing of the
3288 initial financing statement.

3289 (d) Except as otherwise provided in Section 75-9-510, upon
3290 the filing of a termination statement with the filing office, the

3291 financing statement to which the termination statement relates
3292 ceases to be effective. Except as otherwise provided in Section
3293 75-9-510, for purposes of Sections 75-9-519(g), 75-9-522(a) and
3294 75-9-523(c), the filing with the filing office of a termination
3295 statement relating to a financing statement that indicates that
3296 the debtor is a transmitting utility also causes the effectiveness
3297 of the financing statement to lapse.

3298 **SECTION 75-9-514. Assignment of powers of secured party of**
3299 **record.**

3300 (a) Except as otherwise provided in subsection (c), an
3301 initial financing statement may reflect an assignment of all of
3302 the secured party's power to authorize an amendment to the
3303 financing statement by providing the name and mailing address of
3304 the assignee as the name and address of the secured party.

3305 (b) Except as otherwise provided in subsection (c), a
3306 secured party of record may assign of record all or part of its
3307 power to authorize an amendment to a financing statement by filing
3308 in the filing office an amendment of the financing statement
3309 which:

3310 (1) Identifies, by its file number, the initial
3311 financing statement to which it relates;

3312 (2) Provides the name of the assignor; and

3313 (3) Provides the name and mailing address of the
3314 assignee.

3315 (c) An assignment of record of a security interest in a
3316 fixture covered by a record of a mortgage which is effective as a
3317 financing statement filed as a fixture filing under Section
3318 75-9-502(c) may be made only by an assignment of record of the
3319 mortgage in the manner provided by law of this state other than
3320 the Uniform Commercial Code.

3321 **SECTION 75-9-515. Duration and effectiveness of financing**
3322 **statement; effect of lapsed financing statement.**

3323 (a) Except as otherwise provided in subsections (b), (e),
3324 (f), and (g), a filed financing statement is effective for a
3325 period of five (5) years after the date of filing.

3326 (b) Except as otherwise provided in subsections (e), (f),
3327 and (g), an initial financing statement filed in connection with a
3328 public-finance transaction or manufactured-home transaction is
3329 effective for a period of thirty (30) years after the date of
3330 filing if it indicates that it is filed in connection with a
3331 public-finance transaction or manufactured-home transaction.

3332 (c) The effectiveness of a filed financing statement lapses
3333 on the expiration of the period of its effectiveness unless before
3334 the lapse a continuation statement is filed pursuant to subsection
3335 (d). Upon lapse, a financing statement ceases to be effective and
3336 any security interest or agricultural lien that was perfected by
3337 the financing statement becomes unperfected, unless the security
3338 interest is perfected otherwise. If the security interest or
3339 agricultural lien becomes unperfected upon lapse, it is deemed
3340 never to have been perfected as against a purchaser of the
3341 collateral for value.

3342 (d) A continuation statement may be filed only within six
3343 (6) months before the expiration of the five-year period specified
3344 in subsection (a) or the thirty-year period specified in
3345 subsection (b), whichever is applicable.

3346 (e) Except as otherwise provided in Section 75-9-510, upon
3347 timely filing of a continuation statement, the effectiveness of
3348 the initial financing statement continues for a period of five (5)
3349 years commencing on the day on which the financing statement would
3350 have become ineffective in the absence of the filing. Upon the
3351 expiration of the five-year period, the financing statement lapses
3352 in the same manner as provided in subsection (c), unless, before
3353 the lapse, another continuation statement is filed pursuant to
3354 subsection (d). Succeeding continuation statements may be filed

3355 in the same manner to continue the effectiveness of the initial
3356 financing statement.

3357 (f) If a debtor is a transmitting utility and a filed
3358 financing statement so indicates, the financing statement is
3359 effective until a termination statement is filed.

3360 (g) A record of a mortgage that is effective as a financing
3361 statement filed as a fixture filing under Section 75-9-502(c)
3362 remains effective as a financing statement filed as a fixture
3363 filing until the mortgage is released or satisfied of record or
3364 its effectiveness otherwise terminates as to the real property.

3365 **SECTION 75-9-516. What constitutes filing; effectiveness of**
3366 **filing.**

3367 (a) Except as otherwise provided in subsection (b),
3368 communication of a record to a filing office and tender of the
3369 filing fee or acceptance of the record by the filing office
3370 constitutes filing.

3371 (b) Filing does not occur with respect to a record that a
3372 filing office refuses to accept because:

3373 (1) The record is not communicated by a method or
3374 medium of communication authorized by the filing office;

3375 (2) An amount equal to or greater than the applicable
3376 filing fee is not tendered;

3377 (3) The filing office is unable to index the record
3378 because:

3379 (A) In the case of an initial financing statement,
3380 the record does not provide a name for the debtor;

3381 (B) In the case of an amendment or correction
3382 statement, the record:

3383 (i) Does not identify the initial financing
3384 statement as required by Section 75-9-512 or 75-9-518, as
3385 applicable; or

3386 (ii) Identifies an initial financing
3387 statement whose effectiveness has lapsed under Section 75-9-515;

3388 (C) In the case of an initial financing statement
3389 that provides the name of a debtor identified as an individual or
3390 an amendment that provides a name of a debtor identified as an
3391 individual which was not previously provided in the financing
3392 statement to which the record relates, the record does not
3393 identify the debtor's last name; or

3394 (D) In the case of a record filed, or filed for
3395 record, in the filing office described in Section 75-9-501(a)(1),
3396 the record does not provide a sufficient description of the real
3397 property to which it relates;

3398 (4) In the case of an initial financing statement or an
3399 amendment that adds a secured party of record, the record does not
3400 provide a name and mailing address for the secured party of
3401 record;

3402 (5) In the case of an initial financing statement or an
3403 amendment that provides a name of a debtor which was not
3404 previously provided in the financing statement to which the
3405 amendment relates, the record does not:

3406 (A) Provide a mailing address for the debtor;

3407 (B) Indicate whether the debtor is an individual
3408 or an organization; or

3409 (C) If the financing statement indicates that the
3410 debtor is an organization, provide:

3411 (i) A type of organization for the debtor;

3412 (ii) A jurisdiction of organization for the
3413 debtor; or

3414 (iii) An organizational identification number
3415 for the debtor or indicate that the debtor has none;

3416 (6) In the case of an assignment reflected in an
3417 initial financing statement under Section 75-9-514(a) or an
3418 amendment filed under Section 75-9-514(b), the record does not
3419 provide a name and mailing address for the assignee; or

3420 (7) In the case of a continuation statement, the record
3421 is not filed within the six-month period prescribed by Section
3422 75-9-515(d).

3423 (c) For purposes of subsection (b):

3424 (1) A record does not provide information if the filing
3425 office is unable to read or decipher the information; and

3426 (2) A record that does not indicate that it is an
3427 amendment or identify an initial financing statement to which it
3428 relates, as required by Section 75-9-512, 75-9-514 or 75-9-518, is
3429 an initial financing statement.

3430 (d) A record that is communicated to the filing office with
3431 tender of the filing fee, but which the filing office refuses to
3432 accept for a reason other than one set forth in subsection (b), is
3433 effective as a filed record except as against a purchaser of the
3434 collateral which gives value in reasonable reliance upon the
3435 absence of the record from the files.

3436 **SECTION 75-9-517. Effect of indexing errors.** The failure of
3437 the filing office to index a record correctly does not affect the
3438 effectiveness of the filed record.

3439 **SECTION 75-9-518. Claim concerning inaccurate or wrongfully**
3440 **filed record.**

3441 (a) A person may file in the filing office a correction
3442 statement with respect to a record indexed there under the
3443 person's name if the person believes that the record is inaccurate
3444 or was wrongfully filed.

3445 (b) A correction statement must:

3446 (1) Identify the record to which it relates by:

3447 (A) The file number assigned to the initial
3448 financing statement to which the record relates; and

3449 (B) If the correction statement relates to a
3450 record filed for record in a filing office described in Section
3451 75-9-501(a)(1), the date that the initial financing statement was

3452 filed for record and the information specified in Section
3453 75-9-502(b);

3454 (2) Indicate that it is a correction statement; and

3455 (3) Provide the basis for the person's belief that the
3456 record is inaccurate and indicate the manner in which the person
3457 believes the record should be amended to cure any inaccuracy or
3458 provide the basis for the person's belief that the record was
3459 wrongfully filed.

3460 (c) The filing of a correction statement does not affect the
3461 effectiveness of an initial financing statement or other filed
3462 record.

3463 SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

3464 **SECTION 75-9-519. Numbering, maintaining, and indexing**
3465 **records; communicating information provided in records.**

3466 (a) For each record filed in a filing office, the filing
3467 office shall:

3468 (1) Assign a unique number to the filed record;

3469 (2) Create a record that bears the number assigned to
3470 the filed record and the date and time of filing;

3471 (3) Maintain the filed record for public inspection;

3472 and

3473 (4) Index the filed record in accordance with

3474 subsections (c), (d), and (e).

3475 (b) Except as provided in subsection (i), a file number
3476 assigned after January 1, 2002, must include a digit that:

3477 (1) Is mathematically derived from or related to the
3478 other digits of the file number; and

3479 (2) Aids the filing office in determining whether a
3480 number communicated as the file number includes a single-digit or
3481 transpositional error.

3482 (c) Except as otherwise provided in subsections (d) and (e),
3483 the filing office shall:

3484 (1) Index an initial financing statement according to
3485 the name of the debtor and index all filed records relating to the
3486 initial financing statement in a manner that associates with one
3487 another an initial financing statement and all filed records
3488 relating to the initial financing statement; and

3489 (2) Index a record that provides a name of a debtor
3490 which was not previously provided in the financing statement to
3491 which the record relates also according to the name that was not
3492 previously provided.

3493 (d) If a financing statement is filed as a fixture filing or
3494 covers as-extracted collateral or timber to be cut, it must be
3495 filed for record and the filing office shall index it:

3496 (1) Under the names of the debtor and of each owner of
3497 record shown on the financing statement as if they were the
3498 mortgagors under a mortgage of the real property described; and

3499 (2) To the extent that the law of this state provides
3500 for indexing of records of mortgages under the name of the
3501 mortgagee, under the name of the secured party as if the secured
3502 party were the mortgagee thereunder, or, if indexing is by
3503 description, as if the financing statement were a record of a
3504 mortgage of the real property described.

3505 (e) If a financing statement is filed as a fixture filing or
3506 covers as-extracted collateral or timber to be cut, the filing
3507 office shall index an assignment filed under Section 75-9-514(a)
3508 or an amendment filed under Section 75-9-514(b):

3509 (1) Under the name of the assignor as grantor; and

3510 (2) To the extent that the law of this state provides
3511 for indexing a record of the assignment of a mortgage under the
3512 name of the assignee, under the name of the assignee.

3513 (f) The filing office shall maintain a capability:

3514 (1) To retrieve a record by the name of the debtor and:

3515 (A) If the filing office is described in Section
3516 75-9-501(a)(1), by the file number assigned to the initial

3517 financing statement to which the record relates and the date and
3518 time that the record was filed for record; or

3519 (B) If the filing office is described in Section
3520 75-9-501(a)(2), by the file number assigned to the initial
3521 financing statement to which the record relates; and

3522 (2) To associate and retrieve with one another an
3523 initial financing statement and each filed record relating to the
3524 initial financing statement.

3525 (g) The filing office may not remove a debtor's name from
3526 the index until one (1) year after the effectiveness of a
3527 financing statement naming the debtor lapses under Section
3528 75-9-515 with respect to all secured parties of record.

3529 (h) Except as provided in subsection (i), the filing office
3530 shall perform the acts required by subsections (a) through (e) at
3531 the time and in the manner prescribed by filing-office rule, but
3532 not later than two (2) business days after the filing office
3533 receives the record in question.

3534 (i) Subsections (b) and (h) do not apply to a filing office
3535 described in Section 75-9-501(a)(1).

3536 **SECTION 75-9-520. Acceptance and refusal to accept record.**

3537 (a) A filing office shall refuse to accept a record for
3538 filing for a reason set forth in Section 75-9-516(b) and may
3539 refuse to accept a record for filing only for a reason set forth
3540 in Section 75-9-516(b).

3541 (b) If a filing office refuses to accept a record for
3542 filing, it shall communicate to the person that presented the
3543 record the fact of and reason for the refusal and the date and
3544 time the record would have been filed had the filing office
3545 accepted it. The communication must be made at the time and in
3546 the manner prescribed by filing-office rule but, in the case of a
3547 filing office described in Section 75-9-501(a)(1), in no event
3548 more than two (2) business days after the filing office receives
3549 the record.

3550 (c) A filed financing statement satisfying Section
3551 75-9-502(a) and (b) is effective, even if the filing office is
3552 required to refuse to accept it for filing under subsection (a).
3553 However, Section 75-9-338 applies to a filed financing statement
3554 providing information described in Section 75-9-516(b)(5) which is
3555 incorrect at the time the financing statement is filed.

3556 (d) If a record communicated to a filing office provides
3557 information that relates to more than one (1) debtor, this part
3558 applies as to each debtor separately.

3559 **SECTION 75-9-521. Uniform form of written financing**
3560 **statement and amendment.**

3561 (a) A filing office that accepts written records may not
3562 refuse to accept a written initial financing statement in the form
3563 and format set forth in the final official text of the 1999
3564 revisions to Article 9 of the Uniform Commercial Code promulgated
3565 by The American Law Institute and the National Conference of
3566 Commissioners on Uniform State Laws, except for a reason set forth
3567 in Section 75-9-516(b).

3568 (b) A filing office that accepts written records may not
3569 refuse to accept a written record in the form and format set forth
3570 in the final official text of the 1999 revisions to Article 9 of
3571 the Uniform Commercial Code promulgated by The American Law
3572 Institute and the National Conference of Commissioners on Uniform
3573 State Laws, except for a reason set forth in Section 75-9-516(b).

3574 **SECTION 75-9-522. Maintenance and destruction of records.**

3575 (a) The filing office shall maintain a record of the
3576 information provided in a filed financing statement for at least
3577 one (1) year after the effectiveness of the financing statement
3578 has lapsed under Section 75-9-515 with respect to all secured
3579 parties of record. The record must be retrievable by using the
3580 name of the debtor and:

3581 (1) If the record was filed or recorded in the filing
3582 office described in Section 75-9-501(a)(1), by using the file

3583 number assigned to the initial financing statement to which the
3584 record relates and the date that the record was filed for record;
3585 or

3586 (2) If the record was filed in the filing office
3587 described in Section 75-9-501(a)(2), by using the file number
3588 assigned to the initial financing statement to which the record
3589 relates.

3590 (b) Except to the extent that a statute governing
3591 disposition of public records provides otherwise, the filing
3592 office immediately may destroy any written record evidencing a
3593 financing statement. However, if the filing office destroys a
3594 written record, it shall maintain another record of the financing
3595 statement which complies with subsection (a).

3596 **SECTION 75-9-523. Information from filing office; sale or**
3597 **license of records.**

3598 (a) If a person that files a written record requests an
3599 acknowledgment of the filing, the filing office shall send to the
3600 person an image of the record showing the number assigned to the
3601 record pursuant to Section 75-9-519(a)(1) and the date and time of
3602 the filing of the record. However, if the person furnishes a copy
3603 of the record to the filing office, the filing office may instead:

3604 (1) Note upon the copy the number assigned to the
3605 record pursuant to Section 75-9-519(a)(1) and the date and time of
3606 the filing of the record; and

3607 (2) Send the copy to the person.

3608 (b) If a person files a record other than a written record,
3609 the filing office shall communicate to the person an
3610 acknowledgment that provides:

3611 (1) The information in the record;

3612 (2) The number assigned to the record pursuant to
3613 Section 75-9-519(a)(1); and

3614 (3) The date and time of the filing of the record.

3615 (c) The filing office shall communicate or otherwise make
3616 available in a record the following information to any person that
3617 requests it:

3618 (1) Whether there is on file on a date and time
3619 specified by the filing office, but not a date earlier than three
3620 (3) business days before the filing office receives the request,
3621 any financing statement that:

3622 (A) Designates a particular debtor or, if the
3623 request so states, designates a particular debtor at the address
3624 specified in the request;

3625 (B) Has not lapsed under Section 75-9-515 with
3626 respect to all secured parties of record; and

3627 (C) If the request so states, has lapsed under
3628 Section 75-9-515 and a record of which is maintained by the filing
3629 office under Section 75-9-522(a);

3630 (2) The date and time of filing of each financing
3631 statement; and

3632 (3) The information provided in each financing
3633 statement.

3634 (d) In complying with its duty under subsection (c), the
3635 filing office may communicate information in any medium. However,
3636 if requested, the filing office shall communicate information by
3637 issuing its written certificate or, if so requested in writing, a
3638 record that can be admitted into evidence in the courts of this
3639 state without extrinsic evidence of its authenticity.

3640 (e) The filing office shall perform the acts required by
3641 subsections (a) through (d) at the time and in the manner
3642 prescribed by filing-office rule, but, in the case of a filing
3643 office described in Section 75-9-501(a)(2), not later than two (2)
3644 business days after the filing office receives the request.

3645 (f) At least weekly, the filing office shall offer to sell
3646 or license to the public on a nonexclusive basis, in bulk, copies
3647 of all records filed in it under this part, in every medium from

3648 time to time available to the filing office. This subsection
3649 shall apply only to records filed in a filing office described in
3650 Section 75-9-501(a)(2).

3651 **SECTION 75-9-524. Delay by filing office.** Delay by the
3652 filing office beyond a time limit prescribed by this part is
3653 excused if:

3654 (1) The delay is caused by interruption of
3655 communication or computer facilities, war, emergency conditions,
3656 failure of equipment, or other circumstances beyond control of the
3657 filing office; and

3658 (2) The filing office exercises reasonable diligence
3659 under the circumstances.

3660 **SECTION 75-9-525. Fees.**

3661 (a) Except as otherwise provided in subsection (e), the fee
3662 for filing and indexing a record under this part, other than an
3663 initial financing statement of the kind described in subsection
3664 (b) is the amount specified in subsection (c), if applicable,
3665 plus:

3666 (1) Ten Dollars (\$10.00) if the record is communicated
3667 in writing and is in the standard form prescribed by the Secretary
3668 of State;

3669 (2) Thirteen Dollars (\$13.00) if the record is
3670 communicated in writing and is not in the standard form prescribed
3671 by the Secretary of State; and

3672 (3) Eight Dollars (\$8.00) if the record is communicated
3673 by another medium authorized by filing-office rule.

3674 (b) Except as otherwise provided in subsection (e), the fee
3675 for filing and indexing an initial financing statement of the
3676 following kind is the amount specified in subsection (c), if
3677 applicable, plus:

3678 (1) Thirteen Dollars (\$13.00) if the financing
3679 statement indicates that it is filed in connection with a
3680 public-finance transaction;

3681 (2) Ten Dollars (\$10.00) if the financing statement
3682 indicates that it is filed in connection with a manufactured-home
3683 transaction.

3684 (c) Except as otherwise provided in subsection (e), if a
3685 record is communicated in writing, the fee for each additional
3686 debtor name more than one (1) required to be indexed is Four
3687 Dollars (\$4.00).

3688 (d) The fee for responding to a request for information from
3689 the filing office, including for issuing a certificate showing
3690 whether there is on file any financing statement naming a
3691 particular debtor, is:

3692 (1) Five Dollars (\$5.00) if the request is communicated
3693 in writing on the standard form prescribed by the Secretary of
3694 State;

3695 (2) Ten Dollars (\$10.00) if the request is communicated
3696 in writing and is not in the standard form prescribed by the
3697 Secretary of State;

3698 (3) Three Dollars (\$3.00) if the request is
3699 communicated by another medium authorized by filing-office rule;
3700 and

3701 (4) An additional fee of Two Dollars (\$2.00) shall be
3702 paid by the requesting party for each financing statement listed
3703 on the filing officer's certificate, the aggregate of which shall
3704 be billed to the requesting party at the time the filing officer's
3705 certificate is issued.

3706 (e) This section does not require a fee to the chancery
3707 clerk with respect to a record of a mortgage which is effective as
3708 a financing statement filed as a fixture filing or as a financing
3709 statement covering as-extracted collateral or timber to be cut
3710 under Section 75-9-502(c). However, the recording and
3711 satisfaction fees to the chancery clerk that otherwise would be
3712 applicable under Section 25-7-9 to the record of the mortgage
3713 apply.

3714 **SECTION 75-9-526. Filing-office rules.**

3715 (a) The Secretary of State shall adopt and publish rules to
3716 implement this article. The filing-office rules must be:

3717 (1) Consistent with this article; and

3718 (2) Adopted and published in accordance with the
3719 Mississippi Administrative Procedures Act.

3720 (b) To keep the filing-office rules and practices of the
3721 filing office in harmony with the rules and practices of filing
3722 offices in other jurisdictions that enact substantially this part,
3723 and to keep the technology used by the filing office compatible
3724 with the technology used by filing offices in other jurisdictions
3725 that enact substantially this part, the Secretary of State, so far
3726 as is consistent with the purposes, policies, and provisions of
3727 this article, in adopting, amending, and repealing filing-office
3728 rules, shall:

3729 (1) Consult with filing offices in other jurisdictions
3730 that enact substantially this part; and

3731 (2) Consult the most recent version of the Model Rules
3732 promulgated by the International Association of Corporate
3733 Administrators or any successor organization; and

3734 (3) Take into consideration the rules and practices of,
3735 and the technology used by, filing offices in other jurisdictions
3736 that enact substantially this part.

3737 **SECTION 75-9-527. Duty to report.** The Secretary of State
3738 shall report annually on or before January 2 to the Legislature on
3739 the operation of the filing office. The report must contain a
3740 statement of the extent to which:

3741 (1) The filing-office rules are not in harmony with the
3742 rules of filing offices in other jurisdictions that enact
3743 substantially this part and the reasons for these variations; and

3744 (2) The filing-office rules are not in harmony with the
3745 most recent version of the Model Rules promulgated by the

3746 International Association of Corporate Administrators, or any
3747 successor organization, and the reasons for these variations.

3748 **PART 6**

3749 **DEFAULT**

3750 SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

3751 **SECTION 75-9-601. Rights after default; judicial**
3752 **enforcement; consignor or buyer of accounts, chattel paper,**
3753 **payment intangibles, or promissory notes.**

3754 (a) After default, a secured party has the rights provided
3755 in this part and, except as otherwise provided in Section
3756 75-9-602, those provided by agreement of the parties. A secured
3757 party:

3758 (1) May reduce a claim to judgment, foreclose, or
3759 otherwise enforce the claim, security interest, or agricultural
3760 lien by any available judicial procedure; and

3761 (2) If the collateral is documents, may proceed either
3762 as to the documents or as to the goods they cover.

3763 (b) A secured party in possession of collateral or control
3764 of collateral under Section 75-9-104, 75-9-105, 75-9-106, or
3765 75-9-107 has the rights and duties provided in Section 75-9-207.

3766 (c) The rights under subsections (a) and (b) are cumulative
3767 and may be exercised simultaneously.

3768 (d) Except as otherwise provided in subsection (g) and
3769 Section 75-9-605, after default, a debtor and an obligor have the
3770 rights provided in this part and by agreement of the parties.

3771 (e) If a secured party has reduced its claim to judgment,
3772 the lien of any levy that may be made upon the collateral by
3773 virtue of an execution based upon the judgment relates back to the
3774 earliest of:

3775 (1) The date of perfection of the security interest or
3776 agricultural lien in the collateral;

3777 (2) The date of filing a financing statement covering
3778 the collateral; or

3779 (3) Any date specified in a statute under which the
3780 agricultural lien was created.

3781 (f) A sale pursuant to an execution is a foreclosure of the
3782 security interest or agricultural lien by judicial procedure
3783 within the meaning of this section. A secured party may purchase
3784 at the sale and thereafter hold the collateral free of any other
3785 requirements of this article.

3786 (g) Except as otherwise provided in Section 75-9-607(c),
3787 this part imposes no duties upon a secured party that is a
3788 consignor or is a buyer of accounts, chattel paper, payment
3789 intangibles, or promissory notes.

3790 **SECTION 75-9-602. Waiver and variance of rights and duties.**

3791 Except as otherwise provided in Section 75-9-624, to the extent
3792 that they give rights to a debtor or obligor and impose duties on
3793 a secured party, the debtor or obligor may not waive or vary the
3794 rules stated in the following listed sections:

3795 (1) Section 75-9-207(b)(4)(C), which deals with use and
3796 operation of the collateral by the secured party;

3797 (2) Section 75-9-210, which deals with requests for an
3798 accounting and requests concerning a list of collateral and
3799 statement of account;

3800 (3) Section 75-9-607(c), which deals with collection
3801 and enforcement of collateral;

3802 (4) Sections 75-9-608(a) and 75-9-615(c) to the extent
3803 that they deal with application or payment of noncash proceeds of
3804 collection, enforcement, or disposition;

3805 (5) Sections 75-9-608(a) and 75-9-615(d) to the extent
3806 that they require accounting for or payment of surplus proceeds of
3807 collateral;

3808 (6) Section 75-9-609 to the extent that it imposes upon
3809 a secured party that takes possession of collateral without
3810 judicial process the duty to do so without breach of the peace;

3811 (7) Sections 75-9-610(b), 75-9-611, 75-9-613, and
3812 75-9-614, which deal with disposition of collateral;

3813 (8) Section 75-9-615(f), which deals with calculation
3814 of a deficiency or surplus when a disposition is made to the
3815 secured party, a person related to the secured party, or a
3816 secondary obligor;

3817 (9) Section 75-9-616, which deals with explanation of
3818 the calculation of a surplus or deficiency;

3819 (10) Sections 75-9-620, 75-9-621, and 75-9-622, which
3820 deal with acceptance of collateral in satisfaction of obligation;

3821 (11) Section 75-9-623, which deals with redemption of
3822 collateral;

3823 (12) Section 75-9-624, which deals with permissible
3824 waivers; and

3825 (13) Sections 75-9-625 and 75-9-626, which deal with
3826 the secured party's liability for failure to comply with this
3827 article.

3828 **SECTION 75-9-603. Agreement on standards concerning rights**
3829 **and duties.**

3830 (a) The parties may determine by agreement the standards
3831 measuring the fulfillment of the rights of a debtor or obligor and
3832 the duties of a secured party under a rule stated in Section
3833 75-9-602 if the standards are not manifestly unreasonable.

3834 (b) Subsection (a) does not apply to the duty under Section
3835 75-9-609 to refrain from breaching the peace.

3836 **SECTION 75-9-604. Procedure if security agreement covers**
3837 **real property or fixtures.**

3838 (a) If a security agreement covers both personal and real
3839 property, a secured party may proceed:

3840 (1) Under this part as to the personal property without
3841 prejudicing any rights with respect to the real property; or

3842 (2) As to both the personal property and the real
3843 property in accordance with the rights with respect to the real

3844 property, in which case the other provisions of this part do not
3845 apply.

3846 (b) Subject to subsection (c), if a security agreement
3847 covers goods that are or become fixtures, a secured party may
3848 proceed:

3849 (1) Under this part; or

3850 (2) In accordance with the rights with respect to real
3851 property, in which case the other provisions of this part do not
3852 apply.

3853 (c) Subject to the other provisions of this part, if a
3854 secured party holding a security interest in fixtures has priority
3855 over all owners and encumbrancers of the real property, the
3856 secured party, after default, may remove the collateral from the
3857 real property.

3858 (d) A secured party that removes collateral shall promptly
3859 reimburse any encumbrancer or owner of the real property, other
3860 than the debtor, for the cost of repair of any physical injury
3861 caused by the removal. The secured party need not reimburse the
3862 encumbrancer or owner for any diminution in value of the real
3863 property caused by the absence of the goods removed or by any
3864 necessity of replacing them. A person entitled to reimbursement
3865 may refuse permission to remove until the secured party gives
3866 adequate assurance for the performance of the obligation to
3867 reimburse.

3868 **SECTION 75-9-605. Unknown debtor or secondary obligor.** A
3869 secured party does not owe a duty based on its status as secured
3870 party:

3871 (1) To a person that is a debtor or obligor, unless the
3872 secured party knows:

3873 (A) That the person is a debtor or obligor;

3874 (B) The identity of the person; and

3875 (C) How to communicate with the person; or

3876 (2) To a secured party or lienholder that has filed a
3877 financing statement against a person, unless the secured party
3878 knows:

3879 (A) That the person is a debtor; and

3880 (B) The identity of the person.

3881 **SECTION 75-9-606. Time of default for agricultural lien.**

3882 For purposes of this part, a default occurs in connection with an
3883 agricultural lien at the time the secured party becomes entitled
3884 to enforce the lien in accordance with the statute under which it
3885 was created.

3886 **SECTION 75-9-607. Collection and enforcement by secured**
3887 **party.**

3888 (a) If so agreed, and in any event after default, a secured
3889 party:

3890 (1) May notify an account debtor or other person
3891 obligated on collateral to make payment or otherwise render
3892 performance to or for the benefit of the secured party;

3893 (2) May take any proceeds to which the secured party is
3894 entitled under Section 75-9-315;

3895 (3) May enforce the obligations of an account debtor or
3896 other person obligated on collateral and exercise the rights of
3897 the debtor with respect to the obligation of the account debtor or
3898 other person obligated on collateral to make payment or otherwise
3899 render performance to the debtor, and with respect to any property
3900 that secures the obligations of the account debtor or other person
3901 obligated on the collateral;

3902 (4) If it holds a security interest in a deposit
3903 account perfected by control under Section 75-9-104(a)(1), may
3904 apply the balance of the deposit account to the obligation secured
3905 by the deposit account; and

3906 (5) If it holds a security interest in a deposit
3907 account perfected by control under Section 75-9-104(a)(2) or (3),

3908 may instruct the bank to pay the balance of the deposit account to
3909 or for the benefit of the secured party.

3910 (b) If necessary to enable a secured party to exercise under
3911 subsection (a)(3) the right of a debtor to enforce a mortgage
3912 nonjudicially, the secured party may record in the office in which
3913 a record of the mortgage is recorded:

3914 (1) A copy of the security agreement that creates or
3915 provides for a security interest in the obligation secured by the
3916 mortgage; and

3917 (2) The secured party's sworn affidavit in recordable
3918 form stating that:

3919 (A) A default has occurred; and

3920 (B) The secured party is entitled to enforce the
3921 mortgage nonjudicially.

3922 (c) A secured party shall proceed in a commercially
3923 reasonable manner if the secured party:

3924 (1) Undertakes to collect from or enforce an obligation
3925 of an account debtor or other person obligated on collateral; and

3926 (2) Is entitled to charge back uncollected collateral
3927 or otherwise to full or limited recourse against the debtor or a
3928 secondary obligor.

3929 (d) A secured party may deduct from the collections made
3930 pursuant to subsection (c) reasonable expenses of collection and
3931 enforcement, including reasonable attorney's fees and legal
3932 expenses incurred by the secured party.

3933 (e) This section does not determine whether an account
3934 debtor, bank, or other person obligated on collateral owes a duty
3935 to a secured party.

3936 **SECTION 75-9-608. Application of proceeds of collection or**
3937 **enforcement; liability for deficiency and right to surplus.**

3938 (a) If a security interest or agricultural lien secures
3939 payment or performance of an obligation, the following rules
3940 apply:

3941 (1) A secured party shall apply or pay over for
3942 application the cash proceeds of collection or enforcement under
3943 Section 75-9-607 in the following order to:

3944 (A) The reasonable expenses of collection and
3945 enforcement and, to the extent provided for by agreement and not
3946 prohibited by law, reasonable attorney's fees and legal expenses
3947 incurred by the secured party;

3948 (B) The satisfaction of obligations secured by the
3949 security interest or agricultural lien under which the collection
3950 or enforcement is made; and

3951 (C) The satisfaction of obligations secured by any
3952 subordinate security interest in or other lien on the collateral
3953 subject to the security interest or agricultural lien under which
3954 the collection or enforcement is made if the secured party
3955 receives an authenticated demand for proceeds before distribution
3956 of the proceeds is completed.

3957 (2) If requested by a secured party, a holder of a
3958 subordinate security interest or other lien shall furnish
3959 reasonable proof of the interest or lien within a reasonable time.
3960 Unless the holder complies, the secured party need not comply with
3961 the holder's demand under paragraph (1)(C).

3962 (3) A secured party need not apply or pay over for
3963 application noncash proceeds of collection and enforcement under
3964 Section 75-9-607 unless the failure to do so would be commercially
3965 unreasonable. A secured party that applies or pays over for
3966 application noncash proceeds shall do so in a commercially
3967 reasonable manner.

3968 (4) A secured party shall account to and pay a debtor
3969 for any surplus, and the obligor is liable for any deficiency.

3970 (b) If the underlying transaction is a sale of accounts,
3971 chattel paper, payment intangibles, or promissory notes, the
3972 debtor is not entitled to any surplus, and the obligor is not
3973 liable for any deficiency.

3974 **SECTION 75-9-609. Secured party's right to take possession**
3975 **after default.**

3976 (a) After default, a secured party:
3977 (1) May take possession of the collateral; and
3978 (2) Without removal, may render equipment unusable and
3979 dispose of collateral on a debtor's premises under Section
3980 75-9-610.

3981 (b) A secured party may proceed under subsection (a):
3982 (1) Pursuant to judicial process; or
3983 (2) Without judicial process, if it proceeds without
3984 breach of the peace.

3985 (c) If so agreed, and in any event after default, a secured
3986 party may require the debtor to assemble the collateral and make
3987 it available to the secured party at a place to be designated by
3988 the secured party which is reasonably convenient to both parties.

3989 **SECTION 75-9-610. Disposition of collateral after default.**

3990 (a) After default, a secured party may sell, lease, license,
3991 or otherwise dispose of any or all of the collateral in its
3992 present condition or following any commercially reasonable
3993 preparation or processing.

3994 (b) Every aspect of a disposition of collateral, including
3995 the method, manner, time, place, and other terms, must be
3996 commercially reasonable. If commercially reasonable, a secured
3997 party may dispose of collateral by public or private proceedings,
3998 by one or more contracts, as a unit or in parcels, and at any time
3999 and place and on any terms.

4000 (c) A secured party may purchase collateral:
4001 (1) At a public disposition; or
4002 (2) At a private disposition only if the collateral is
4003 of a kind that is customarily sold on a recognized market or the
4004 subject of widely distributed standard price quotations.

4005 (d) A contract for sale, lease, license, or other
4006 disposition includes the warranties relating to title, possession,

4007 quiet enjoyment, and the like which by operation of law accompany
4008 a voluntary disposition of property of the kind subject to the
4009 contract.

4010 (e) A secured party may disclaim or modify warranties under
4011 subsection (d):

4012 (1) In a manner that would be effective to disclaim or
4013 modify the warranties in a voluntary disposition of property of
4014 the kind subject to the contract of disposition; or

4015 (2) By communicating to the purchaser a record
4016 evidencing the contract for disposition and including an express
4017 disclaimer or modification of the warranties.

4018 (f) A record is sufficient to disclaim warranties under
4019 subsection (e) if it indicates "There is no warranty relating to
4020 title, possession, quiet enjoyment or the like in this
4021 disposition" or uses words of similar import.

4022 **SECTION 75-9-611. Notification before disposition of**
4023 **collateral.**

4024 (a) In this section, "notification date" means the earlier
4025 of the date on which:

4026 (1) A secured party sends to the debtor and any
4027 secondary obligor an authenticated notification of disposition; or

4028 (2) The debtor and any secondary obligor waive the
4029 right to notification.

4030 (b) Except as otherwise provided in subsection (d), a
4031 secured party that disposes of collateral under Section 75-9-610
4032 shall send to the persons specified in subsection (c) a reasonable
4033 authenticated notification of disposition.

4034 (c) To comply with subsection (b), the secured party shall
4035 send an authenticated notification of disposition to:

4036 (1) The debtor;

4037 (2) Any secondary obligor; and

4038 (3) If the collateral is other than consumer goods:

4039 (A) Any other person from which the secured party
4040 has received, before the notification date, an authenticated
4041 notification of a claim of an interest in the collateral;

4042 (B) Any other secured party or lienholder that,
4043 ten (10) days before the notification date, held a security
4044 interest in or other lien on the collateral perfected by the
4045 filing of a financing statement that:

4046 (i) Identified the collateral;

4047 (ii) Was indexed under the debtor's name as
4048 of that date; and

4049 (iii) Was filed in the office in which to
4050 file a financing statement against the debtor covering the
4051 collateral as of that date; and

4052 (C) Any other secured party that, ten (10) days
4053 before the notification date, held a security interest in the
4054 collateral perfected by compliance with a statute, regulation, or
4055 treaty described in Section 75-9-311(a).

4056 (d) Subsection (b) does not apply if the collateral is
4057 perishable or threatens to decline speedily in value or is of a
4058 type customarily sold on a recognized market.

4059 (e) A secured party complies with the requirement for
4060 notification prescribed by subsection (c)(3)(B) if:

4061 (1) Not later than twenty (20) days or earlier than
4062 thirty (30) days before the notification date, the secured party
4063 requests, in a commercially reasonable manner, information
4064 concerning financing statements indexed under the debtor's name in
4065 the office indicated in subsection (c)(3)(B); and

4066 (2) Before the notification date, the secured party:

4067 (A) Did not receive a response to the request for
4068 information; or

4069 (B) Received a response to the request for
4070 information and sent an authenticated notification of disposition

4071 to each secured party or other lienholder named in that response
4072 whose financing statement covered the collateral.

4073 **SECTION 75-9-612. Timeliness of notification before**
4074 **disposition of collateral.**

4075 (a) Except as otherwise provided in subsection (b), whether
4076 a notification is sent within a reasonable time is a question of
4077 fact.

4078 (b) A notification of disposition sent after default and ten
4079 (10) days or more before the earliest time of disposition set
4080 forth in the notification is sent within a reasonable time before
4081 the disposition.

4082 **SECTION 75-9-613. Contents and form of notification before**
4083 **disposition of collateral: general.** Except in a consumer-goods
4084 transaction, the following rules apply:

4085 (1) The contents of a notification of disposition are
4086 sufficient if the notification:

4087 (A) Describes the debtor and the secured party;

4088 (B) Describes the collateral that is the subject
4089 of the intended disposition;

4090 (C) States the method of intended disposition;

4091 (D) States that the debtor is entitled to an
4092 accounting of the unpaid indebtedness and states the charge, if
4093 any, for an accounting; and

4094 (E) States the time and place of a public
4095 disposition or the time after which any other disposition is to be
4096 made.

4097 (2) Whether the contents of a notification that lacks
4098 any of the information specified in paragraph (1) are nevertheless
4099 sufficient is a question of fact.

4100 (3) The contents of a notification providing
4101 substantially the information specified in paragraph (1) are
4102 sufficient, even if the notification includes:

4103 (A) Information not specified by that paragraph;
4104 or

4105 (B) Minor errors that are not seriously
4106 misleading.

4107 (4) A particular phrasing of the notification is not
4108 required.

4109 (5) The following form of notification and the form
4110 appearing in Section 75-9-614(3), when completed, each provides
4111 sufficient information:

4112 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

4113 To: [Name of debtor, obligor or other
4114 person to which the notification
4115 is sent]

4116 From: [Name, address and telephone number
4117 of secured party]

4118 Name of Debtor(s): [Include only if debtor(s) are not
4119 an addressee]

4120 [For a public disposition:]

4121 We will sell (or lease or license, as applicable) the
4122 [describe collateral] to the highest qualified bidder in
4123 public as follows:

4124 Day and Date: _____

4125 Time: _____

4126 Place: _____

4127 [For a private disposition:]

4128 We will sell (or lease or license, as applicable), the
4129 [describe collateral] privately sometime after [day and
4130 date] .

4131 You are entitled to an accounting of the unpaid indebtedness
4132 secured by the property that we intend to sell (or lease or
4133 license, as applicable) (for a charge of \$_____). You may
4134 request an accounting by calling us at [telephone number] .

4135 **[END OF FORM]**

4136 **SECTION 75-9-614. Contents and form of notification before**
4137 **disposition of collateral: consumer-goods transaction.** In a
4138 consumer-goods transaction, the following rules apply:

4139 (1) A notification of disposition must provide the
4140 following information:

4141 (A) The information specified in Section
4142 75-9-613(1);

4143 (B) A description of any liability for a
4144 deficiency of the person to which the notification is sent;

4145 (C) A telephone number from which the amount that
4146 must be paid to the secured party to redeem the collateral under
4147 Section 75-9-623 is available; and

4148 (D) A telephone number or mailing address from
4149 which additional information concerning the disposition and the
4150 obligation secured is available.

4151 (2) A particular phrasing of the notification is not
4152 required.

4153 (3) The following form of notification, when completed,
4154 provides sufficient information:

4155 Name and address of secured party:

4156 Date:

4157 **NOTICE OF OUR PLAN TO SELL PROPERTY**

4158 Name and address of any obligor who is also a debtor:

4159 Subject: [Identification of transaction]

4160 We have your: [describe collateral] because you broke
4161 promises in our agreement.

4162 [For a public disposition:]

4163 We will sell [describe collateral] at public sale. A sale
4164 could include a lease or license. The sale will be held as
4165 follows:

4166 Date: _____

4167 Time: _____

4168 Place: _____

4169 You may attend the sale and bring bidders if you want.
4170 [For a private disposition]
4171 We will sell [describe collateral] at private sale sometime
4172 after [date] . A sale could include a lease or license.
4173 The money that we get from the sale (after paying our costs) will
4174 reduce the amount you owe. If we get less money than you owe, you
4175 [will or will not, as applicable] still owe us the difference.
4176 If we get more money than you owe, you will get the extra money,
4177 unless we must pay it to someone else.
4178 You can get the property back at any time before we sell it by
4179 paying us the full amount you owe which is then due or past due,
4180 (excluding any amount that would not be due except for an
4181 acceleration provision), including our expenses. To learn the
4182 exact amount you must pay, call us at [telephone number] .
4183 If you want us to explain to you in writing how we have figured
4184 the amount that you owe us, you may call us at [telephone
4185 number] , or write us at [secured party's address] and
4186 request a written explanation. We will charge you \$_____ for
4187 the explanation if we sent you another written explanation of the
4188 amount you owe us within the last six (6) months.
4189 If you need more information about the sale call us at
4190 [telephone number] , or write us at [secured party's
4191 address] .
4192 We are sending this notice to the following other people who have
4193 an interest in [describe collateral] or who owe money under
4194 your agreement:
4195 Names of all other debtors and obligors, if any:

4196 **[END OF FORM]**

4197 (4) A notification in the form of paragraph (3) is
4198 sufficient, even if additional information appears at the end of
4199 the form.

4200 (5) A notification in the form of paragraph (3) is
4201 sufficient, even if it includes errors in information not required

4202 by paragraph (1), unless the error is misleading with respect to
4203 rights arising under this article.

4204 (6) If a notification under this section is not in the
4205 form of paragraph (3), law other than this article determines the
4206 effect of including information not required by paragraph (1).

4207 **SECTION 75-9-615. Application of proceeds of disposition;**
4208 **liability for deficiency and right to surplus.**

4209 (a) A secured party shall apply or pay over for application
4210 the cash proceeds of disposition under Section 75-9-610 in the
4211 following order to:

4212 (1) The reasonable expenses of retaking, holding,
4213 preparing for disposition, processing, and disposing, and, to the
4214 extent provided for by agreement and not prohibited by law,
4215 reasonable attorney's fees and legal expenses incurred by the
4216 secured party;

4217 (2) The satisfaction of obligations secured by the
4218 security interest or agricultural lien under which the disposition
4219 is made;

4220 (3) The satisfaction of obligations secured by any
4221 subordinate security interest in or other subordinate lien on the
4222 collateral if:

4223 (A) The secured party receives from the holder of
4224 the subordinate security interest or other lien an authenticated
4225 demand for proceeds before distribution of the proceeds is
4226 completed; and

4227 (B) In a case in which a consignor has an interest
4228 in the collateral, the subordinate security interest or other lien
4229 is senior to the interest of the consignor; and

4230 (4) A secured party that is a consignor of the
4231 collateral if the secured party receives from the consignor an
4232 authenticated demand for proceeds before distribution of the
4233 proceeds is completed.

4234 (b) If requested by a secured party, a holder of a
4235 subordinate security interest or other lien shall furnish
4236 reasonable proof of the interest or lien within a reasonable time.
4237 Unless the holder does so, the secured party need not comply with
4238 the holder's demand under subsection (a)(3).

4239 (c) A secured party need not apply or pay over for
4240 application noncash proceeds of disposition under Section 75-9-610
4241 unless the failure to do so would be commercially unreasonable. A
4242 secured party that applies or pays over for application noncash
4243 proceeds shall do so in a commercially reasonable manner.

4244 (d) If the security interest under which a disposition is
4245 made secures payment or performance of an obligation, after making
4246 the payments and applications required by subsection (a) and
4247 permitted by subsection (c):

4248 (1) Unless subsection (a)(4) requires the secured party
4249 to apply or pay over cash proceeds to a consignor, the secured
4250 party shall account to and pay a debtor for any surplus; and

4251 (2) The obligor is liable for any deficiency.

4252 (e) If the underlying transaction is a sale of accounts,
4253 chattel paper, payment intangibles, or promissory notes:

4254 (1) The debtor is not entitled to any surplus; and

4255 (2) The obligor is not liable for any deficiency.

4256 (f) The surplus or deficiency following a disposition is
4257 calculated based on the amount of proceeds that would have been
4258 realized in a disposition complying with this part to a transferee
4259 other than the secured party, a person related to the secured
4260 party, or a secondary obligor if:

4261 (1) The transferee in the disposition is the secured
4262 party, a person related to the secured party, or a secondary
4263 obligor; and

4264 (2) The amount of proceeds of the disposition is
4265 significantly below the range of proceeds that a complying
4266 disposition to a person other than the secured party, a person

4267 related to the secured party, or a secondary obligor would have
4268 brought.

4269 (g) A secured party that receives cash proceeds of a
4270 disposition in good faith and without knowledge that the receipt
4271 violates the rights of the holder of a security interest or other
4272 lien that is not subordinate to the security interest or
4273 agricultural lien under which the disposition is made:

4274 (1) Takes the cash proceeds free of the security
4275 interest or other lien;

4276 (2) Is not obligated to apply the proceeds of the
4277 disposition to the satisfaction of obligations secured by the
4278 security interest or other lien; and

4279 (3) Is not obligated to account to or pay the holder of
4280 the security interest or other lien for any surplus.

4281 **SECTION 75-9-616. Explanation of calculation of surplus or**
4282 **deficiency.**

4283 (a) In this section:

4284 (1) "Explanation" means a writing that:

4285 (A) States the amount of the surplus or
4286 deficiency;

4287 (B) Provides an explanation in accordance with
4288 subsection (c) of how the secured party calculated the surplus or
4289 deficiency;

4290 (C) States, if applicable, that future debits,
4291 credits, charges, including additional credit service charges or
4292 interest, rebates, and expenses may affect the amount of the
4293 surplus or deficiency; and

4294 (D) Provides a telephone number or mailing address
4295 from which additional information concerning the transaction is
4296 available.

4297 (2) "Request" means a record:

4298 (A) Authenticated by a debtor or consumer obligor;

4299 (B) Requesting that the recipient provide an
4300 explanation; and

4301 (C) Sent after disposition of the collateral under
4302 Section 75-9-610.

4303 (b) In a consumer-goods transaction in which the debtor is
4304 entitled to a surplus or a consumer obligor is liable for a
4305 deficiency under Section 75-9-615, the secured party shall:

4306 (1) Send an explanation to the debtor or consumer
4307 obligor, as applicable, after the disposition and:

4308 (A) Before or when the secured party accounts to
4309 the debtor and pays any surplus or first makes written demand on
4310 the consumer obligor after the disposition for payment of the
4311 deficiency; and

4312 (B) Within fourteen (14) days after receipt of a
4313 request; or

4314 (2) In the case of a consumer obligor who is liable for
4315 a deficiency, within fourteen (14) days after receipt of a
4316 request, send to the consumer obligor a record waiving the secured
4317 party's right to a deficiency.

4318 (c) To comply with subsection (a)(1)(B), a writing must
4319 provide the following information in the following order:

4320 (1) The aggregate amount of obligations secured by the
4321 security interest under which the disposition was made, and, if
4322 the amount reflects a rebate of unearned interest or credit
4323 service charge, an indication of that fact, calculated as of a
4324 specified date:

4325 (A) If the secured party takes or receives
4326 possession of the collateral after default, not more than
4327 thirty-five (35) days before the secured party takes or receives
4328 possession; or

4329 (B) If the secured party takes or receives
4330 possession of the collateral before default or does not take

4331 possession of the collateral, not more than thirty-five (35) days
4332 before the disposition;

4333 (2) The amount of proceeds of the disposition;

4334 (3) The aggregate amount of the obligations after
4335 deducting the amount of proceeds;

4336 (4) The amount, in the aggregate or by type, and types
4337 of expenses, including expenses of retaking, holding, preparing
4338 for disposition, processing, and disposing of the collateral, and
4339 attorney's fees secured by the collateral which are known to the
4340 secured party and relate to the current disposition;

4341 (5) The amount, in the aggregate or by type, and types
4342 of credits, including rebates of interest or credit service
4343 charges, to which the obligor is known to be entitled and which
4344 are not reflected in the amount in paragraph (1); and

4345 (6) The amount of the surplus or deficiency.

4346 (d) A particular phrasing of the explanation is not
4347 required. An explanation complying substantially with the
4348 requirements of subsection (a) is sufficient, even if it includes
4349 minor errors that are not seriously misleading.

4350 (e) A debtor or consumer obligor is entitled without charge
4351 to one (1) response to a request under this section during any
4352 six-month period in which the secured party did not send to the
4353 debtor or consumer obligor an explanation pursuant to subsection
4354 (b)(1). The secured party may require payment of a charge not
4355 exceeding Twenty-five Dollars (\$25.00) for each additional
4356 response.

4357 **SECTION 75-9-617. Rights of transferee of collateral.**

4358 (a) A secured party's disposition of collateral after
4359 default:

4360 (1) Transfers to a transferee for value all of the
4361 debtor's rights in the collateral;

4362 (2) Discharges the security interest under which the
4363 disposition is made; and

4364 (3) Discharges any subordinate security interest or
4365 other subordinate lien.

4366 (b) A transferee that acts in good faith takes free of the
4367 rights and interests described in subsection (a), even if the
4368 secured party fails to comply with this article or the
4369 requirements of any judicial proceeding.

4370 (c) If a transferee does not take free of the rights and
4371 interests described in subsection (a), the transferee takes the
4372 collateral subject to:

4373 (1) The debtor's rights in the collateral;

4374 (2) The security interest or agricultural lien under
4375 which the disposition is made; and

4376 (3) Any other security interest or other lien.

4377 **SECTION 75-9-618. Rights and duties of certain secondary**
4378 **obligors.**

4379 (a) A secondary obligor acquires the rights and becomes
4380 obligated to perform the duties of the secured party after the
4381 secondary obligor:

4382 (1) Receives an assignment of a secured obligation from
4383 the secured party;

4384 (2) Receives a transfer of collateral from the secured
4385 party and agrees to accept the rights and assume the duties of the
4386 secured party; or

4387 (3) Is subrogated to the rights of a secured party with
4388 respect to collateral.

4389 (b) An assignment, transfer, or subrogation described in
4390 subsection (a):

4391 (1) Is not a disposition of collateral under Section
4392 75-9-610; and

4393 (2) Relieves the secured party of further duties under
4394 this article.

4395 **SECTION 75-9-619. Transfer of record or legal title.**

4396 (a) In this section, "transfer statement" means a record
4397 authenticated by a secured party stating:

4398 (1) That the debtor has defaulted in connection with an
4399 obligation secured by specified collateral;

4400 (2) That the secured party has exercised its
4401 post-default remedies with respect to the collateral;

4402 (3) That, by reason of the exercise, a transferee has
4403 acquired the rights of the debtor in the collateral; and

4404 (4) The name and mailing address of the secured party,
4405 debtor, and transferee.

4406 (b) A transfer statement entitles the transferee to the
4407 transfer of record of all rights of the debtor in the collateral
4408 specified in the statement in any official filing, recording,
4409 registration, or certificate-of-title system covering the
4410 collateral. If a transfer statement is presented with the
4411 applicable fee and request form to the official or office
4412 responsible for maintaining the system, the official or office
4413 shall:

4414 (1) Accept the transfer statement;

4415 (2) Promptly amend its records to reflect the transfer;

4416 and

4417 (3) If applicable, issue a new appropriate certificate
4418 of title in the name of the transferee.

4419 (c) A transfer of the record or legal title to collateral to
4420 a secured party under subsection (b) or otherwise is not of itself
4421 a disposition of collateral under this article and does not of
4422 itself relieve the secured party of its duties under this article.

4423 **SECTION 75-9-620. Acceptance of collateral in full or**
4424 **partial satisfaction of obligation; compulsory disposition of**
4425 **collateral.**

4426 (a) Except as otherwise provided in subsection (g), a
4427 secured party may accept collateral in full or partial
4428 satisfaction of the obligation it secures only if:

4429 (1) The debtor consents to the acceptance under
4430 subsection (c);

4431 (2) The secured party does not receive, within the time
4432 set forth in subsection (d), a notification of objection to the
4433 proposal authenticated by:

4434 (A) A person to which the secured party was
4435 required to send a proposal under Section 75-9-621; or

4436 (B) Any other person, other than the debtor,
4437 holding an interest in the collateral subordinate to the security
4438 interest that is the subject of the proposal;

4439 (3) If the collateral is consumer goods, the collateral
4440 is not in the possession of the debtor when the debtor consents to
4441 the acceptance; and

4442 (4) Subsection (e) does not require the secured party
4443 to dispose of the collateral or the debtor waives the requirement
4444 pursuant to Section 75-9-624.

4445 (b) A purported or apparent acceptance of collateral under
4446 this section is ineffective unless:

4447 (1) The secured party consents to the acceptance in an
4448 authenticated record or sends a proposal to the debtor; and

4449 (2) The conditions of subsection (a) are met.

4450 (c) For purposes of this section:

4451 (1) A debtor consents to an acceptance of collateral in
4452 partial satisfaction of the obligation it secures only if the
4453 debtor agrees to the terms of the acceptance in a record
4454 authenticated after default; and

4455 (2) A debtor consents to an acceptance of collateral in
4456 full satisfaction of the obligation it secures only if the debtor
4457 agrees to the terms of the acceptance in a record authenticated
4458 after default or the secured party:

4459 (A) Sends to the debtor after default a proposal
4460 that is unconditional or subject only to a condition that

4461 collateral not in the possession of the secured party be preserved
4462 or maintained;

4463 (B) In the proposal, proposes to accept collateral
4464 in full satisfaction of the obligation it secures; and

4465 (C) Does not receive a notification of objection
4466 authenticated by the debtor within twenty (20) days after the
4467 proposal is sent.

4468 (d) To be effective under subsection (a)(2), a notification
4469 of objection must be received by the secured party:

4470 (1) In the case of a person to which the proposal was
4471 sent pursuant to Section 75-9-621, within twenty (20) days after
4472 notification was sent to that person; and

4473 (2) In other cases:

4474 (A) Within twenty (20) days after the last
4475 notification was sent pursuant to Section 75-9-621; or

4476 (B) If a notification was not sent, before the
4477 debtor consents to the acceptance under subsection (c).

4478 (e) A secured party that has taken possession of collateral
4479 shall dispose of the collateral pursuant to Section 75-9-610
4480 within the time specified in subsection (f) if:

4481 (1) Sixty percent (60%) of the cash price has been paid
4482 in the case of a purchase-money security interest in consumer
4483 goods; or

4484 (2) Sixty percent (60%) of the principal amount of the
4485 obligation secured has been paid in the case of a
4486 nonpurchase-money security interest in consumer goods.

4487 (f) To comply with subsection (e), the secured party shall
4488 dispose of the collateral:

4489 (1) Within ninety (90) days after taking possession; or

4490 (2) Within any longer period to which the debtor and
4491 all secondary obligors have agreed in an agreement to that effect
4492 entered into and authenticated after default.

4493 (g) In a consumer transaction, a secured party may not
4494 accept collateral in partial satisfaction of the obligation it
4495 secures.

4496 **SECTION 75-9-621. Notification of proposal to accept**
4497 **collateral.**

4498 (a) A secured party that desires to accept collateral in
4499 full or partial satisfaction of the obligation it secures shall
4500 send its proposal to:

4501 (1) Any person from which the secured party has
4502 received, before the debtor consented to the acceptance, an
4503 authenticated notification of a claim of an interest in the
4504 collateral;

4505 (2) Any other secured party or lienholder that, ten
4506 (10) days before the debtor consented to the acceptance, held a
4507 security interest in or other lien on the collateral perfected by
4508 the filing of a financing statement that:

4509 (A) Identified the collateral;

4510 (B) Was indexed under the debtor's name as of that
4511 date; and

4512 (C) Was filed in the office or offices in which to
4513 file a financing statement against the debtor covering the
4514 collateral as of that date; and

4515 (3) Any other secured party that, ten (10) days before
4516 the debtor consented to the acceptance, held a security interest
4517 in the collateral perfected by compliance with a statute,
4518 regulation, or treaty described in Section 75-9-311(a).

4519 (b) A secured party that desires to accept collateral in
4520 partial satisfaction of the obligation it secures shall send its
4521 proposal to any secondary obligor in addition to the persons
4522 described in subsection (a).

4523 **SECTION 75-9-622. Effect of acceptance of collateral.**

4524 (a) A secured party's acceptance of collateral in full or
4525 partial satisfaction of the obligation it secures:

4526 (1) Discharges the obligation to the extent consented
4527 to by the debtor;

4528 (2) Transfers to the secured party all of a debtor's
4529 rights in the collateral;

4530 (3) Discharges the security interest or agricultural
4531 lien that is the subject of the debtor's consent and any
4532 subordinate security interest or other subordinate lien; and

4533 (4) Terminates any other subordinate interest.

4534 (b) A subordinate interest is discharged or terminated under
4535 subsection (a), even if the secured party fails to comply with
4536 this article.

4537 **SECTION 75-9-623. Right to redeem collateral.**

4538 (a) A debtor, any secondary obligor, or any other secured
4539 party or lienholder may redeem collateral.

4540 (b) To redeem collateral, a person shall tender:

4541 (1) Fulfillment of all obligations secured by the
4542 collateral then due or past due (excluding any sums that would not
4543 be due except for an acceleration provision); and

4544 (2) The reasonable expenses and attorney's fees
4545 described in Section 75-9-615(a)(1).

4546 (c) A redemption may occur at any time before a secured
4547 party:

4548 (1) Has collected collateral under Section 75-9-607;

4549 (2) Has disposed of collateral or entered into a
4550 contract for its disposition under Section 75-9-610; or

4551 (3) Has accepted collateral in full or partial
4552 satisfaction of the obligation it secures under Section 75-9-622.

4553 **SECTION 75-9-624. Waiver.**

4554 (a) A debtor or secondary obligor may waive the right to
4555 notification of disposition of collateral under Section 75-9-611
4556 only by an agreement to that effect entered into and authenticated
4557 after default.

4558 (b) A debtor may waive the right to require disposition of
4559 collateral under Section 75-9-620(e) only by an agreement to that
4560 effect entered into and authenticated after default.

4561 (c) Except in a consumer-goods transaction, a debtor or
4562 secondary obligor may waive the right to redeem collateral under
4563 Section 75-9-623 only by an agreement to that effect entered into
4564 and authenticated after default.

4565 SUBPART 2. NONCOMPLIANCE WITH ARTICLE

4566 **SECTION 75-9-625. Remedies for secured party's failure to**
4567 **comply with article.**

4568 (a) If it is established that a secured party is not
4569 proceeding in accordance with this article, a court may order or
4570 restrain collection, enforcement, or disposition of collateral on
4571 appropriate terms and conditions.

4572 (b) Subject to subsections (c), (d), and (f), a person is
4573 liable for damages in the amount of any loss caused by a failure
4574 to comply with this article. Loss caused by a failure to comply
4575 may include loss resulting from the debtor's inability to obtain,
4576 or increased costs of, alternative financing.

4577 (c) Except as otherwise provided in Section 75-9-628:

4578 (1) A person that, at the time of the failure, was a
4579 debtor, was an obligor, or held a security interest in or other
4580 lien on the collateral may recover damages under subsection (b)
4581 for its loss; and

4582 (2) If the collateral is consumer goods, a person that
4583 was a debtor or a secondary obligor at the time a secured party
4584 failed to comply with this part may recover for that failure in
4585 any event an amount not less than the credit service charge plus
4586 ten percent (10%) of the principal amount of the obligation or the
4587 time-price differential plus ten percent (10%) of the cash price.

4588 (d) A debtor whose deficiency is eliminated under Section
4589 75-9-626 may recover damages for the loss of any surplus.

4590 However, a debtor or secondary obligor whose deficiency is

4591 eliminated or reduced under Section 75-9-626 may not otherwise
4592 recover under subsection (b) for noncompliance with the provisions
4593 of this part relating to collection, enforcement, disposition, or
4594 acceptance.

4595 (e) In addition to any damages recoverable under subsection
4596 (b), the debtor, consumer obligor, or person named as a debtor in
4597 a filed record, as applicable, may recover Five Hundred Dollars
4598 (\$500.00) in each case from a person that:

4599 (1) Fails to comply with Section 75-9-208;

4600 (2) Fails to comply with Section 75-9-209;

4601 (3) Files a record that the person is not entitled to
4602 file under Section 75-9-509(a) and fails to file a termination
4603 statement with respect to the filed record within ten (10) days
4604 after receiving an authenticated demand by the debtor, consumer
4605 obligor, or person named as a debtor in the filed record;

4606 (4) Fails to cause the secured party of record to file
4607 or send a termination statement as required by Section 75-9-513(a)
4608 or (c);

4609 (5) Fails to comply with Section 75-9-616(b)(1) and
4610 whose failure is part of a pattern, or consistent with a practice,
4611 of noncompliance; or

4612 (6) Fails to comply with Section 75-9-616(b)(2).

4613 (f) A debtor or consumer obligor may recover damages under
4614 subsection (b) and, in addition, Five Hundred Dollars (\$500.00) in
4615 each case from a person that, without reasonable cause, fails to
4616 comply with a request under Section 75-9-210. A recipient of a
4617 request under Section 75-9-210 which never claimed an interest in
4618 the collateral or obligations that are the subject of a request
4619 under that section has a reasonable excuse for failure to comply
4620 with the request within the meaning of this subsection.

4621 (g) If a secured party fails to comply with a request
4622 regarding a list of collateral or a statement of account under
4623 Section 75-9-210, the secured party may claim a security interest

4624 only as shown in the list or statement included in the request as
4625 against a person that is reasonably misled by the failure.

4626 **SECTION 75-9-626. Action in which deficiency or surplus is**
4627 **in issue.**

4628 In an action arising from a transaction in which the amount
4629 of a deficiency or surplus is in issue, the following rules apply:

4630 (1) A secured party need not prove compliance with the
4631 provisions of this part relating to collection, enforcement,
4632 disposition, or acceptance unless the debtor or a secondary
4633 obligor places the secured party's compliance in issue.

4634 (2) If the secured party's compliance is placed in
4635 issue, the secured party has the burden of establishing that the
4636 collection, enforcement, disposition, or acceptance was conducted
4637 in accordance with this part.

4638 (3) Except as otherwise provided in Section 75-9-628,
4639 if a secured party fails to prove that the collection,
4640 enforcement, disposition, or acceptance was conducted in
4641 accordance with the provisions of this part relating to
4642 collection, enforcement, disposition, or acceptance, the liability
4643 of a debtor or a secondary obligor for a deficiency is limited to
4644 an amount by which the sum of the secured obligation, expenses,
4645 and attorney's fees exceeds the greater of:

4646 (A) The proceeds of the collection, enforcement,
4647 disposition, or acceptance; or

4648 (B) The amount of proceeds that would have been
4649 realized had the noncomplying secured party proceeded in
4650 accordance with the provisions of this part relating to
4651 collection, enforcement, disposition, or acceptance.

4652 (4) For purposes of paragraph (3)(B), the amount of
4653 proceeds that would have been realized is equal to the sum of the
4654 secured obligation, expenses, and attorney's fees unless the
4655 secured party proves that the amount is less than that sum.

4656 (5) If a deficiency or surplus is calculated under
4657 Section 75-9-615(f), the debtor or obligor has the burden of
4658 establishing that the amount of proceeds of the disposition is
4659 significantly below the range of prices that a complying
4660 disposition to a person other than the secured party, a person
4661 related to the secured party, or a secondary obligor would have
4662 brought.

4663 **SECTION 75-9-627. Determination of whether conduct was**
4664 **commercially reasonable.**

4665 (a) The fact that a greater amount could have been obtained
4666 by a collection, enforcement, disposition, or acceptance at a
4667 different time or in a different method from that selected by the
4668 secured party is not of itself sufficient to preclude the secured
4669 party from establishing that the collection, enforcement,
4670 disposition, or acceptance was made in a commercially reasonable
4671 manner.

4672 (b) A disposition of collateral is made in a commercially
4673 reasonable manner if the disposition is made:

4674 (1) In the usual manner on any recognized market;

4675 (2) At the price current in any recognized market at
4676 the time of the disposition; or

4677 (3) Otherwise in conformity with reasonable commercial
4678 practices among dealers in the type of property that was the
4679 subject of the disposition.

4680 (c) A collection, enforcement, disposition, or acceptance is
4681 commercially reasonable if it has been approved:

4682 (1) In a judicial proceeding;

4683 (2) By a bona fide creditors' committee;

4684 (3) By a representative of creditors; or

4685 (4) By an assignee for the benefit of creditors.

4686 (d) Approval under subsection (c) need not be obtained, and
4687 lack of approval does not mean that the collection, enforcement,
4688 disposition, or acceptance is not commercially reasonable.

4689 **SECTION 75-9-628. Nonliability and limitation on liability**
4690 **of secured party; liability of secondary obligor.**

4691 (a) Unless a secured party knows that a person is a debtor
4692 or obligor, knows the identity of the person, and knows how to
4693 communicate with the person:

4694 (1) The secured party is not liable to the person, or
4695 to a secured party or lienholder that has filed a financing
4696 statement against the person, for failure to comply with this
4697 article; and

4698 (2) The secured party's failure to comply with this
4699 article does not affect the liability of the person for a
4700 deficiency.

4701 (b) A secured party is not liable because of its status as
4702 secured party:

4703 (1) To a person that is a debtor or obligor, unless the
4704 secured party knows:

4705 (A) That the person is a debtor or obligor;

4706 (B) The identity of the person; and

4707 (C) How to communicate with the person; or

4708 (2) To a secured party or lienholder that has filed a
4709 financing statement against a person, unless the secured party
4710 knows:

4711 (A) That the person is a debtor; and

4712 (B) The identity of the person.

4713 (c) A secured party is not liable to any person, and a
4714 person's liability for a deficiency is not affected, because of
4715 any act or omission arising out of the secured party's reasonable
4716 belief that a transaction is not a consumer-goods transaction or a
4717 consumer transaction or that goods are not consumer goods, if the
4718 secured party's belief is based on its reasonable reliance on:

4719 (1) A debtor's representation concerning the purpose
4720 for which collateral was to be used, acquired, or held; or

4721 (2) An obligor's representation concerning the purpose
4722 for which a secured obligation was incurred.

4723 (d) A secured party is not liable to any person under
4724 Section 75-9-625(c)(2) for its failure to comply with Section
4725 75-9-616.

4726 (e) A secured party is not liable under Section
4727 75-9-625(c)(2) more than once with respect to any one (1) secured
4728 obligation.

4729 **PART 7**

4730 **TRANSITION**

4731 **SECTION 75-9-701. Definitions.** (1) References in Part 7 to
4732 "this act" refer to the legislative enactment by which this part
4733 is added to Article 9 of the Uniform Commercial Code.

4734 (2) References in this part to "former Article 9" are to
4735 Article 9 found in Chapter 9 of Title 75 as in effect on June 30,
4736 2001.

4737 **SECTION 75-9-702. Savings clause.**

4738 (a) Except as otherwise provided in this part, this act
4739 applies to a transaction or lien within its scope, even if the
4740 transaction or lien was entered into or created before this act
4741 takes effect.

4742 (b) Except as otherwise provided in subsection (c) and
4743 Sections 75-9-703 through 75-9-709:

4744 (1) Transactions and liens that were not governed by
4745 former Article 9, were validly entered into or created before this
4746 act takes effect, and would be subject to this act if they had
4747 been entered into or created after this act takes effect, and the
4748 rights, duties, and interests flowing from those transactions and
4749 liens remain valid after this act takes effect; and

4750 (2) The transactions and liens may be terminated,
4751 completed, consummated, and enforced as required or permitted by
4752 this act or by the law that otherwise would apply if this act had
4753 not taken effect.

4754 (c) This act does not affect an action, case, or proceeding
4755 commenced before this act takes effect.

4756 **SECTION 75-9-703. Security interest perfected before**
4757 **effective date.**

4758 (a) A security interest that is enforceable immediately
4759 before this act takes effect and would have priority over the
4760 rights of a person that becomes a lien creditor at that time is a
4761 perfected security interest under this act if, when this act takes
4762 effect, the applicable requirements for enforceability and
4763 perfection under this act are satisfied without further action.

4764 (b) Except as otherwise provided in Section 75-9-705, if,
4765 immediately before this act takes effect, a security interest is
4766 enforceable and would have priority over the rights of a person
4767 that becomes a lien creditor at that time, but the applicable
4768 requirements for enforceability or perfection under this act are
4769 not satisfied when this act takes effect, the security interest:

4770 (1) Is a perfected security interest for one (1) year
4771 after this act takes effect;

4772 (2) Remains enforceable thereafter only if the security
4773 interest becomes enforceable under Section 75-9-203 before the
4774 year expires; and

4775 (3) Remains perfected thereafter only if the applicable
4776 requirements for perfection under this act are satisfied before
4777 the year expires.

4778 **SECTION 75-9-704. Security interest unperfected before**
4779 **effective date.** A security interest that is enforceable

4780 immediately before this act takes effect but which would be
4781 subordinate to the rights of a person that becomes a lien creditor
4782 at that time:

4783 (1) Remains an enforceable security interest for one
4784 (1) year after this act takes effect;

4785 (2) Remains enforceable thereafter if the security
4786 interest becomes enforceable under Section 75-9-203 when this act
4787 takes effect or within one (1) year thereafter; and

4788 (3) Becomes perfected:

4789 (A) Without further action, when this act takes
4790 effect if the applicable requirements for perfection under this
4791 act are satisfied before or at that time; or

4792 (B) When the applicable requirements for
4793 perfection are satisfied if the requirements are satisfied after
4794 that time.

4795 **SECTION 75-9-705. Effectiveness of action taken before**
4796 **effective date.**

4797 (a) If action, other than the filing of a financing
4798 statement, is taken before this act takes effect and the action
4799 would have resulted in priority of a security interest over the
4800 rights of a person that becomes a lien creditor had the security
4801 interest become enforceable before this act takes effect, the
4802 action is effective to perfect a security interest that attaches
4803 under this act within one (1) year after this act takes effect.
4804 An attached security interest becomes unperfected one (1) year
4805 after this act takes effect unless the security interest becomes a
4806 perfected security interest under this act before the expiration
4807 of that period.

4808 (b) The filing of a financing statement before this act
4809 takes effect is effective to perfect a security interest to the
4810 extent the filing would satisfy the applicable requirements for
4811 perfection under this act.

4812 (c) This act does not render ineffective an effective
4813 financing statement that, before this act takes effect, is filed
4814 and satisfies the applicable requirements for perfection under the
4815 law of the jurisdiction governing perfection as provided in former
4816 Section 75-9-103. However, except as otherwise provided in

4817 subsections (d) and (e) and Section 75-9-706, the financing
4818 statement ceases to be effective at the earlier of:

4819 (1) The time the financing statement would have ceased
4820 to be effective under the law of the jurisdiction in which it is
4821 filed; or

4822 (2) June 30, 2006.

4823 (d) The filing of a continuation statement after this act
4824 takes effect does not continue the effectiveness of the financing
4825 statement filed before this act takes effect. However, upon the
4826 timely filing of a continuation statement after this act takes
4827 effect and in accordance with the law of the jurisdiction
4828 governing perfection as provided in Part 3, the effectiveness of a
4829 financing statement filed in the same office in that jurisdiction
4830 before this act takes effect continues for the period provided by
4831 the law of that jurisdiction.

4832 (e) Subsection (c)(2) applies to a financing statement that,
4833 before this act takes effect, is filed against a transmitting
4834 utility and satisfies the applicable requirements for perfection
4835 under the law of the jurisdiction governing perfection as provided
4836 in former Section 75-9-103 only to the extent that Part 3 provides
4837 that the law of a jurisdiction other than the jurisdiction in
4838 which the financing statement is filed governs perfection of a
4839 security interest in collateral covered by the financing
4840 statement.

4841 (f) A financing statement that includes a financing
4842 statement filed before this act takes effect and a continuation
4843 statement filed after this act takes effect is effective only to
4844 the extent that it satisfies the requirements of Part 5 for an
4845 initial financing statement.

4846 **SECTION 75-9-706. When initial financing statement suffices**
4847 **to continue effectiveness of financing statement.**

4848 (a) The filing of an initial financing statement in the
4849 office specified in Section 75-9-501 continues the effectiveness
4850 of a financing statement filed before this act takes effect if:

4851 (1) The filing of an initial financing statement in
4852 that office would be effective to perfect a security interest
4853 under this act;

4854 (2) The pre-effective-date financing statement was
4855 filed in an office in another state or another office in this
4856 state; and

4857 (3) The initial financing statement satisfies
4858 subsection (c).

4859 (b) The filing of an initial financing statement under
4860 subsection (a) continues the effectiveness of the
4861 pre-effective-date financing statement:

4862 (1) If the initial financing statement is filed before
4863 this act takes effect, for the period provided in former Section
4864 75-9-403 with respect to a financing statement; and

4865 (2) If the initial financing statement is filed after
4866 this act takes effect, for the period provided in Section 75-9-515
4867 with respect to an initial financing statement.

4868 (c) To be effective for purposes of subsection (a), an
4869 initial financing statement must:

4870 (1) Satisfy the requirements of Part 5 for an initial
4871 financing statement;

4872 (2) Identify the pre-effective-date financing statement
4873 by indicating the office in which the financing statement was
4874 filed and providing the dates of filing and file numbers, if any,
4875 of the financing statement and of the most recent continuation
4876 statement filed with respect to the financing statement; and

4877 (3) Indicate that the pre-effective-date financing
4878 statement remains effective.

4879 **SECTION 75-9-707. Amendment of pre-effective-date financing**
4880 **statement.**

4881 (a) In this section, "pre-effective-date financing
4882 statement" means a financing statement filed before this act takes
4883 effect.

4884 (b) After this act takes effect, a person may add or delete
4885 collateral covered by, continue or terminate the effectiveness of,
4886 or otherwise amend the information provided in, a
4887 pre-effective-date financing statement only in accordance with the
4888 law of the jurisdiction governing perfection as provided in Part.

4889 (3) However, the effectiveness of a pre-effective-date
4890 financing statement also may be terminated in accordance with the
4891 law of the jurisdiction in which the financing statement is filed.

4892 (c) Except as otherwise provided in subsection (d), if the
4893 law of this state governs perfection of a security interest, the
4894 information in a pre-effective-date financing statement may be
4895 amended after this act takes effect only if:

4896 (1) The pre-effective-date financing statement and an
4897 amendment are filed in the office specified in Section 75-9-501;

4898 (2) An amendment is filed in the office specified in
4899 Section 75-9-501 concurrently with, or after the filing in that
4900 office of, an initial financing statement that satisfies Section
4901 75-9-706(c); or

4902 (3) An initial financing statement that provides the
4903 information as amended and satisfies Section 75-9-706(c) is filed
4904 in the office specified in Section 75-9-501.

4905 (d) If the law of this state governs perfection of a
4906 security interest, the effectiveness of a pre-effective-date
4907 financing statement may be continued only under Section
4908 75-9-705(d) and (f) or 75-9-706.

4909 (e) Whether or not the law of this state governs perfection
4910 of a security interest, the effectiveness of a pre-effective-date
4911 financing statement filed in this state may be terminated after
4912 this act takes effect by filing a termination statement in the
4913 office in which the pre-effective-date financing statement is

4914 filed, unless an initial financing statement that satisfies
4915 Section 75-9-706(c) has been filed in the office specified by the
4916 law of the jurisdiction governing perfection as provided in Part 3
4917 as the office in which to file a financing statement.

4918 **SECTION 75-9-708. Persons entitled to file initial financing**
4919 **statement or continuation statement.** A person may file an initial
4920 financing statement or a continuation statement under this part
4921 if:

4922 (1) The secured party of record authorizes the filing;
4923 and

4924 (2) The filing is necessary under this part:

4925 (A) To continue the effectiveness of a financing
4926 statement filed before this act takes effect; or

4927 (B) To perfect or continue the perfection of a
4928 security interest.

4929 **SECTION 75-9-709. Priority.**

4930 (a) This act determines the priority of conflicting claims
4931 to collateral. However, if the relative priorities of the claims
4932 were established before this act takes effect, former Article 9
4933 determines priority.

4934 (b) For purposes of Section 75-9-322(a), the priority of a
4935 security interest that becomes enforceable under Section 75-9-203
4936 of this act dates from the time this act takes effect if the
4937 security interest is perfected under this act by the filing of a
4938 financing statement before this act takes effect which would not
4939 have been effective to perfect the security interest under former
4940 Article 9. This subsection does not apply to conflicting security
4941 interests each of which is perfected by the filing of such a
4942 financing statement.

4943 **SECTION 75-9-710. Special transitional provisions for**
4944 **maintaining and searching local records.**

4945 (a) In this section:

4946 (1) "Local-filing office" means a filing office, other
4947 than the statewide central filing office identified in Section
4948 75-9-401(1) of former Article 9, that is designated as the proper
4949 place to file a financing statement under Section 75-9-401(1) of
4950 former Article 9. The term applies only with respect to a record
4951 that covers a type of collateral as to which the filing office is
4952 designated in that section as the proper place to file.

4953 (2) "Former-Article-9 records" means:

4954 (A) Financing statements and other records that
4955 have been filed in a local-filing office before July 1, 2001, and
4956 that are, or upon processing and indexing will be, reflected in
4957 the index maintained, as of June 30, 2001, by the local-filing
4958 office for financing statements and other records filed in the
4959 local-filing office before July 1, 2001, and

4960 (B) The index as of June 30, 2001.

4961 The term does not include records presented to a local-filing
4962 office for filing after June 30, 2001, whether or not the records
4963 relate to financing statements filed in the local-filing office
4964 before July 1, 2001.

4965 (3) "Mortgage," "as-extracted collateral," "fixture
4966 filing," "goods" and "fixtures" have the meanings set forth in
4967 Revised Article 9 for those terms.

4968 (b) Except as expressly provided in Part 5 of Article 9 as
4969 effective on and after July 1, 2001, a local-filing office must
4970 not accept for filing a record presented after June 30, 2001,
4971 whether or not the record relates to a financing statement filed
4972 in the local-filing office before July 1, 2001.

4973 (c) Until July 1, 2008, each local-filing office must
4974 maintain all former-Article-9 records in accordance with former
4975 Article 9. A former-Article-9 record that is not reflected on the
4976 index maintained at June 30, 2001, by the local-filing office must
4977 be processed and indexed, and reflected on the index as of June

4978 30, 2001, as soon as practicable but in any event no later than
4979 July 30, 2001.

4980 (d) Until at least June 30, 2008, each local-filing office
4981 must respond to requests for information with respect to
4982 former-Article-9 records relating to a debtor and issue
4983 certificates in accordance with former Article 9.

4984 (1) Upon request in writing of any person, the filing
4985 officer shall issue his certificate showing whether there is on
4986 file, on the date and hour stated therein, any presently effective
4987 financing statements naming a particular debtor thereof, and if
4988 there is, giving the date and hour of filing and file number of
4989 each such financing statement and the name and address of each
4990 secured party or his assignee therein. Each such request shall be
4991 accompanied by a search fee of Five Dollars (\$5.00) if the request
4992 is made on the standard form prescribed by the Secretary of State,
4993 and otherwise it shall be Ten Dollars (\$10.00). An additional fee
4994 of Two Dollars (\$2.00) shall be paid by the requesting party for
4995 each financing statement listed on the filing officer's
4996 certificate, the aggregate of which shall be billed to the
4997 requesting party at the time the filing officer's certificate is
4998 issued. Failure to pay the additional fee by any requesting party
4999 when due may result in denial of further service to the requesting
5000 party until the amount due has been paid.

5001 (2) Upon request, the filing officer shall furnish a
5002 copy of any presently effective financing statements on file for a
5003 uniform fee of Two Dollars (\$2.00) per page naming a particular
5004 debtor when the request is made on the form and in the manner
5005 hereinbefore provided for listing the same.

5006 (e) After June 30, 2008, each local-filing office may remove
5007 and destroy, in accordance with any then applicable record
5008 retention law of this state, all former-Article-9 records,
5009 including the related index.

5010 (f) This section does not apply, with respect to financing
5011 statements and other records, to a filing office in which
5012 mortgages or records of mortgages on real property are required to
5013 be filed or recorded, if:

5014 (1) The collateral is timber to be cut or as-extracted
5015 collateral, or

5016 (2) The record is or relates to a financing statement
5017 filed as a fixture filing and the collateral is goods that are or
5018 are to become fixtures.

5019 SECTION 2. Sections 75-9-101, 75-9-102, 75-9-103, 75-9-104,
5020 75-9-105, 75-9-106, 75-9-107, 75-9-108, 75-9-109, 75-9-110,
5021 75-9-111, 75-9-112, 75-9-113, 75-9-114, 75-9-115, 75-9-116,
5022 75-9-201, 75-9-202, 75-9-203, 75-9-204, 75-9-205, 75-9-206,
5023 75-9-207, 75-9-208, 75-9-301, 75-9-302, 75-9-303, 75-9-304,
5024 75-9-305, 75-9-306, 75-9-307, 75-9-308, 75-9-309, 75-9-310,
5025 75-9-311, 75-9-312, 75-9-313, 75-9-314, 75-9-315, 75-9-316,
5026 75-9-317, 75-9-318, 75-9-319, 75-9-401, 75-9-402, 75-9-403,
5027 75-9-404, 75-9-405, 75-9-406, 75-9-407, 75-9-408, 75-9-409,
5028 75-9-410, 75-9-501, 75-9-502, 75-9-503, 75-9-504, 75-9-505,
5029 75-9-506 and 75-9-507, Mississippi Code of 1972, which comprise
5030 Uniform Commercial Code Article 9 - Secured Transactions, are
5031 repealed.

5032 SECTION 3. The following shall be codified as Section
5033 75-5-118, Mississippi Code of 1972:

5034 75-5-118. **Security interest of issuer or nominated person.**

5035 (a) An issuer or nominated person has a security interest in
5036 a document presented under a letter of credit to the extent that
5037 the issuer or nominated person honors or gives value for the
5038 presentation.

5039 (b) So long as and to the extent that an issuer or nominated
5040 person has not been reimbursed or has not otherwise recovered the
5041 value given with respect to a security interest in a document

5042 under subsection (a), the security interest continues and is
5043 subject to Article 9 of the Uniform Commercial Code, but:

5044 (1) A security agreement is not necessary to make the
5045 security interest enforceable under Section 75-9-203(b)(3);

5046 (2) If the document is presented in a medium other than
5047 a written or other tangible medium, the security interest is
5048 perfected; and

5049 (3) If the document is presented in a written or other
5050 tangible medium and is not a certificated security, chattel paper,
5051 a document of title, an instrument, or a letter of credit, the
5052 security interest is perfected and has priority over a conflicting
5053 security interest in the document so long as the debtor does not
5054 have possession of the document.

5055 SECTION 4. Section 75-1-105, Mississippi Code of 1972, is
5056 amended as follows:

5057 75-1-105. (1) Except as provided hereafter in this section,
5058 when a transaction bears a reasonable relation to this state and
5059 also to another state or nation the parties may agree that the law
5060 either of this state or of such other state or nation shall govern
5061 their rights and duties. Failing such agreement, this code
5062 applies to transactions bearing an appropriate relation to this
5063 state. Provided, however, the law of the State of Mississippi
5064 shall always govern the rights and duties of the parties in regard
5065 to disclaimers of implied warranties of merchantability or
5066 fitness, limitations of remedies for breaches of implied
5067 warranties of merchantability or fitness, or the necessity for
5068 privity of contract to maintain a civil action for breach of
5069 implied warranties of merchantability or fitness notwithstanding
5070 any agreement by the parties that the laws of some other state or
5071 nation shall govern the rights and duties of the parties.

5072 (2) Where one of the following provisions of this code
5073 specifies the applicable law, that provision governs and a

5074 contrary agreement is effective only to the extent permitted by
5075 the law (including the conflict of laws rules) so specified:

5076 Rights of creditors against sold goods (Section 75-2-402).

5077 Applicability of the Article on Leases (Sections 75-2A-105
5078 and 75-2A-106).

5079 Applicability of the Article on Bank Deposits and Collections
5080 (Section 75-4-102).

5081 Governing law in the Article on Funds Transfers (Section
5082 75-4A-507).

5083 Letters of credit (Section 75-5-116).

5084 Applicability of the Article on Investment Securities
5085 (Section 75-8-110).

5086 Law governing perfection, the effect of perfection or
5087 nonperfection, and the priority of security interests and
5088 agricultural liens (Sections 75-9-301 through 75-9-307).

5089 SECTION 5. Section 75-1-201, Mississippi Code of 1972, is
5090 amended as follows:

5091 75-1-201. Subject to additional definitions contained in the
5092 subsequent chapters of this code which are applicable to specific
5093 chapters or parts thereof, and unless the context otherwise
5094 requires, in this code:

5095 (1) "Action" in the sense of a judicial proceeding
5096 includes recoupment, counterclaim, set-off, suit in equity and any
5097 other proceedings in which rights are determined.

5098 (2) "Aggrieved party" means a party entitled to resort
5099 to a remedy.

5100 (3) "Agreement" means the bargain of the parties in
5101 fact as found in their language or by implication from other
5102 circumstances including course of dealing or usage of trade or
5103 course of performance as provided in this code (Sections 75-1-205
5104 and 75-2-208). Whether an agreement has legal consequences is
5105 determined by the provisions of this code, if applicable;

5106 otherwise by the law of contracts (Section 75-1-103). (Compare
5107 "Contract.")

5108 (4) "Bank" means any person engaged in the business of
5109 banking.

5110 (5) "Bearer" means the person in possession of an
5111 instrument, document of title, or certificated security payable to
5112 bearer or indorsed in blank.

5113 (6) "Bill of lading" means a document evidencing the
5114 receipt of goods for shipment issued by a person engaged in the
5115 business of transporting or forwarding goods, and includes an
5116 airbill. "Airbill" means a document serving for air
5117 transportation as a bill of lading does for marine or rail
5118 transportation, and includes an air consignment note or air
5119 waybill.

5120 (7) "Branch" includes a separately incorporated foreign
5121 branch of a bank.

5122 (8) "Burden of establishing" a fact means the burden of
5123 persuading the triers of fact that the existence of the fact is
5124 more probable than its nonexistence.

5125 (9) "Buyer in ordinary course of business" means a
5126 person that buys goods in good faith, without knowledge that the
5127 sale violates the * * * rights * * * of another person in the
5128 goods, and in the ordinary course from a person, other than a
5129 pawnbroker, in the business of selling goods of that kind * * *.
5130 A person buys goods in the ordinary course if the sale to the
5131 person comports with the usual or customary practices in the kind
5132 of business in which the seller is engaged or with the seller's
5133 own usual or customary practices. A person that sells oil, gas,
5134 or other minerals at the wellhead or minehead is a person in the
5135 business of selling goods of that kind. A buyer in the ordinary
5136 course of business may buy for cash, by exchange of other
5137 property, or on secured or unsecured credit, and may acquire goods
5138 or documents of title under a preexisting contract for sale * * *.

5139 Only a buyer that takes possession of the goods or has a right to
5140 recover the goods from the seller under Article 2 may be a buyer
5141 in ordinary course of business. A person that acquires goods in a
5142 transfer in bulk or as security for or in total or partial
5143 satisfaction of a money debt is not a buyer in ordinary course of
5144 business.

5145 (10) "Conspicuous": A term or clause is conspicuous
5146 when it is so written that a reasonable person against whom it is
5147 to operate ought to have noticed it. A printed heading in
5148 capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous.
5149 Language in the body of a form is "conspicuous" if it is in larger
5150 or other contrasting type or color. But in a telegram any stated
5151 term is "conspicuous." Whether a term or clause is "conspicuous"
5152 or not is for decision by the court.

5153 (11) "Contract" means the total legal obligation which
5154 results from the parties' agreement as affected by this code and
5155 any other applicable rules of law. (Compare "Agreement.")

5156 (12) "Creditor" includes a general creditor, a secured
5157 creditor, a lien creditor and any representative of creditors,
5158 including an assignee for the benefit of creditors, a trustee in
5159 bankruptcy, a receiver in equity and an executor or administrator
5160 of an insolvent debtor's or assignor's estate.

5161 (13) "Defendant" includes a person in the position of
5162 defendant in a cross-action or counterclaim.

5163 (14) "Delivery" with respect to instruments, documents
5164 of title, chattel paper, or certificated securities means
5165 voluntary transfer of possession.

5166 (15) "Document of title" includes bill of lading, dock
5167 warrant, dock receipt, warehouse receipt or order for the delivery
5168 of goods, and also any other document which in the regular course
5169 of business or financing is treated as adequately evidencing that
5170 the person in possession of it is entitled to receive, hold and
5171 dispose of the document and the goods it covers. To be a document

5172 of title a document must purport to be issued by or addressed to a
5173 bailee and purport to cover goods in the bailee's possession which
5174 are either identified or are fungible portions of an identified
5175 mass.

5176 (16) "Fault" means wrongful act, omission or breach.

5177 (17) "Fungible" with respect to goods or securities
5178 means goods or securities of which any unit is, by nature or usage
5179 of trade, the equivalent of any other like unit. Goods which are
5180 not fungible shall be deemed fungible for the purposes of this
5181 code to the extent that under a particular agreement or document
5182 unlike units are treated as equivalents.

5183 (18) "Genuine" means free of forgery or counterfeiting.

5184 (19) "Good faith" means honesty in fact in the conduct
5185 or transaction concerned.

5186 (20) "Holder," with respect to a negotiable instrument,
5187 means the person in possession if the instrument is payable to
5188 bearer or, in the case of an instrument payable to an identified
5189 person, if the identified person is in possession. "Holder," with
5190 respect to a document of title, means the person in possession if
5191 the goods are deliverable to bearer or to the order of the person
5192 in possession.

5193 (21) To "honor" is to pay or to accept and pay, or
5194 where a credit so engages to purchase or discount a draft
5195 complying with the terms of the credit.

5196 (22) "Insolvency proceedings" includes any assignment
5197 for the benefit of creditors or other proceedings intended to
5198 liquidate or rehabilitate the estate of the person involved.

5199 (23) A person is "insolvent" who either has ceased to
5200 pay his debts in the ordinary course of business or cannot pay his
5201 debts as they become due or is insolvent within the meaning of the
5202 federal bankruptcy law.

5203 (24) "Money" means a medium of exchange authorized or
5204 adopted by a domestic or foreign government and includes a

5205 monetary unit of account established by an intergovernmental
5206 organization or by agreement between two (2) or more nations.

5207 (25) A person has "notice" of a fact when

5208 (a) He has actual knowledge of it; or

5209 (b) He has received a notice or notification of
5210 it; or

5211 (c) From all the facts and circumstances known to
5212 him at the time in question he has reason to know that it exists.

5213 A person "knows" or has "knowledge" of a fact when he has
5214 actual knowledge of it. "Discover" or "learn" or a word or phrase
5215 of similar import refers to knowledge rather than to reason to
5216 know. The time and circumstances under which a notice or
5217 notification may cease to be effective are not determined by this
5218 code.

5219 (26) A person "notifies" or "gives" a notice or
5220 notification to another by taking such steps as may be reasonably
5221 required to inform the other in ordinary course whether or not
5222 such other actually comes to know of it. A person "receives" a
5223 notice or notification when:

5224 (a) It comes to his attention; or

5225 (b) It is duly delivered at the place of business
5226 through which the contract was made or at any other place held out
5227 by him as the place for receipt of such communications.

5228 (27) Notice, knowledge or a notice or notification
5229 received by an organization is effective for a particular
5230 transaction from the time when it is brought to the attention of
5231 the individual conducting that transaction, and in any event from
5232 the time when it would have been brought to his attention if the
5233 organization had exercised due diligence. An organization
5234 exercises due diligence if it maintains reasonable routines for
5235 communicating significant information to the person conducting the
5236 transaction and there is reasonable compliance with the routines.
5237 Due diligence does not require an individual acting for the

5238 organization to communicate information unless such communication
5239 is part of his regular duties or unless he has reason to know of
5240 the transaction and that the transaction would be materially
5241 affected by the information.

5242 (28) "Organization" includes a corporation, government
5243 or governmental subdivision or agency, business trust, estate,
5244 trust, partnership or association, two (2) or more persons having
5245 a joint or common interest, or any other legal or commercial
5246 entity.

5247 (29) "Party," as distinct from "third party," means a
5248 person who has engaged in a transaction or made an agreement
5249 within this code.

5250 (30) "Person" includes an individual or an organization
5251 (see Section 75-1-102).

5252 (31) "Presumption" or "presumed" means that the trier
5253 of fact must find the existence of the fact presumed unless and
5254 until evidence is introduced which would support a finding of its
5255 nonexistence.

5256 (32) "Purchase" includes taking by sale, discount,
5257 negotiation, mortgage, pledge, lien, security interest, issue or
5258 reissue, gift or any other voluntary transaction creating an
5259 interest in property.

5260 (33) "Purchaser" means a person who takes by purchase.

5261 (34) "Remedy" means any remedial right to which an
5262 aggrieved party is entitled with or without resort to a tribunal.

5263 (35) "Representative" includes an agent, an officer of
5264 a corporation or association, and a trustee, executor or
5265 administrator of an estate, or any other person empowered to act
5266 for another.

5267 (36) "Rights" includes remedies.

5268 (37) "Security interest" means an interest in personal
5269 property or fixtures which secures payment or performance of an
5270 obligation.

5271 (a) * * * The term also includes any interest of a
5272 consignor and a buyer of accounts, chattel paper, a payment
5273 intangible, or a promissory note in a transaction that is subject
5274 to Article 9. The special property interest of a buyer of goods
5275 on identification of such goods to a contract for sale under
5276 Section 75-2-401 is not a "security interest," but a buyer may
5277 also acquire "security interest," by complying with Article 9.
5278 Except as otherwise provided in Section 75-2-505, the right of a
5279 seller or lessor of goods under Article 2 or 2A to retain or
5280 acquire possession of the goods is not a "security interest," but
5281 a seller or lessor may also acquire a "security interest" by
5282 complying with Article 9. The retention or reservation of title
5283 by a seller of goods notwithstanding shipment or delivery to the
5284 buyer (Section 75-2-401) is limited in effect to a reservation of
5285 a security interest.

5286 (b) Whether a transaction creates a lease or
5287 security interest is determined by the facts of each case;
5288 however, a transaction creates a security interest if the
5289 consideration the lessee is to pay the lessor for the right to
5290 possession and use of the goods is an obligation for the term of
5291 the lease not subject to termination by the lessee, and

5292 (i) The original term of the lease is equal
5293 to or greater than the remaining economic life of the goods,

5294 (ii) The lessee is bound to renew the lease
5295 for the remaining economic life of the goods or is bound to become
5296 the owner of the goods,

5297 (iii) The lessee has an option to renew the
5298 lease for the remaining economic life of the goods for no
5299 additional consideration or nominal additional consideration upon
5300 compliance with the lease agreement, or

5301 (iv) The lessee has an option to become the
5302 owner of the goods for no additional consideration or nominal
5303 additional consideration upon compliance with the lease agreement.

5304 (c) A transaction does not create a security
5305 interest merely because it provides that:

5306 (i) The present value of the consideration
5307 the lessee is obligated to pay the lessor for the right to
5308 possession and use of the goods is substantially equal to or is
5309 greater than the fair market value of the goods at the time the
5310 lease is entered into,

5311 (ii) The lessee assumes risk of loss of the
5312 goods, or agrees to pay taxes, insurance, filing, recording, or
5313 registration fees, or service or maintenance costs with respect to
5314 the goods,

5315 (iii) The lessee has an option to renew the
5316 lease or to become the owner of the goods,

5317 (iv) The lessee has an option to renew the
5318 lease for a fixed rent that is equal to or greater than the
5319 reasonably predictable fair market rent for the use of the goods
5320 for the term of the renewal at the time the option is to be
5321 performed, or

5322 (v) The lessee has an option to become the
5323 owner of the goods for a fixed price that is equal to or greater
5324 than the reasonably predictable fair market value of the goods at
5325 the time the option is to be performed.

5326 (d) For purposes of this subsection (37):

5327 (i) Additional consideration is not nominal
5328 if

5329 1. When the option to renew the lease is
5330 granted to the lessee the rent is stated to be the fair market
5331 rent for the use of the goods for the term of the renewal
5332 determined at the time the option is to be performed, or

5333 2. When the option to become the owner
5334 of the goods is granted to the lessee the price is stated to be
5335 the fair market value of the goods determined at the time the
5336 option is to be performed. Additional consideration is nominal if

5337 it is less than the lessee's reasonably predictable cost of
5338 performing under the lease agreement if the option is not
5339 exercised;

5340 (ii) "Reasonably predictable" and "remaining
5341 economic life of the goods" are to be determined with reference to
5342 the fact and circumstances at the time the transaction is entered
5343 into; and

5344 (iii) "Present value" means the amount as of
5345 a date certain of one or more sums payable in the future,
5346 discounted to the date certain. The discount is determined by the
5347 interest rate specified by the parties if the rate is not
5348 manifestly unreasonable at the time the transaction is entered
5349 into; otherwise, the discount is determined by a commercially
5350 reasonable rate that takes into account the facts and
5351 circumstances of each case at the time the transaction was entered
5352 into.

5353 (38) "Send" in connection with any writing or notice
5354 means to deposit in the mail or deliver for transmission by any
5355 other usual means of communication with postage or cost of
5356 transmission provided for and properly addressed and in the case
5357 of an instrument to an address specified thereon or otherwise
5358 agreed, or if there be none to any address reasonable under the
5359 circumstances. The receipt of any writing or notice within the
5360 time at which it would have arrived if properly sent has the
5361 effect of a proper sending.

5362 (39) "Signed" includes any symbol executed or adopted
5363 by a party with present intention to authenticate a writing.

5364 (40) "Surety" includes guarantor.

5365 (41) "Telegram" includes a message transmitted by
5366 radio, teletype, cable, any mechanical method of transmission, or
5367 the like.

5368 (42) "Term" means that portion of an agreement which
5369 relates to a particular matter.

5370 (43) "Unauthorized" signature means one made without
5371 actual, implied or apparent authority and includes a forgery.

5372 (44) "Value," except as otherwise provided with respect
5373 to negotiable instruments and bank collections (Sections 75-3-303,
5374 75-4-208 and 75-4-209), a person gives "value" for rights if he
5375 acquires them:

5376 (a) In return for a binding commitment to extend
5377 credit or for the extension of immediately available credit
5378 whether or not drawn upon and whether or not a charge-back is
5379 provided for in the event of difficulties in collection; or

5380 (b) As security for or in total or partial
5381 satisfaction of a preexisting claim; or

5382 (c) By accepting delivery pursuant to a
5383 preexisting contract for purchase; or

5384 (d) Generally, in return for any consideration
5385 sufficient to support a simple contract.

5386 (45) "Warehouse receipt" means a receipt issued by a
5387 person engaged in the business of storing goods for hire.

5388 (46) "Written" or "writing" includes printing,
5389 typewriting, or any other intentional reduction to tangible form.

5390 SECTION 6. Section 75-2-103, Mississippi Code of 1972, is
5391 amended as follows:

5392 75-2-103. (1) In this chapter unless the context otherwise
5393 requires:

5394 (a) "Buyer" means a person who buys or contracts to buy
5395 goods.

5396 (b) "Good faith" in the case of a merchant means
5397 honesty in fact and the observance of reasonable commercial
5398 standards of fair dealing in the trade.

5399 (c) "Receipt" of goods means taking physical possession
5400 of them.

5401 (d) "Seller" means a person who sells or contracts to
5402 sell goods.

5403 (2) Other definitions applying to this chapter or to
5404 specified parts thereof, and the sections in which they appear
5405 are:

5406	"Acceptance"	Section <u>75-2-606</u> .
5407	"Banker's credit"	Section <u>75-2-325</u> .
5408	"Between merchants"	Section <u>75-2-104</u> .
5409	"Cancellation"	Section <u>75-2-106(4)</u> .
5410	"Commercial unit"	Section <u>75-2-105</u> .
5411	"Confirmed credit"	Section <u>75-2-325</u> .
5412	"Conforming to contract"	Section <u>75-2-106</u> .
5413	"Contract for sale"	Section <u>75-2-106</u> .
5414	"Cover"	Section <u>75-2-712</u> .
5415	"Entrusting"	Section <u>75-2-403</u> .
5416	"Financing agency"	Section <u>75-2-104</u> .
5417	"Future goods"	Section <u>75-2-105</u> .
5418	"Goods"	Section <u>75-2-105</u> .
5419	"Identification"	Section <u>75-2-501</u> .
5420	"Installment contract"	Section <u>75-2-612</u> .
5421	"Letter of Credit"	Section <u>75-2-325</u> .
5422	"Lot"	Section <u>75-2-105</u> .
5423	"Merchant"	Section <u>75-2-104</u> .
5424	"Overseas"	Section <u>75-2-323</u> .
5425	"Person in position of seller"	Section <u>75-2-707</u> .
5426	"Present sale"	Section <u>75-2-106</u> .
5427	"Sale"	Section <u>75-2-106</u> .
5428	"Sale on approval"	Section <u>75-2-326</u> .
5429	"Sale or return"	Section <u>75-2-326</u> .
5430	"Termination"	Section <u>75-2-106</u> .

5431 (3) The following definitions in other chapters apply to
5432 this chapter:

5433	"Check"	Section <u>75-3-104</u> .
5434	"Consignee"	Section <u>75-7-102</u> .
5435	"Consignor"	Section <u>75-7-102</u> .

5436 "Consumer goods" Section 75-9-102.
5437 "Dishonor" Section 75-3-502.
5438 "Draft" Section 75-3-104.

5439 (4) In addition Chapter 1 contains general definitions and
5440 principles of construction and interpretation applicable
5441 throughout this chapter.

5442 SECTION 7. Section 75-2-210, Mississippi Code of 1972, is
5443 amended as follows:

5444 75-2-210. (1) A party may perform his duty through a
5445 delegate unless otherwise agreed or unless the other party has a
5446 substantial interest in having his original promisor perform or
5447 control the acts required by the contract. No delegation of
5448 performance relieves the party delegating of any duty to perform
5449 or any liability for breach.

5450 (2) Except as otherwise provided in Section 75-9-406, unless
5451 otherwise agreed, all rights of either seller or buyer can be
5452 assigned except where the assignment would materially change the
5453 duty of the other party, or increase materially the burden or risk
5454 imposed on him by his contract, or impair materially his chance of
5455 obtaining return performance. A right to damages for breach of
5456 the whole contract or a right arising out of the assignor's due
5457 performance of his entire obligation can be assigned despite
5458 agreement otherwise.

5459 (3) The creation, attachment, perfection, or enforcement of
5460 a security interest in the seller's interest under a contract is
5461 not a transfer that materially changes the duty of or increases
5462 materially the burden or risk imposed on the buyer or impairs
5463 materially the buyer's chance of obtaining return performance
5464 within the purview of subsection (2) unless, and then only to the
5465 extent that, enforcement actually results in a delegation of
5466 material performance of the seller. Even in that event, the
5467 creation, attachment, perfection, and enforcement of the security
5468 interest remain effective, but (i) the seller is liable to the

5469 buyer for damages caused by the delegation to the extent that the
5470 damages could not reasonably be prevented by the buyer, and (ii) a
5471 court having jurisdiction may grant other appropriate relief,
5472 including cancellation of the contract for sale or an injunction
5473 against enforcement of the security interest or consummation of
5474 the enforcement.

5475 (4) Unless the circumstances indicate the contrary a
5476 prohibition of assignment of "the contract" is to be construed as
5477 barring only the delegation to the assignee of the assignor's
5478 performance.

5479 (5) An assignment of "the contract" or of "all my rights
5480 under the contract" or an assignment in similar general terms is
5481 an assignment of rights and unless the language or the
5482 circumstances (as in an assignment for security) indicate the
5483 contrary, it is a delegation of performance of the duties of the
5484 assignor and its acceptance by the assignee constitutes a promise
5485 by him to perform those duties. This promise is enforceable by
5486 either the assignor or the other party to the original contract.

5487 (6) The other party may treat any assignment which delegates
5488 performance as creating reasonable grounds for insecurity and may
5489 without prejudice to his rights against the assignor demand
5490 assurances from the assignee (Section 75-2-609).

5491 SECTION 8. Section 75-2-326, Mississippi Code of 1972, is
5492 amended as follows:

5493 75-2-326. (1) Unless otherwise agreed, if delivered goods
5494 may be returned by the buyer even though they conform to the
5495 contract, the transaction is

5496 (a) A "sale on approval" if the goods are delivered
5497 primarily for use, and

5498 (b) A "sale or return" if the goods are delivered
5499 primarily for resale.

5500 (2) * * * Goods held on approval are not subject to the
5501 claims of the buyer's creditors until acceptance; goods held on

5502 sale or return are subject to such claims while in the buyer's
5503 possession.

5504 * * *

5505 (3) Any "or return" term of a contract for sale is to be
5506 treated as a separate contract for sale within the statute of
5507 frauds section of this chapter (Section 75-2-201) and as
5508 contradicting the sale aspect of the contract within the
5509 provisions of this chapter on parol or extrinsic evidence (Section
5510 75-2-202).

5511 SECTION 9. Section 75-2-502, Mississippi Code of 1972, is
5512 amended as follows:

5513 75-2-502. **Buyer's right to goods on seller's repudiation,**
5514 **failure to deliver, or insolvency.**

5515 (1) Subject to subsections (2) and (3) and even though the
5516 goods have not been shipped a buyer who has paid a part or all of
5517 the price of goods in which he has a special property under the
5518 provisions of Section 75-2-501 may on making and keeping good a
5519 tender of any unpaid portion of their price recover them from the
5520 seller if:

5521 (a) In the case of goods bought for personal, family,
5522 or household purposes, the seller repudiates or fails to deliver
5523 as required by the contract; or

5524 (b) In all cases, the seller becomes insolvent within
5525 ten (10) days after receipt of the first installment on their
5526 price.

5527 (2) The buyer's right to recover the goods under subsection
5528 (1)(a) vests upon acquisition of a special property, even if the
5529 seller had not then repudiated or failed to deliver.

5530 (3) If the identification creating his special property has
5531 been made by the buyer he acquires the right to recover the goods
5532 only if they conform to the contract for sale.

5533 SECTION 10. Section 75-2-716, Mississippi Code of 1972, is
5534 amended as follows:

5535 75-2-716. (1) Specific performance may be decreed where the
5536 goods are unique or in other proper circumstances.

5537 (2) The decree for specific performance may include such
5538 terms and conditions as to payment of the price, damages, or other
5539 relief as the court may deem just.

5540 (3) The buyer has a right of replevin for goods identified
5541 to the contract if after reasonable effort he is unable to effect
5542 cover for such goods or the circumstances reasonably indicate that
5543 such effort will be unavailing or if the goods have been shipped
5544 under reservation and satisfaction of the security interest in
5545 them has been made or tendered. In the case of goods bought for
5546 personal, family, or household purposes, the buyer's right of
5547 replevin vests upon acquisition of a special property, even if the
5548 seller had not then repudiated or failed to deliver.

5549 SECTION 11. Section 75-2A-103, Mississippi Code of 1972, is
5550 amended as follows:

5551 75-2A-103. (1) In this chapter unless the context otherwise
5552 requires:

5553 (a) "Buyer in ordinary course of business" means a
5554 person who in good faith and without knowledge that the sale to
5555 him is in violation of the ownership rights or security interest
5556 or leasehold interest of a third party in the goods, buys in
5557 ordinary course from a person in the business of selling goods of
5558 that kind but does not include a pawnbroker. "Buying" may be for
5559 cash or by exchange of other property or on secured or unsecured
5560 credit and includes receiving goods or documents of title under a
5561 preexisting contract for sale but does not include a transfer in
5562 bulk or as security for or in total or partial satisfaction of a
5563 money debt.

5564 (b) "Cancellation" occurs when either party puts an end
5565 to the lease contract for default by the other party.

5566 (c) "Commercial unit" means such a unit of goods as by
5567 commercial usage is a single whole for purposes of lease and

5568 division of which materially impairs its character or value on the
5569 market or in use. A commercial unit may be a single article, as a
5570 machine, or a set of articles, as a suite of furniture or a line
5571 of machinery, or a quantity, as a gross or carload, or any other
5572 unit treated in use or in the relevant market as a single whole.

5573 (d) "Conforming" goods or performance under a lease
5574 contract means goods or performance that are in accordance with
5575 the obligations under the lease contract.

5576 (e) "Consumer lease" means a lease that a lessor
5577 regularly engaged in the business of leasing or selling makes to a
5578 lessee who is an individual and who takes under the lease
5579 primarily for a personal, family or household purpose, if the
5580 total payments to be made under the lease contract, excluding
5581 payments for options to renew or buy, do not exceed Twenty-five
5582 Thousand Dollars (\$25,000.00).

5583 (f) "Fault" means wrongful act, omission, breach or
5584 default.

5585 (g) "Finance lease" means a lease with respect to
5586 which:

5587 (i) The lessor does not select, manufacture, or
5588 supply the goods;

5589 (ii) The lessor acquires the goods or the right to
5590 possession and use of the goods in connection with the lease; and

5591 (iii) One (1) of the following occurs:

5592 (A) The lessee receives a copy of the
5593 contract by which the lessor acquired the goods or the right to
5594 possession and use of the goods before signing the lease contract;

5595 (B) The lessee's approval of the contract by
5596 which the lessor acquired the goods or the right to possession and
5597 use of the goods is a condition to effectiveness of the lease
5598 contract;

5599 (C) The lessee, before signing the lease
5600 contract, receives an accurate and complete statement designating

5601 the promises and warranties, and any disclaimers of warranties,
5602 limitations or modifications of remedies, or liquidated damages,
5603 including those of a third party, such as the manufacturer of the
5604 goods, provided to the lessor by the person supplying the goods in
5605 connection with or as part of the contract by which the lessor
5606 acquired the goods or the right to possession and use of the
5607 goods; or

5608 (D) If the lease is not a consumer lease, the
5609 lessor, before the lessee signs the lease contract, informs the
5610 lessee in writing (a) of the identity of the person supplying the
5611 goods to the lessor, unless the lessee has selected that person
5612 and directed the lessor to acquire the goods or the right to
5613 possession and use of the goods from that person, (b) that the
5614 lessee is entitled under this chapter to the promises and
5615 warranties, including those of any third party, provided to the
5616 lessor by the person supplying the goods in connection with or as
5617 part of the contract by which the lessor acquired the goods or the
5618 right to possession and use of the goods, and (c) that the lessee
5619 may communicate with the person supplying the goods to the lessor
5620 and receive an accurate and complete statement of those promises
5621 and warranties, including any disclaimers and limitations of them
5622 or of remedies.

5623 (h) "Goods" means all things that are movable at the
5624 time of identification to the lease contract, or are fixtures
5625 (Section 75-2A-309), but the term does not include money,
5626 documents, instruments, accounts, chattel paper, general
5627 intangibles or minerals or the like, including oil and gas, before
5628 extraction. The term also includes the unborn young of animals.

5629 (i) "Installment lease contract" means a lease contract
5630 that authorizes or requires the delivery of goods in separate lots
5631 to be separately accepted, even though the lease contract contains
5632 a clause "each delivery is a separate lease" or its equivalent.

5633 (j) "Lease" means a transfer of the right to possession
5634 and use of goods for a term in return for consideration, but a
5635 sale, including a sale on approval or a sale or return, or
5636 retention or creation of a security interest is not a lease.
5637 Unless the context clearly indicates otherwise, the term includes
5638 a sublease.

5639 (k) "Lease agreement" means the bargain, with respect
5640 to the lease, of the lessor and the lessee in fact as found in
5641 their language or by implication from other circumstances
5642 including course of dealing or usage of trade or course of
5643 performance as provided in this chapter. Unless the context
5644 clearly indicates otherwise, the term includes a sublease
5645 agreement.

5646 (l) "Lease contract" means the total legal obligation
5647 that results from the lease agreement as affected by this chapter
5648 and any other applicable rules of law. Unless the context clearly
5649 indicates otherwise, the term includes a sublease contract.

5650 (m) "Leasehold interest" means the interest of the
5651 lessor or the lessee under a lease contract.

5652 (n) "Lessee" means a person who acquires the right to
5653 possession and use of goods under a lease. Unless the context
5654 clearly indicates otherwise, the term includes a sublease.

5655 (o) "Lessee in ordinary course of business" means a
5656 person who in good faith and without knowledge that the lease to
5657 him is in violation of the ownership rights or security interest
5658 or leasehold interest of a third party in the goods leases in
5659 ordinary course from a person in the business of selling or
5660 leasing goods of that kind but does not include a pawnbroker.
5661 "Leasing" may be for cash or by exchange of other property or on
5662 secured or unsecured credit and includes receiving goods or
5663 documents of title under a preexisting lease contract but does not
5664 include a transfer in bulk or as security for or in total or
5665 partial satisfaction of a money debt.

5666 (p) "Lessor" means a person who transfers the right to
5667 possession and use of goods under a lease. Unless the context
5668 clearly indicates otherwise, the term includes a sublessor.

5669 (q) "Lessor's residual interest" means the lessor's
5670 interest in the goods after expiration, termination or
5671 cancellation of the lease contract.

5672 (r) "Lien" means a charge against or interest in goods
5673 to secure payment of a debt or performance of an obligation, but
5674 the term does not include a security interest.

5675 (s) "Lot" means a parcel or a single article that is
5676 the subject matter of a separate lease or delivery, whether or not
5677 it is sufficient to perform the lease contract.

5678 (t) "Merchant lessee" means a lessee that is a merchant
5679 with respect to goods of the kind subject to the lease.

5680 (u) "Present value" means the amount as of a date
5681 certain of one or more sums payable in the future, discounted to
5682 the date certain. The discount is determined by the interest rate
5683 specified by the parties if the rate was not manifestly
5684 unreasonable at the time the transaction was entered into;
5685 otherwise, the discount is determined by a commercially reasonable
5686 rate that takes into account the facts and circumstances of each
5687 case at the time the transaction was entered into.

5688 (v) "Purchase" includes taking by sale, lease,
5689 mortgage, security interest, pledge, gift or any other voluntary
5690 transaction creating an interest in goods.

5691 (w) "Sublease" means a lease of goods the right to
5692 possession and use of which was acquired by the lessor as a lessee
5693 under an existing lease.

5694 (x) "Supplier" means a person from whom a lessor buys
5695 or leases goods to be leased under a finance lease.

5696 (y) "Supply contract" means a contract under which a
5697 lessor buys or leases goods to be leased.

5698 (z) "Termination" occurs when either party pursuant to
5699 a power created by agreement or law puts an end to the lease
5700 contract otherwise than for default.

5701 (2) Other definitions applying to this chapter and the
5702 sections in which they appear are:

5703	"Accessions."	Section 75-2A-310(1).
5704	"Construction mortgage."	Section 75-2A-309(1)(d).
5705	"Encumbrance."	Section 75-2A-309(1)(e).
5706	"Fixtures."	Section 75-2A-309(1)(a).
5707	"Fixture filing."	Section 75-2A-309(1)(b).
5708	"Purchase money lease."	Section 75-2A-309(1)(c).

5709 (3) The following definitions in other chapters apply to
5710 this chapter:

5711	"Account"	Section <u>75-9-102(a)(2)</u> .
5712	"Between merchants"	Section 75-2-104(3).
5713	"Buyer"	Section 75-2-103(1)(a).
5714	"Chattel paper"	Section <u>75-9-102(a)(11)</u> .
5715	"Consumer goods"	Section <u>75-9-102(a)(23)</u> .
5716	"Document"	Section <u>75-9-102(a)(30)</u> .
5717	"Entrusting"	Section 75-2-403(3).
5718	"General <u>intangible</u> "	Section <u>75-9-102(a)(42)</u> .
5719	"Good faith"	Section 75-2-103(1)(b).
5720	"Instrument"	Section <u>75-9-102(a)(47)</u> .
5721	"Merchant"	Section 75-2-104(1).
5722	"Mortgage"	Section <u>75-9-102(a)(55)</u> .
5723	"Pursuant to commitment"	Section <u>75-9-102(a)(68)</u> .
5724	"Receipt"	Section 75-2-103(1)(c).
5725	"Sale"	Section 75-2-106(1).
5726	"Sale on approval"	Section 75-2-326.
5727	"Sale or return"	Section 75-2-326.
5728	"Seller"	Section 75-2-103(1)(d).

5729 (4) In addition, Chapter 1 contains general definitions and
5730 principles of construction and interpretation applicable
5731 throughout this chapter.

5732 SECTION 12. Section 75-2A-303, Mississippi Code of 1972, is
5733 amended as follows:

5734 75-2A-303. (1) As used in this section, "creation of a
5735 security interest" includes the sale of a lease contract that is
5736 subject to Chapter 9, Secured Transactions, by reason of Section
5737 75-9-109(a)(3).

5738 (2) Except as provided in subsection (3) of Section
5739 75-9-705, a provision in a lease agreement which (i) prohibits the
5740 voluntary or involuntary transfer, including a transfer by sale,
5741 sublease, creation or enforcement of a security interest, or
5742 attachment, levy, or other judicial process, of an interest of a
5743 party under the lease contract or of the lessor's residual
5744 interest in the goods, or (ii) makes such a transfer an event of
5745 default, gives rise to the rights and remedies provided in
5746 subsection (4), but a transfer that is prohibited or is an event
5747 of default under the lease agreement is otherwise effective.

5748 * * *

5749 (3) A provision in a lease agreement which (i) prohibits a
5750 transfer of a right to damages for default with respect to the
5751 whole lease contract or of a right to payment arising out of the
5752 transferor's due performance of the transferor's entire
5753 obligation, or (ii) makes such a transfer an event of default, is
5754 not enforceable, and such a transfer is not a transfer that
5755 materially impairs the prospect of obtaining return performance
5756 by, materially changes the duty of, or materially increases the
5757 burden or risk imposed on, the other party to the lease contract
5758 within the purview of subsection (4).

5759 (4) Subject to subsections (3) and Section 75-9-407:

5760 (a) If a transfer is made which is made an event of
5761 default under a lease agreement, the party to the lease contract

5762 not making the transfer, unless that party waives the default or
5763 otherwise agrees, has the rights and remedies described in Section
5764 75-2A-501(2);

5765 (b) If paragraph (a) is not applicable and if a
5766 transfer is made that (i) is prohibited under a lease agreement or
5767 (ii) materially impairs the prospect of obtaining return
5768 performance by, materially changes the duty of, or materially
5769 increases the burden or risk imposed on, the other party to the
5770 lease contract, unless the party not making the transfer agrees at
5771 any time to the transfer in the lease contract or otherwise, then,
5772 except as limited by contract, (i) the transferor is liable to the
5773 party not making the transfer for damages caused by the transfer
5774 to the extent that the damages could not reasonably be prevented
5775 by the party not making the transfer and (ii) a court having
5776 jurisdiction may grant other appropriate relief, including
5777 cancellation of the lease contract or an injunction against the
5778 transfer.

5779 (5) A transfer of "the lease" or of "all my rights under the
5780 lease," or a transfer in similar general terms, is a transfer of
5781 rights and, unless the language or the circumstances, as in a
5782 transfer for security, indicate the contrary, the transfer is a
5783 delegation of duties by the transferor to the transferee.
5784 Acceptance by the transferee constitutes a promise by the
5785 transferee to perform those duties. The promise is enforceable by
5786 either the transferor or the other party to the lease contract.

5787 (6) Unless otherwise agreed by the lessor and the lessee, a
5788 delegation of performance does not relieve the transferor as
5789 against the other party of any duty to perform or of any liability
5790 for default.

5791 (7) In a consumer lease, to prohibit the transfer of an
5792 interest of a party under the lease contract or to make a transfer
5793 an event of default, the language must be specific, by a writing,
5794 and conspicuous.

5795 SECTION 13. Section 75-2A-307, Mississippi Code of 1972, is
5796 amended as follows:

5797 75-2A-307. (1) Except as otherwise provided in Section
5798 75-2A-306, a creditor of a lessee takes subject to the lease
5799 contract.

5800 (2) Except as otherwise provided in subsection (3), * * *
5801 and in Sections 75-2A-306 and 75-2A-308, a creditor of a lessor
5802 takes subject to the lease contract unless * * * the creditor
5803 holds a lien that attached to the goods before the lease contract
5804 became enforceable.

5805 * * *

5806 (3) Except as otherwise provided in Section 75-9-317,
5807 75-9-321 and 75-9-323, a lessee takes a leasehold interest subject
5808 to a security interest held by a creditor of the lessor.

5809 * * *

5810 SECTION 14. Section 75-2A-309, Mississippi Code of 1972, is
5811 amended as follows:

5812 75-2A-309. (1) In this section:

5813 (a) Goods are "fixtures" when they become so related to
5814 particular real estate that an interest in them arises under real
5815 estate law;

5816 (b) A "fixture filing" is the filing, in the office
5817 where a record of a mortgage on the real estate would be filed or
5818 recorded, of a financing statement covering goods that are or are
5819 to become fixtures and conforming to the requirements of Section
5820 75-9-502(a) and (b);

5821 (c) A lease is a "purchase money lease" unless the
5822 lessee has possession or use of the goods or the right to
5823 possession or use of the goods before the lease agreement is
5824 enforceable;

5825 (d) A mortgage is a "construction mortgage" to the
5826 extent it secures an obligation incurred for the construction of

5827 an improvement on land including the acquisition cost of the land,
5828 if the recorded writing so indicates; and

5829 (e) "Encumbrance" includes real estate mortgages and
5830 other liens on real estate and all other rights in real estate
5831 that are not ownership interests.

5832 (2) Under this chapter a lease may be of goods that are
5833 fixtures or may continue in goods that become fixtures, but no
5834 lease exists under this chapter of ordinary building materials
5835 incorporated into an improvement on land.

5836 (3) This chapter does not prevent creation of a lease of
5837 fixtures pursuant to real estate law.

5838 (4) The perfected interest of a lessor of fixtures has
5839 priority over a conflicting interest of an encumbrancer or owner
5840 of the real estate if:

5841 (a) The lease is a purchase money lease, the
5842 conflicting interest of the encumbrancer or owner arises before
5843 the goods become fixtures, the interest of the lessor is perfected
5844 by a fixture filing before the goods become fixtures or within ten
5845 (10) days thereafter, and the lessee has an interest of record in
5846 the real estate or is in possession of the real estate; or

5847 (b) The interest of the lessor is perfected by a
5848 fixture filing before the interest of the encumbrancer or owner is
5849 of record, the lessor's interest has priority over any conflicting
5850 interest of a predecessor in title of the encumbrancer or owner,
5851 and the lessee has an interest of record in the real estate or is
5852 in possession of the real estate.

5853 (5) The interest of a lessor of fixtures, whether or not
5854 perfected, has priority over the conflicting interest of an
5855 encumbrancer or owner of the real estate if:

5856 (a) The fixtures are readily removable factory or
5857 office machines, readily removable equipment that is not primarily
5858 used or leased for use in the operation of the real estate, or
5859 readily removable replacements of domestic appliances that are

5860 goods subject to a consumer lease, and before the goods become
5861 fixtures the lease contract is enforceable; or

5862 (b) The conflicting interest is a lien on the real
5863 estate obtained by legal or equitable proceedings after the lease
5864 contract is enforceable; or

5865 (c) The encumbrancer or owner has consented in writing
5866 to the lease or has disclaimed an interest in the goods as
5867 fixtures; or

5868 (d) The lessee has a right to remove the goods as
5869 against the encumbrancer or owner. If the lessee's right to
5870 remove terminates, the priority of the interest of the lessor
5871 continues for a reasonable time.

5872 (6) Notwithstanding subsection (4)(a) but otherwise subject
5873 to subsections (4) and (5), the interest of a lessor of fixtures,
5874 including the lessor's residual interest, is subordinate to the
5875 conflicting interest of an encumbrancer of the real estate under a
5876 construction mortgage recorded before the goods become fixtures if
5877 the goods become fixtures before the completion of the
5878 construction. To the extent given to refinance a construction
5879 mortgage, the conflicting interest of an encumbrancer of the real
5880 estate under a mortgage has this priority to the same extent as
5881 the encumbrancer of the real estate under the construction
5882 mortgage.

5883 (7) In cases not within the preceding subsections, priority
5884 between the interest of a lessor of fixtures, including the
5885 lessor's residual interest, and the conflicting interest of an
5886 encumbrancer or owner of the real estate who is not the lessee is
5887 determined by the priority rules governing conflicting interests
5888 in real estate.

5889 (8) If the interest of a lessor of fixtures, including the
5890 lessor's residual interest, has priority over all conflicting
5891 interests of all owners and encumbrancers of the real estate, the
5892 lessor or the lessee may (i) on default, expiration, termination

5893 or cancellation of the lease agreement but subject to the lease
5894 agreement and this chapter, or (ii) if necessary to enforce other
5895 rights and remedies of the lessor or lessee under this chapter,
5896 remove the goods from the real estate, free and clear of all
5897 conflicting interests of all owners and encumbrancers of the real
5898 estate, but the lessor or lessee must reimburse any encumbrancer
5899 or owner of the real estate who is not the lessee and who has not
5900 otherwise agreed for the cost of repair of any physical injury,
5901 but not for any diminution in value of the real estate caused by
5902 the absence of the goods removed or by any necessity of replacing
5903 them. A person entitled to reimbursement may refuse permission to
5904 remove until the party seeking removal gives adequate security for
5905 the performance of this obligation.

5906 (9) Even though the lease agreement does not create a
5907 security interest, the interest of a lessor of fixtures, including
5908 the lessor's residual interest, is perfected by filing a financing
5909 statement as a fixture filing for leased goods that are or are to
5910 become fixtures in accordance with the relevant provisions of the
5911 Chapter on Secured Transactions (Chapter 9).

5912 SECTION 15. Section 75-4-210, Mississippi Code of 1972, is
5913 amended as follows:

5914 75-4-210. (a) A collecting bank has a security interest in
5915 an item and any accompanying documents or the proceeds of either:

5916 (1) In case of an item deposited in an account, to the
5917 extent to which credit given for the item has been withdrawn or
5918 applied;

5919 (2) In case of an item for which it has given credit
5920 available for withdrawal as of right, to the extent of the credit
5921 given, whether or not the credit is drawn upon or there is a right
5922 of charge-back; or

5923 (3) If it makes an advance on or against the item.

5924 (b) If credit given for several items received at one time
5925 or pursuant to a single agreement is withdrawn or applied in part,

5926 the security interest remains upon all the items, any accompanying
5927 documents or the proceeds of either. For the purpose of this
5928 section, credits first given are first withdrawn.

5929 (c) Receipt by a collecting bank of a final settlement for
5930 an item is a realization on its security interest in the item,
5931 accompanying documents, and proceeds. So long as the bank does
5932 not receive final settlement for the item or give up possession of
5933 the item or accompanying documents for purposes other than
5934 collection, the security interest continues to that extent and is
5935 subject to Chapter 9, but:

5936 (1) No security agreement is necessary to make the
5937 security interest enforceable (Section 75-9-203(b)(3)(A);

5938 (2) No filing is required to perfect the security
5939 interest; and

5940 (3) The security interest has priority over conflicting
5941 perfected security interests in the item, accompanying documents,
5942 or proceeds.

5943 SECTION 16. Section 75-7-503, Mississippi Code of 1972, is
5944 amended as follows:

5945 75-7-503. (1) A document of title confers no right in goods
5946 against a person who before issuance of the document had a legal
5947 interest or a perfected security interest in them and who neither

5948 (a) Delivered or entrusted them or any document of
5949 title covering them to the bailor or his nominee with actual or
5950 apparent authority to ship, store or sell or with power to obtain
5951 delivery under this chapter (Section 75-7-403) or with power of
5952 disposition under this code (Sections 75-2-403 and 75-9-320) or
5953 other statute or rule of law; nor

5954 (b) Acquiesced in the procurement by the bailor or his
5955 nominee of any document of title.

5956 (2) Title to goods based upon an unaccepted delivery order
5957 is subject to the rights of anyone to whom a negotiable warehouse
5958 receipt or bill of lading covering the goods has been duly

5959 negotiated. Such a title may be defeated under the next section
5960 to the same extent as the rights of the issuer or a transferee
5961 from the issuer.

5962 (3) Title to goods based upon a bill of lading issued to a
5963 freight forwarder is subject to the rights of anyone to whom a
5964 bill issued by the freight forwarder is duly negotiated; but
5965 delivery by the carrier in accordance with Part 4 of this chapter
5966 pursuant to its own bill of lading discharges the carrier's
5967 obligation to deliver.

5968 SECTION 17. Section 75-8-103, Mississippi Code of 1972, is
5969 amended as follows:

5970 75-8-103. (a) A share or similar equity interest issued by
5971 a corporation, business trust, joint stock company, or similar
5972 entity is a security.

5973 (b) An "investment company security" is a security.
5974 "Investment company security" means a share or similar equity
5975 interest issued by an entity that is registered as an investment
5976 company under the federal investment company laws, an interest in
5977 a unit investment trust that is so registered, or a face-amount
5978 certificate issued by a face-amount certificate company that is so
5979 registered. Investment company security does not include an
5980 insurance policy or endowment policy or annuity contract issued by
5981 an insurance company.

5982 (c) An interest in a partnership or limited liability
5983 company is not a security unless it is dealt in or traded on
5984 securities exchanges or in securities markets, its terms expressly
5985 provide that it is a security governed by this chapter, or it is
5986 an investment company security. However, an interest in a
5987 partnership or limited liability company is a financial asset if
5988 it is held in a securities account.

5989 (d) A writing that is a security certificate is governed by
5990 this chapter and not by Chapter 3, even though it also meets the
5991 requirements of that chapter. However, a negotiable instrument

5992 governed by Chapter 3 is a financial asset if it is held in a
5993 securities account.

5994 (e) An option or similar obligation issued by a clearing
5995 corporation to its participants is not a security, but is a
5996 financial asset.

5997 (f) A commodity contract, as defined in Section
5998 75-9-102(a)(15), is not a security or a financial asset.

5999 SECTION 18. Section 75-8-106, Mississippi Code of 1972, is
6000 amended as follows:

6001 75-8-106. (a) A purchaser has "control" of a certificated
6002 security in bearer form if the certificated security is delivered
6003 to the purchaser.

6004 (b) A purchaser has "control" of a certificated security in
6005 registered form if the certificated security is delivered to the
6006 purchaser, and:

6007 (1) The certificate is endorsed to the purchaser or in
6008 blank by an effective endorsement; or

6009 (2) The certificate is registered in the name of the
6010 purchaser, upon original issue or registration of transfer by the
6011 issuer.

6012 (c) A purchaser has "control" of an uncertificated security
6013 if:

6014 (1) The uncertificated security is delivered to the
6015 purchaser; or

6016 (2) The issuer has agreed that it will comply with
6017 instructions originated by the purchaser without further consent
6018 by the registered owner.

6019 (d) A purchaser has "control" of a security entitlement if:

6020 (1) The purchaser becomes the entitlement holder; * * *

6021 (2) The securities intermediary has agreed that it will
6022 comply with entitlement orders originated by the purchaser without
6023 further consent by the entitlement holder; or

6024 (3) Another person has control of the security
6025 entitlement on behalf of the purchaser or, having previously
6026 acquired control of the security entitlement, acknowledges that it
6027 has control on behalf of the purchaser.

6028 (e) If an interest in a security entitlement is granted by
6029 the entitlement holder to the entitlement holder's own securities
6030 intermediary, the securities intermediary has control.

6031 (f) A purchaser who has satisfied the requirements of
6032 subsection (c) * * * or (d) * * * has control, even if the
6033 registered owner in the case of subsection (c) * * * or the
6034 entitlement holder in the case of subsection (d) * * * retains the
6035 right to make substitutions for the uncertificated security or
6036 security entitlement, to originate instructions or entitlement
6037 orders to the issuer or securities intermediary, or otherwise to
6038 deal with the uncertificated security or security entitlement.

6039 (g) An issuer or a securities intermediary may not enter
6040 into an agreement of the kind described in subsection (c)(2) or
6041 (d)(2) without the consent of the registered owner or entitlement
6042 holder, but an issuer or a securities intermediary is not required
6043 to enter into such an agreement even though the registered owner
6044 or entitlement holder so directs. An issuer or securities
6045 intermediary that has entered into such an agreement is not
6046 required to confirm the existence of the agreement to another
6047 party unless requested to do so by the registered owner or
6048 entitlement holder.

6049 SECTION 19. Section 75-8-110, Mississippi Code of 1972, is
6050 amended as follows:

6051 75-8-110. (a) The local law of the issuer's jurisdiction,
6052 as specified in subsection (d), governs:

6053 (1) The validity of a security;

6054 (2) The rights and duties of the issuer with respect to
6055 registration of transfer;

6056 (3) The effectiveness of registration of transfer by
6057 the issuer;

6058 (4) Whether the issuer owes any duties to an adverse
6059 claimant to a security; and

6060 (5) Whether an adverse claim can be asserted against a
6061 person to whom transfer of a certificated or uncertificated
6062 security is registered or a person who obtains control of an
6063 uncertificated security.

6064 (b) The local law of the securities intermediary's
6065 jurisdiction, as specified in subsection (e), governs:

6066 (1) Acquisition of a security entitlement from the
6067 securities intermediary;

6068 (2) The rights and duties of the securities
6069 intermediary and entitlement holder arising out of a security
6070 entitlement;

6071 (3) Whether the securities intermediary owes any duties
6072 to an adverse claimant to a security entitlement; and

6073 (4) Whether an adverse claim can be asserted against a
6074 person who acquires a security entitlement from the securities
6075 intermediary or a person who purchases a security entitlement or
6076 interest therein from an entitlement holder.

6077 (c) The local law of the jurisdiction in which a security
6078 certificate is located at the time of delivery governs whether an
6079 adverse claim can be asserted against a person to whom the
6080 security certificate is delivered.

6081 (d) "Issuer's jurisdiction" means the jurisdiction under
6082 which the issuer of the security is organized or, if permitted by
6083 the law of that jurisdiction, the law of another jurisdiction
6084 specified by the issuer. An issuer organized under the law of
6085 this state may specify the law of another jurisdiction as the law
6086 governing the matters specified in subsection (a)(2) through (5).

6087 (e) The following rules determine a "securities
6088 intermediary's jurisdiction" for purposes of this section:

6089 (1) If an agreement between the securities intermediary
6090 and its entitlement holder governing the securities account
6091 expressly provides that a particular jurisdiction is the
6092 securities intermediary's jurisdiction for the purposes of this
6093 part, this article or the Uniform Commercial Code, that
6094 jurisdiction is the securities intermediary's jurisdiction.

6095 (2) If paragraph (1) does not apply and an agreement
6096 between the securities intermediary and its entitlement holder
6097 governing the securities account expressly provides that the
6098 agreement is governed by the law of a particular jurisdiction,
6099 that jurisdiction is the securities intermediary's jurisdiction.

6100 (3) If neither paragraph (1) nor paragraph (2) applies
6101 and an agreement between the securities intermediary and its
6102 entitlement holder * * * expressly provides that the securities
6103 account is maintained at an office in a particular jurisdiction,
6104 that jurisdiction is the securities intermediary's jurisdiction.

6105 (4) If none of the preceding paragraphs of this
6106 subsection apply, the securities intermediary's jurisdiction is
6107 the jurisdiction in which * * * the office identified in an
6108 account statement as the office serving the entitlement holder's
6109 account is located.

6110 (5) If none of the preceding paragraphs of this
6111 subsection apply, the securities intermediary's jurisdiction is
6112 the jurisdiction in which * * * the chief executive office of the
6113 securities intermediary is located.

6114 (f) A securities intermediary's jurisdiction is not
6115 determined by the physical location of certificates representing
6116 financial assets, or by the jurisdiction in which is organized the
6117 issuer of the financial asset with respect to which an entitlement
6118 holder has a security entitlement, or by the location of
6119 facilities for data processing or other record keeping concerning
6120 the account.

6121 SECTION 20. Section 75-8-301, Mississippi Code of 1972, is
6122 amended as follows:

6123 75-8-301. (a) Delivery of a certificated security to a
6124 purchaser occurs when:

6125 (1) The purchaser acquires possession of the security
6126 certificate;

6127 (2) Another person, other than a securities
6128 intermediary, either acquires possession of the security
6129 certificate on behalf of the purchaser or, having previously
6130 acquired possession of the certificate, acknowledges that it holds
6131 for the purchaser; or

6132 (3) A securities intermediary acting on behalf of the
6133 purchaser acquires possession of the security certificate, only if
6134 the certificate is in registered form and is (i) registered in the
6135 name of the purchaser, (ii) payable to the order of the purchaser,
6136 or (iii) specially endorsed to the purchaser by an effective
6137 endorsement and has not been endorsed to the securities
6138 intermediary or in blank.

6139 (b) Delivery of an uncertificated security to a purchaser
6140 occurs when:

6141 (1) The issuer registers the purchaser as the
6142 registered owner, upon original issue or registration of transfer;
6143 or

6144 (2) Another person, other than a securities
6145 intermediary, either becomes the registered owner of the
6146 uncertificated security on behalf of the purchaser or, having
6147 previously become the registered owner, acknowledges that it holds
6148 for the purchaser.

6149 SECTION 21. Section 75-8-302, Mississippi Code of 1972, is
6150 amended as follows:

6151 75-8-302. (a) Except as otherwise provided in subsections
6152 (b) and (c), * * * a purchaser of a certificated or uncertificated

6153 security acquires all rights in the security that the transferor
6154 had or had power to transfer.

6155 (b) A purchaser of a limited interest acquires rights only
6156 to the extent of the interest purchased.

6157 (c) A purchaser of a certificated security who as a previous
6158 holder had notice of an adverse claim does not improve its
6159 position by taking from a protected purchaser.

6160 SECTION 22. Section 75-8-510, Mississippi Code of 1972, is
6161 amended as follows:

6162 75-8-510. (a) In a case not covered by the priority rules
6163 in Article 9 or the rules stated in subsection (c), an action
6164 based on an adverse claim to a financial asset or security
6165 entitlement, whether framed in conversion, replevin, constructive
6166 trust, equitable lien, or other theory, may not be asserted
6167 against a person who purchases a security entitlement, or an
6168 interest therein, from an entitlement holder if the purchaser
6169 gives value, does not have notice of the adverse claim, and
6170 obtains control.

6171 (b) If an adverse claim could not have been asserted against
6172 an entitlement holder under Section 75-8-502, the adverse claim
6173 cannot be asserted against a person who purchases a security
6174 entitlement, or an interest therein, from the entitlement holder.

6175 (c) In a case not covered by the priority rules in Chapter
6176 9, a purchaser for value of a security entitlement, or an interest
6177 therein, who obtains control has priority over a purchaser of a
6178 security entitlement, or an interest therein, who does not obtain
6179 control. Except as otherwise provided in subsection (d),
6180 purchasers who have control rank according to priority in time of:

6181 (1) The purchaser's becoming the person for whom the
6182 securities account, in which the security entitlement is carried,
6183 is maintained, if the purchaser obtained control under Section
6184 75-8-106(d)(1);

6185 (2) The securities intermediary's agreement to comply
6186 with the purchaser's entitlement orders with respect to security
6187 entitlements carried or to be carried in the securities account in
6188 which the security entitlement is carried, if the purchaser
6189 obtained control under Section 75-8-106(d)(2); or

6190 (3) If the purchaser obtained control through another
6191 person under Section 75-8-106(d)(3), the time on which priority
6192 would be based under this subsection if the other person were the
6193 secured party.

6194 (d) A securities intermediary as purchaser has priority over
6195 a conflicting purchaser who has control unless otherwise agreed by
6196 the securities intermediary.

6197 SECTION 23. Section 71-3-43, Mississippi Code of 1972, is
6198 amended as follows:

6199 71-3-43. No assignment, release, or commutation of
6200 compensation or benefits due or payable under this chapter, except
6201 as provided by this chapter, shall be valid; and such compensation
6202 and benefits shall be exempt from all claims of creditors and from
6203 levy, execution, and attachment or other remedy for recovery or
6204 collection of a debt, which exemption may be waived. This section
6205 prevails over Sections 75-9-406 and 75-9-408 of Article 9 of the
6206 Uniform Commercial Code to the extent, if any, that these sections
6207 may otherwise be applicable.

6208 SECTION 24. Section 41-29-177, Mississippi Code of 1972, is
6209 amended as follows:

6210 41-29-177. (1) Except as otherwise provided in Section
6211 41-29-176, Mississippi Code of 1972, when any property, other than
6212 a controlled substance, raw material or paraphernalia, is seized
6213 under the Uniform Controlled Substances Law, proceedings under
6214 this section shall be instituted within thirty (30) days from the
6215 date of seizure or the subject property shall be immediately
6216 returned to the party from whom seized.

6217 (2) A petition for forfeiture shall be filed in the name of
6218 the State of Mississippi, the county or the municipality and may
6219 be filed in the county in which the seizure is made, the county in
6220 which the criminal prosecution is brought or the county in which
6221 the owner of the seized property is found. Forfeiture proceedings
6222 may be brought in the circuit court or the county court if a
6223 county court exists in the county and the value of the seized
6224 property is within the jurisdictional limits of the county court
6225 as set forth in Section 9-9-21, Mississippi Code of 1972. A copy
6226 of such petition shall be served upon the following persons by
6227 service of process in the same manner as in civil cases:

6228 (a) The owner of the property, if address is known;

6229 (b) Any secured party who has registered his lien or
6230 filed a financing statement as provided by law, if the identity of
6231 such secured party can be ascertained by the Bureau of Narcotics
6232 or the local law enforcement agency by making a good faith effort
6233 to ascertain the identity of such secured party as described in
6234 subsections (3), (4), (5), (6) and (7) of this section;

6235 (c) Any other bona fide lienholder or secured party or
6236 other person holding an interest in the property in the nature of
6237 a security interest of whom the Mississippi Bureau of Narcotics or
6238 the local law enforcement agency has actual knowledge;

6239 (d) Any holder of a mortgage, deed of trust, lien or
6240 encumbrance of record, if the property is real estate, by making a
6241 good faith inquiry as described in subsection (8) of this section;
6242 and

6243 (e) Any person in possession of property subject to
6244 forfeiture at the time that it was seized.

6245 (3) If the property is a motor vehicle susceptible of
6246 titling under the Mississippi Motor Vehicle Title Law and if there
6247 is any reasonable cause to believe that the vehicle has been
6248 titled, the Bureau of Narcotics or the local law enforcement
6249 agency shall make inquiry of the State Tax Commission as to what

6250 the records of the State Tax Commission show as to who is the
6251 record owner of the vehicle and who, if anyone, holds any lien or
6252 security interest which affects the vehicle.

6253 (4) If the property is a motor vehicle and is not titled in
6254 the State of Mississippi, then the Bureau of Narcotics or the
6255 local law enforcement agency shall attempt to ascertain the name
6256 and address of the person in whose name the vehicle is licensed,
6257 and if the vehicle is licensed in a state which has in effect a
6258 certificate of title law, the bureau or the local law enforcement
6259 agency shall make inquiry of the appropriate agency of that state
6260 as to what the records of the agency show as to who is the record
6261 owner of the vehicle and who, if anyone, holds any lien, security
6262 interest or other instrument in the nature of a security device
6263 which affects the vehicle.

6264 (5) If the property is of a nature that a financing
6265 statement is required by the laws of this state to be filed to
6266 perfect a security interest affecting the property and if there is
6267 any reasonable cause to believe that a financing statement
6268 covering the security interest has been filed under the laws of
6269 this state, the Bureau of Narcotics or the local law enforcement
6270 agency shall make inquiry of the appropriate office designated in
6271 Section 75-9-501, Mississippi Code of 1972, as to what the records
6272 show as to who is the record owner of the property and who, if
6273 anyone, has filed a financing statement affecting the property.

6274 (6) If the property is an aircraft or part thereof and if
6275 there is any reasonable cause to believe that an instrument in the
6276 nature of a security device affects the property, then the Bureau
6277 of Narcotics or the local law enforcement agency shall make
6278 inquiry of the Mississippi Department of Transportation as to what
6279 the records of the Federal Aviation Administration show as to who
6280 is the record owner of the property and who, if anyone, holds an
6281 instrument in the nature of a security device which affects the
6282 property.

6283 (7) In the case of all other personal property subject to
6284 forfeiture, if there is any reasonable cause to believe that an
6285 instrument in the nature of a security device affects the
6286 property, then the Bureau of Narcotics or the local law
6287 enforcement agency shall make a good faith inquiry to identify the
6288 holder of any such instrument.

6289 (8) If the property is real estate, the Bureau of Narcotics
6290 or the local law enforcement agency shall make inquiry of the
6291 chancery clerk of the county wherein the property is located to
6292 determine who is the owner of record and who, if anyone, is a
6293 holder of a bona fide mortgage, deed of trust, lien or
6294 encumbrance.

6295 (9) In the event the answer to an inquiry states that the
6296 record owner of the property is any person other than the person
6297 who was in possession of it when it was seized, or states that any
6298 person holds any lien, encumbrance, security interest, other
6299 interest in the nature of a security interest, mortgage or deed of
6300 trust which affects the property, the Bureau of Narcotics or the
6301 local law enforcement agency shall cause any record owner and also
6302 any lienholder, secured party, other person who holds an interest
6303 in the property in the nature of a security interest, or holder of
6304 an encumbrance, mortgage or deed of trust which affects the
6305 property to be named in the petition of forfeiture and to be
6306 served with process in the same manner as in civil cases.

6307 (10) If the owner of the property cannot be found and served
6308 with a copy of the petition of forfeiture, or if no person was in
6309 possession of the property subject to forfeiture at the time that
6310 it was seized and the owner of the property is unknown, the Bureau
6311 of Narcotics or the local law enforcement agency shall file with
6312 the clerk of the court in which the proceeding is pending an
6313 affidavit to such effect, whereupon the clerk of the court shall
6314 publish notice of the hearing addressed to "the Unknown Owner of
6315 _____," filling in the blank space with a reasonably

6316 detailed description of the property subject to forfeiture.
6317 Service by publication shall contain the other requisites
6318 prescribed in Section 11-33-41, and shall be served as provided in
6319 Section 11-33-37, Mississippi Code of 1972, for publication of
6320 notice for attachments at law.

6321 (11) No proceedings instituted pursuant to the provisions of
6322 this article shall proceed to hearing unless the judge conducting
6323 the hearing is satisfied that this section has been complied with.
6324 Any answer received from an inquiry required by subsections (3)
6325 through (8) of this section shall be introduced into evidence at
6326 the hearing.

6327 SECTION 25. Section 49-7-251, Mississippi Code of 1972, is
6328 amended as follows:

6329 49-7-251. (1) Except as otherwise provided in Section
6330 49-7-257, when any property is seized pursuant to Section
6331 49-7-103, 49-15-21(2) or 59-21-33, Mississippi Code of 1972,
6332 proceedings under this section shall be instituted promptly.
6333 Provided, however, that the seizing law enforcement agency may, in
6334 the sound exercise of discretion, decide not to bring a forfeiture
6335 action if the interests of bona fide lienholders or secured
6336 creditors equal or exceed the value of the seized property, or if
6337 other factors would produce a negative economic result. Provided
6338 further, that no property shall be subject to forfeiture which has
6339 been stolen from its owner if the owner can be identified and
6340 prosecution for the theft has been initiated.

6341 (2) A petition for forfeiture shall be filed promptly in the
6342 name of the State of Mississippi, the county or the municipality
6343 and may be filed in the county in which the seizure is made, the
6344 county in which the criminal prosecution is brought or the county
6345 in which the owner of the seized property is found. Forfeiture
6346 proceedings may be brought in the circuit court or the county
6347 court if a county court exists in the county and the value of the
6348 seized property is within the jurisdictional limits of the county

6349 court as set forth in Section 9-9-21, Mississippi Code of 1972. A
6350 copy of such petition shall be served upon the following persons
6351 by service of process in the same manner as in civil cases:

6352 (a) The owner of the property, if address is known;

6353 (b) Any secured party who has registered his lien or
6354 filed a financing statement as provided by law, if the identity of
6355 such secured party can be ascertained by the Department of
6356 Wildlife Conservation or the local law enforcement agency by
6357 making a good faith effort to ascertain the identity of such
6358 secured party as described in subsections (3), (4), (5), (6) and
6359 (7) of this section;

6360 (c) Any other bona fide lienholder or secured party or
6361 other person holding an interest in the property in the nature of
6362 a security interest of whom the Department of Wildlife
6363 Conservation or the local law enforcement agency has actual
6364 knowledge; and

6365 (d) Any person in possession of property subject to
6366 forfeiture at the time that it was seized.

6367 (3) If the property is a motor vehicle susceptible of
6368 titling under the Mississippi Motor Vehicle Title Law and if there
6369 is any reasonable cause to believe that the vehicle has been
6370 titled, the Department of Wildlife Conservation or the local law
6371 enforcement agency shall make inquiry of the State Tax Commission
6372 as to what the records of the State Tax Commission show as to who
6373 is the record owner of the vehicle and who, if anyone, holds any
6374 lien or security interest which affects the vehicle.

6375 (4) If the property is a motor vehicle and is not titled in
6376 the State of Mississippi, then the Department of Wildlife
6377 Conservation or the local law enforcement agency shall attempt to
6378 ascertain the name and address of the person in whose name the
6379 vehicle is licensed, and if the vehicle is licensed in a state
6380 which has in effect a certificate of title law, the Department of
6381 Wildlife Conservation or the local law enforcement agency shall

6382 make inquiry of the appropriate agency of that state as to what
6383 the records of the agency show as to who is the record owner of
6384 the vehicle and who, if anyone, holds any lien, security interest
6385 or other instrument in the nature of a security device which
6386 affects the vehicle.

6387 (5) If the property is of a nature that a financing
6388 statement is required by the laws of this state to be filed to
6389 perfect a security interest affecting the property and if there is
6390 any reasonable cause to believe that a financing statement
6391 covering the security interest has been filed under the laws of
6392 this state, the Department of Wildlife Conservation or the local
6393 law enforcement agency shall make inquiry of the appropriate
6394 office designated in Section 75-9-501, Mississippi Code of 1972,
6395 as to what the records show as to who is the record owner of the
6396 property and who, if anyone, has filed a financing statement
6397 affecting the property.

6398 (6) If the property is an aircraft or part thereof and if
6399 there is any reasonable cause to believe that an instrument in the
6400 nature of a security device affects the property, then the
6401 Department of Wildlife Conservation or the local law enforcement
6402 agency shall make inquiry of the Administrator of the Mississippi
6403 Aeronautics Commission as to what the records of the Federal
6404 Aviation Administration show as to who is the record owner of the
6405 property and who, if anyone, holds an instrument in the nature of
6406 a security device which affects the property.

6407 (7) In the case of all other personal property subject to
6408 forfeiture, if there is any reasonable cause to believe that an
6409 instrument in the nature of a security device affects the
6410 property, then the Department of Wildlife Conservation or the
6411 local law enforcement agency shall make a good faith inquiry to
6412 identify the holder of any such instrument.

6413 (8) In the event the answer to an inquiry states that the
6414 record owner of the property is any person other than the person

6415 who was in possession of it when it was seized, or states that any
6416 person holds any lien, encumbrance, security interest, other
6417 interest in the nature of a security interest, mortgage or deed of
6418 trust which affects the property, the Department of Wildlife
6419 Conservation or the local law enforcement agency shall cause any
6420 record owner and also any lienholder, secured party, other person
6421 who holds an interest in the property in the nature of a security
6422 interest which affects the property to be named in the petition of
6423 forfeiture and to be served with process in the same manner as in
6424 civil cases.

6425 (9) If the owner of the property cannot be found and served
6426 with a copy of the petition of forfeiture, or if no person was in
6427 possession of the property subject to forfeiture at the time that
6428 it was seized and the owner of the property is unknown, the
6429 Department of Wildlife Conservation or the local law enforcement
6430 agency shall file with the clerk of the court in which the
6431 proceeding is pending an affidavit to such effect, whereupon the
6432 clerk of the court shall publish notice of the hearing addressed
6433 to "the Unknown Owner of _____," filling in the blank
6434 space with a reasonably detailed description of the property
6435 subject to forfeiture. Service by publication shall contain the
6436 other requisites prescribed in Section 11-33-41, Mississippi Code
6437 of 1972, and shall be served as provided in Section 11-33-37,
6438 Mississippi Code of 1972, for publication of notice for
6439 attachments at law.

6440 (10) No proceedings instituted pursuant to the provisions of
6441 this section shall proceed to hearing unless the judge conducting
6442 the hearing is satisfied that this section has been complied with.
6443 Any answer received from an inquiry required by subsections (3)
6444 through (7) of this section shall be introduced into evidence at
6445 the hearing.

6446 SECTION 26. Section 67-1-93, Mississippi Code of 1972, is
6447 amended as follows:

6448 67-1-93. (1) Except as otherwise provided in Section
6449 67-1-99, when any property, other than an alcoholic beverage or
6450 raw material, is seized under this chapter or Chapter 31 of Title
6451 97, Mississippi Code of 1972, proceedings under this section shall
6452 be instituted promptly.

6453 (2) A petition for forfeiture shall be filed promptly in the
6454 name of the State of Mississippi with the clerk of the circuit or
6455 county court of the county in which the seizure is made. A copy
6456 of such petition shall be served upon the following persons by
6457 service of process in the same manner as in civil cases:

6458 (a) The owner of the property, if address is known;

6459 (b) Any secured party who has registered his lien or
6460 filed a financing statement as provided by law, if the identity of
6461 such secured party can be ascertained by the agent or agency which
6462 seized the property making a good faith effort to ascertain the
6463 identity of such secured party as described in subsections (3),
6464 (4), (5), (6) and (7) of this section;

6465 (c) Any other bona fide lienholder or secured party or
6466 other person holding an interest in the property in the nature of
6467 a security interest of whom the agent or agency has actual
6468 knowledge; and

6469 (d) Any person in possession of property subject to
6470 forfeiture at the time that it was seized.

6471 (3) If the property is a motor vehicle susceptible of
6472 titling under the Mississippi Motor Vehicle Title Law and if there
6473 is any reasonable cause to believe that the vehicle has been
6474 titled, the agent or agency shall make inquiry of the State Tax
6475 Commission as to what the records of the State Tax Commission show
6476 as to who is the record owner of the vehicle and who, if anyone,
6477 holds any lien or security interest which affects the vehicle.

6478 (4) If the property is a motor vehicle and is not titled in
6479 the State of Mississippi then the agent or agency shall attempt to
6480 ascertain the name and address of the person in whose name the

6481 vehicle is licensed, and if the vehicle is licensed in a state
6482 which has in effect a certificate of title law, the agent or
6483 agency shall make inquiry of the appropriate agency of that state
6484 to determine through such agency's records the name of the record
6485 owner of the vehicle and who, if anyone, holds any lien, security
6486 interest or other instrument in the nature of a security device
6487 which affects the vehicle.

6488 (5) If the property is of a nature that a financing
6489 statement is required by the laws of this state to be filed to
6490 perfect a security interest affecting the property and if there is
6491 any reasonable cause to believe that a financing statement
6492 covering the security interest has been filed under the laws of
6493 this state, the agent or agency shall make inquiry of the
6494 appropriate office designated in Section 75-9-501 to determine
6495 through the records of such office the name of the record owner of
6496 the property and who, if anyone, has filed a financing statement
6497 affecting the property.

6498 (6) If the property is an aircraft or part thereof and if
6499 there is any reasonable cause to believe that an instrument in the
6500 nature of a security device affects the property, then the agent
6501 or agency shall make inquiry of the Administrator of the Federal
6502 Aviation Administration to determine through records of the
6503 administrator the name of the record owner of the property and
6504 who, if anyone, holds an instrument in the name of a security
6505 device which affects the property.

6506 (7) In the case of all other property other than an
6507 alcoholic beverage or raw material subject to forfeiture, if there
6508 is any reasonable cause to believe that an instrument in the
6509 nature of a security device affects the property, then the agent
6510 or agency shall make a good faith inquiry to identify the holder
6511 of any such instrument.

6512 (8) In the event the answer to an inquiry states that the
6513 record owner of the property is any person other than the person

6514 who was in possession of it when it was seized, or states that any
6515 person holds any lien, security interest or other interest in the
6516 nature of a security interest which affects the property, the
6517 agent or agency shall cause any record owner and also any
6518 lienholder, secured party or other person who holds an interest in
6519 the property in the nature of a security interest which affects
6520 the property to be named in the petition of forfeiture and to be
6521 served with process in the same manner as in civil cases.

6522 (9) If the owner of the property cannot be found and served
6523 with a copy of the petition of forfeiture, or if no person was in
6524 possession of the property subject to forfeiture at the time that
6525 it was seized and the owner of the property is unknown, the agent
6526 or agency shall file with the clerk of the court in which the
6527 proceeding is pending an affidavit to such effect, whereupon the
6528 clerk of the court shall publish notice of the hearing addressed
6529 to "the Unknown Owner of _____," filling in the blank
6530 space with a reasonably detailed description of the property
6531 subject to forfeiture. Service by publication shall be made in
6532 accordance with the Mississippi Rules of Civil Procedure.

6533 (10) No proceedings instituted pursuant to the provisions of
6534 this chapter shall proceed to hearing unless the judge conducting
6535 the hearing is satisfied that this section has been complied with.
6536 Any answer received from an inquiry required by subsections (3)
6537 through (7) of this section shall be introduced into evidence at
6538 the hearing.

6539 SECTION 27. Section 97-17-4, Mississippi Code of 1972, is
6540 amended as follows:

6541 97-17-4. (1) All property, real or personal, including
6542 money, used in the course of, intended for use in the course of,
6543 derived from, or realized through, conduct in violation of a
6544 provision of Section 97-17-1 or 97-17-3 is subject to civil
6545 forfeiture to the state pursuant to the provisions of this
6546 section; provided, however, that a forfeiture of personal property

6547 encumbered by a bona fide security interest or real property
6548 encumbered by a bona fide mortgage, deed of trust, lien or
6549 encumbrance of record shall be subject to the interest of the
6550 secured party or subject to the interest of the holder of the
6551 mortgage deed of trust, lien of encumbrance of record if such
6552 secured party or holder neither had knowledge of or consented to
6553 the act or omission.

6554 (2) Property subject to forfeiture may be seized by law
6555 enforcement officers upon process issued by any appropriate court
6556 having jurisdiction over the property. Seizure without process
6557 may be made if:

6558 (a) The seizure is incident to an arrest or a search
6559 under a search warrant or an inspection under a lawful
6560 administrative inspection;

6561 (b) The property subject to seizure has been the
6562 subject of a prior judgment in favor of the state in a criminal
6563 injunction or forfeiture proceeding based upon this section.

6564 (3) When any property is seized pursuant to this section,
6565 proceedings under this section shall be instituted promptly.

6566 (4) (a) A petition for forfeiture shall be filed promptly
6567 in the name of the State of Mississippi with the clerk of the
6568 circuit court of the county in which the seizure is made. A copy
6569 of such petition shall be served upon the following persons by
6570 service of process in the same manner as in civil cases:

6571 (i) The owner of the property, if address is
6572 known;

6573 (ii) Any secured party who has registered his lien
6574 or filed a financing statement as provided by law, if the identity
6575 of such secured party can be ascertained by the state by making a
6576 good faith effort to ascertain the identity of such secured party
6577 as described in paragraphs (b), (c), (d), (e) and (f) of this
6578 subsection;

6579 (iii) Any other bona fide lienholder or secured
6580 party or other person holding an interest in the property in the
6581 nature of a security interest of whom the state has actual
6582 knowledge;

6583 (iv) A holder of a mortgage, deed of trust, lien
6584 or encumbrance of record, if the property is real estate by making
6585 a good faith inquiry as described in paragraph (g) of this
6586 section; and

6587 (v) Any person in possession of property subject
6588 to forfeiture at the time that it was seized.

6589 (b) If the property is a motor vehicle susceptible of
6590 titling under the Mississippi Motor Vehicle Title Law and if there
6591 is any reasonable cause to believe that the vehicle has been
6592 titled, the state shall make inquiry of the State Tax Commission
6593 as to what the records of the State Tax Commission show as to who
6594 is the record owner of the vehicle and who, if anyone, holds any
6595 lien or security interest which affects the vehicle.

6596 (c) If the property is a motor vehicle and is not
6597 titled in the State of Mississippi, then the state shall attempt
6598 to ascertain the name and address of the person in whose name the
6599 vehicle is licensed, and if the vehicle is licensed in a state
6600 which has in effect a certificate of title law, the state shall
6601 make inquiry of the appropriate agency of that state as to what
6602 the records of the agency show as to who is the record owner of
6603 the vehicle and who, if anyone, holds any lien, security interest,
6604 or other instrument in the nature of a security device which
6605 affects the vehicle.

6606 (d) If the property is of a nature that a financing
6607 statement is required by the laws of this state to be filed to
6608 perfect a security interest affecting the property and if there is
6609 any reasonable cause to believe that a financing statement
6610 covering the security interest has been filed under the laws of
6611 this state, the state shall make inquiry of the appropriate office

6612 designated in Section 75-9-501 as to what the records show as to
6613 who is the record owner of the property and who, if anyone, has
6614 filed a financing statement affecting the property.

6615 (e) If the property is an aircraft or part thereof and
6616 if there is any reasonable cause to believe that an instrument in
6617 the nature of a security device affects the property, then the
6618 state shall make inquiry of the administrator of the Federal
6619 Aviation Administration as to what the records of the
6620 administrator show as to who is the record owner of the property
6621 and who, if anyone, holds an instrument in the nature of a
6622 security device which affects the property.

6623 (f) In the case of all other personal property subject
6624 to forfeiture, if there is any reasonable cause to believe that an
6625 instrument in the nature of a security device affects the
6626 property, then the state shall make a good faith inquiry to
6627 identify the holder of any such instrument.

6628 (g) If the property is real estate, the state shall
6629 make inquiry at the appropriate places to determine who is the
6630 owner of record and who, if anyone is a holder of a bona fide
6631 mortgage, deed of trust, lien or encumbrance.

6632 (h) In the event the answer to an inquiry states that
6633 the record owner of the property is any person other than the
6634 person who was in possession of it when it was seized, or states
6635 that any person holds any lien, encumbrance, security interest,
6636 other interest in the nature of a security interest, mortgage or
6637 deed of trust which affects the property, the state shall cause
6638 any record owner and also any lienholder, secured party, other
6639 person who holds an interest in the property in the nature of a
6640 security interest, or holder of an encumbrance, mortgage or deed
6641 of trust which affects the property to be named in the petition of
6642 forfeiture and to be served with process in the same manner as in
6643 civil cases.

6644 (i) If the owner of the property cannot be found and
6645 served with a copy of the petition of forfeiture, or if no person
6646 was in possession of the property subject to forfeiture at the
6647 time that it was seized and the owner of the property is unknown,
6648 the state shall file with the clerk of the court in which the
6649 proceeding is pending an affidavit to such effect, whereupon the
6650 clerk of the court shall publish notice of the hearing addressed
6651 to "the Unknown Owner of _____," filling in the blank
6652 space with a reasonably detailed description of the property
6653 subject to forfeiture. Service by publication shall contain the
6654 other requisites prescribed in Section 11-33-41, and shall be
6655 served as provided in Section 11-33-37 for publication of notice
6656 for attachments at law.

6657 (j) No proceedings instituted pursuant to the
6658 provisions of this article shall proceed to hearing unless the
6659 judge conducting the hearing is satisfied that this section has
6660 been complied with. Any answer received from an inquiry required
6661 by paragraphs (b) through (g) of this section shall be introduced
6662 into evidence at the hearing.

6663 (5) (a) An owner of property that has been seized shall
6664 file a verified answer within twenty (20) days after the
6665 completion of service of process. If no answer is filed, the
6666 court shall hear evidence that the property is subject to
6667 forfeiture and forfeit the property to the state. If an answer is
6668 filed, a time for hearing on forfeiture shall be set within thirty
6669 (30) days of filing the answer or at the succeeding term of court
6670 if court would not be in progress within thirty (30) days after
6671 filing the answer. Provided, however, that upon request by the
6672 state or the owner of the property, the court may postpone said
6673 forfeiture hearing to a date past the time any criminal action is
6674 pending against said owner.

6675 (b) If the owner of the property has filed a verified
6676 answer denying that the property is subject to forfeiture, then

6677 the burden is on the state to prove that the property is subject
6678 to forfeiture. The burden of proof placed upon the state shall be
6679 clear and convincing proof. However, if no answer has been filed
6680 by the owner of the property, the petition for forfeiture may be
6681 introduced into evidence and is prima facie evidence that the
6682 property is subject to forfeiture.

6683 (c) At the hearing any claimant of any right, title, or
6684 interest in the property may prove his lien, encumbrance, security
6685 interest, other interest in the nature of a security interest,
6686 mortgage or deed of trust to be bona fide and created without
6687 knowledge or consent that the property was to be used so as to
6688 cause the property to be subject to forfeiture.

6689 (d) If it is found that the property is subject to
6690 forfeiture, then the judge shall forfeit the property to the
6691 state. However, if proof at the hearing discloses that the
6692 interest of any bona fide lienholder, secured party, other person
6693 holding an interest in the property in the nature of a security
6694 interest or any holder of a bona fide encumbrance, mortgage or
6695 deed of trust is greater than or equal to the present value of the
6696 property, the court shall order the property released to him. If
6697 such interest is less than the present value of the property and
6698 if the proof shows that the property is subject to forfeiture, the
6699 court shall order the property forfeited to the state.

6700 (6) (a) All personal property, including money, which is
6701 forfeited to the state and is not capable of being sold at public
6702 auction shall be liquidated and the proceeds, after deduction of
6703 all storage and court costs, shall be forwarded to the State
6704 Treasurer and deposited in the General Fund of the state.

6705 (b) All real estate which is forfeited to the state
6706 shall be sold to the highest bidder at a public auction to be
6707 conducted by the state at such place, on such notice and in
6708 accordance with the same procedure, as far as practicable, as is
6709 required in the case of sales of land under execution of law. The

6710 proceeds of such sale shall first be applied to the cost and
6711 expense in administering and conducting such sale, then to the
6712 satisfaction of all mortgages, deeds of trusts, liens and
6713 encumbrances of record on such property. All proceeds in excess
6714 of the amount necessary for the cost of the sale of such land and
6715 the satisfaction of any liens thereon shall be deposited in the
6716 General Fund of the State Treasury.

6717 (c) All other property that has been seized by the
6718 state and that has been forfeited shall, except as otherwise
6719 provided, be sold at a public auction for cash by the state to the
6720 highest and best bidder after advertising the sale for at least
6721 once each week for three (3) consecutive weeks, the last notice to
6722 appear not more than ten (10) days nor less than five (5) days
6723 prior to such sale, in a newspaper having a general circulation
6724 throughout the State of Mississippi. Such notices shall contain a
6725 description of the property to be sold and a statement of the time
6726 and place of sale. It shall not be necessary to the validity of
6727 such sale either to have the property present at the place of sale
6728 or to have the name of the owner thereof stated in such notice.
6729 The proceeds of the sale shall be delivered to the circuit clerk
6730 and shall be disposed of as follows:

6731 (i) To any bona fide lienholder, secured party, or
6732 other party holding an interest in the property in the nature of a
6733 security interest, to the extent of his interest; and

6734 (ii) The balance, if any, after deduction of all
6735 storage and court costs, shall be forwarded to the State Treasurer
6736 and deposited with and used as general funds of the state.

6737 (d) The State Tax Commission shall issue a certificate
6738 of title to any person who purchases property under the provisions
6739 of this section when a certificate of title is required under the
6740 laws of this state.

6741 SECTION 28. Section 97-43-11, Mississippi Code of 1972, is
6742 amended as follows:

6743 97-43-11. (1) When any property is seized pursuant to
6744 Section 97-43-9, proceedings under this section shall be
6745 instituted promptly.

6746 (2) (a) A petition for forfeiture shall be filed promptly
6747 in the name of the State of Mississippi with the clerk of the
6748 circuit court of the county in which the seizure is made. A copy
6749 of such petition shall be served upon the following persons by
6750 service of process in the same manner as in civil cases:

6751 (i) The owner of the property, if address is
6752 known;

6753 (ii) Any secured party who has registered his lien
6754 or filed a financing statement as provided by law, if the identity
6755 of such secured party can be ascertained by the state by making a
6756 good faith effort to ascertain the identity of such secured party
6757 as described in paragraphs (b), (c), (d), (e) and (f) of this
6758 subsection;

6759 (iii) Any other bona fide lienholder or secured
6760 party or other person holding an interest in the property in the
6761 nature of a security interest of whom the state has actual
6762 knowledge;

6763 (iv) A holder of a mortgage, deed of trust, lien
6764 or encumbrance of record, if the property is real estate by making
6765 a good faith inquiry as described in paragraph (g) of this
6766 section; and

6767 (v) Any person in possession of property subject
6768 to forfeiture at the time that it was seized.

6769 (b) If the property is a motor vehicle susceptible of
6770 titling under the Mississippi Motor Vehicle Title Law and if there
6771 is any reasonable cause to believe that the vehicle has been
6772 titled, the state shall make inquiry of the State Tax Commission
6773 as to what the records of the State Tax Commission show as to who
6774 is the record owner of the vehicle and who, if anyone, holds any
6775 lien or security interest which affects the vehicle.

6776 (c) If the property is a motor vehicle and is not
6777 titled in the State of Mississippi, then the state shall attempt
6778 to ascertain the name and address of the person in whose name the
6779 vehicle is licensed, and if the vehicle is licensed in a state
6780 which has in effect a certificate of title law, the state shall
6781 make inquiry of the appropriate agency of that state as to what
6782 the records of the agency show as to who is the record owner of
6783 the vehicle and who, if anyone, holds any lien, security interest,
6784 or other instrument in the nature of a security device which
6785 affects the vehicle.

6786 (d) If the property is of a nature that a financing
6787 statement is required by the laws of this state to be filed to
6788 perfect a security interest affecting the property and if there is
6789 any reasonable cause to believe that a financing statement
6790 covering the security interest has been filed under the laws of
6791 this state, the state shall make inquiry of the appropriate office
6792 designated in Section 75-9-501 as to what the records show as to
6793 who is the record owner of the property and who, if anyone, has
6794 filed a financing statement affecting the property.

6795 (e) If the property is an aircraft or part thereof and
6796 if there is any reasonable cause to believe that an instrument in
6797 the nature of a security device affects the property, then the
6798 state shall make inquiry of the administrator of the Federal
6799 Aviation Administration as to what the records of the
6800 administrator show as to who is the record owner of the property
6801 and who, if anyone, holds an instrument in the nature of a
6802 security device which affects the property.

6803 (f) In the case of all other personal property subject
6804 to forfeiture, if there is any reasonable cause to believe that an
6805 instrument in the nature of a security device affects the
6806 property, then the state shall make a good faith inquiry to
6807 identify the holder of any such instrument.

6808 (g) If the property is real estate, the state shall
6809 make inquiry at the appropriate places to determine who is the
6810 owner of record and who, if anyone is a holder of a bona fide
6811 mortgage, deed of trust, lien or encumbrance.

6812 (h) In the event the answer to an inquiry states that
6813 the record owner of the property is any person other than the
6814 person who was in possession of it when it was seized, or states
6815 that any person holds any lien, encumbrance, security interest,
6816 other interest in the nature of a security interest, mortgage or
6817 deed of trust which affects the property, the state shall cause
6818 any record owner and also any lienholder, secured party, other
6819 person who holds an interest in the property in the nature of a
6820 security interest, or holder of an encumbrance, mortgage or deed
6821 of trust which affects the property to be named in the petition of
6822 forfeiture and to be served with process in the same manner as in
6823 civil cases.

6824 (i) If the owner of the property cannot be found and
6825 served with a copy of the petition of forfeiture, or if no person
6826 was in possession of the property subject to forfeiture at the
6827 time that it was seized and the owner of the property is unknown,
6828 the state shall file with the clerk of the court in which the
6829 proceeding is pending an affidavit to such effect, whereupon the
6830 clerk of the court shall publish notice of the hearing addressed
6831 to "the Unknown Owner of _____," filling in the blank
6832 space with a reasonably detailed description of the property
6833 subject to forfeiture. Service by publication shall contain the
6834 other requisites prescribed in Section 11-33-41, and shall be
6835 served as provided in Section 11-33-37 for publication of notice
6836 for attachments at law.

6837 (j) No proceedings instituted pursuant to the
6838 provisions of this article shall proceed to hearing unless the
6839 judge conducting the hearing is satisfied that this section has
6840 been complied with. Any answer received from an inquiry required

6841 by paragraphs (b) through (g) of this section shall be introduced
6842 into evidence at the hearing.

6843 (3) (a) An owner of property that has been seized shall
6844 file a verified answer within twenty (20) days after the
6845 completion of service of process. If no answer is filed, the
6846 court shall hear evidence that the property is subject to
6847 forfeiture and forfeit the property to the state. If an answer is
6848 filed, a time for hearing on forfeiture shall be set within thirty
6849 (30) days of filing the answer or at the succeeding term of court
6850 if court would not be in progress within thirty (30) days after
6851 filing the answer. Provided, however, that upon request by the
6852 state or the owner of the property, the court may postpone said
6853 forfeiture hearing to a date past the time any criminal action is
6854 pending against said owner.

6855 (b) If the owner of the property has filed a verified
6856 answer denying that the property is subject to forfeiture, then
6857 the burden is on the state to prove that the property is subject
6858 to forfeiture. The burden of proof placed upon the state shall be
6859 clear and convincing proof. However, if no answer has been filed
6860 by the owner of the property, the petition for forfeiture may be
6861 introduced into evidence and is prima facie evidence that the
6862 property is subject to forfeiture.

6863 (c) At the hearing any claimant of any right, title, or
6864 interest in the property may prove his lien, encumbrance, security
6865 interest, other interest in the nature of a security interest,
6866 mortgage or deed of trust to be bona fide and created without
6867 knowledge or consent that the property was to be used so as to
6868 cause the property to be subject to forfeiture.

6869 (d) If it is found that the property is subject to
6870 forfeiture, then the judge shall forfeit the property to the
6871 state. However, if proof at the hearing discloses that the
6872 interest of any bona fide lienholder, secured party, other person
6873 holding an interest in the property in the nature of a security

6874 interest or any holder of a bona fide encumbrance, mortgage or
6875 deed of trust is greater than or equal to the present value of the
6876 property, the court shall order the property released to him. If
6877 such interest is less than the present value of the property and
6878 if the proof shows that the property is subject to forfeiture, the
6879 court shall order the property forfeited to the state.

6880 (4) (a) All personal property, including money, which is
6881 forfeited to the state and is not capable of being sold at public
6882 auction shall be liquidated and the proceeds, after deduction of
6883 all storage and court costs, shall be forwarded to the State
6884 Treasurer and deposited in the General Fund of the state.

6885 (b) All real estate which is forfeited to the state
6886 shall be sold to the highest bidder at a public auction to be
6887 conducted by the state at such place, on such notice and in
6888 accordance with the same procedure, as far as practicable, as is
6889 required in the case of sales of land under execution of law. The
6890 proceeds of such sale shall first be applied to the cost and
6891 expense in administering and conducting such sale, then to the
6892 satisfaction of all mortgages, deeds of trusts, liens and
6893 encumbrances of record on such property. All proceeds in excess
6894 of the amount necessary for the cost of the sale of such land and
6895 the satisfaction of any liens thereon shall be deposited in the
6896 General Fund of the State Treasury.

6897 (c) All other property that has been seized by the
6898 state and that has been forfeited shall, except as otherwise
6899 provided, be sold at a public auction for cash by the state to the
6900 highest and best bidder after advertising the sale for at least
6901 once each week for three (3) consecutive weeks, the last notice to
6902 appear not more than ten (10) days nor less than five (5) days
6903 prior to such sale, in a newspaper having a general circulation
6904 throughout the State of Mississippi. Such notices shall contain a
6905 description of the property to be sold and a statement of the time
6906 and place of sale. It shall not be necessary to the validity of

6907 such sale either to have the property present at the place of sale
6908 or to have the name of the owner thereof stated in such notice.
6909 The proceeds of the sale shall be delivered to the circuit clerk
6910 and shall be disposed of as follows:

6911 (i) To any bona fide lienholder, secured party, or
6912 other party holding an interest in the property in the nature of a
6913 security interest, to the extent of his interest; and

6914 (ii) The balance, if any, after deduction of all
6915 storage and court costs, shall be forwarded to the State Treasurer
6916 and deposited with and used as general funds of the state.

6917 (d) The State Tax Commission shall issue a certificate
6918 of title to any person who purchases property under the provisions
6919 of this section when a certificate of title is required under the
6920 laws of this state.

6921 SECTION 29. Section 53-3-41, Mississippi Code of 1972, is
6922 amended as follows:

6923 53-3-41. (1) For the purposes of this section, the
6924 following terms shall have the meanings ascribed herein:

6925 (a) "Oil and gas production" means any oil, natural
6926 gas, condensate of either, natural gas liquids, other gaseous,
6927 liquid or dissolved hydrocarbons, sulfur or helium, or other
6928 substance produced as a by-product or adjunct to their production,
6929 or any combination of these, which is severed, extracted or
6930 produced from the ground, the seabed or other submerged lands
6931 within the jurisdiction of the State of Mississippi. Any such
6932 substance, including recoverable or recovered natural gas liquids,
6933 which is transported to or in a natural gas pipeline or natural
6934 gas gathering system, or otherwise transported or sold for use as
6935 natural gas, or is transported or sold for the extraction of
6936 helium or natural gas liquids is gas production. Any such
6937 substance which is transported or sold to persons and for purposes
6938 not included in the foregoing natural gas definition is oil
6939 production.

6940 (b) "Interest owner" means a person owning an entire or
6941 fractional interest of any kind or nature in oil or gas production
6942 at the time of severance, or a person who has an express, implied
6943 or constructive right to receive a monetary payment determined by
6944 the value of oil or gas production or by the amount of production.

6945 (c) "Royalty owner" means any person who possesses an
6946 interest in the production, but who is not an owner as defined in
6947 Section 53-1-3(g).

6948 (d) "Disbursing agent" shall mean that person who,
6949 pursuant to an oil and gas lease, operating agreement, purchase
6950 contract, or otherwise, assumes the responsibility of paying
6951 royalty proceeds derived from a well's oil and gas production to
6952 the royalty owner or owners legally entitled thereto. A first
6953 purchaser shall not be deemed to be the disbursing agent unless
6954 the first purchaser expressly assumes such responsibility in the
6955 purchase contract.

6956 (e) "First purchaser" means the first person who
6957 purchases oil or gas production from the interest owners after the
6958 production is severed and may include the operator if the operator
6959 acts as a purchaser of production attributable to other interest
6960 owners.

6961 (f) An "operator" is a person engaged in the business
6962 of severing oil or gas production from the ground, whether for
6963 himself alone, for other persons alone or for himself and others.

6964 (2) Whenever a disbursing agent has not disbursed the
6965 royalty proceeds derived from the well's production to the royalty
6966 owner within one hundred twenty (120) days following the date of
6967 first sale of oil or gas in the event the disbursing agent is a
6968 first purchaser of oil or gas, or within one hundred twenty (120)
6969 days following the date the disbursing agent receives the proceeds
6970 from such production if the disbursing agent is not the first
6971 purchaser, such royalty owner shall have a lien to secure the
6972 payment of the royalty proceeds. The lien shall attach to the

6973 proceeds from such production received by the disbursing agent
6974 attributable to the royalty owner's interest.

6975 (3) The lien provided by this section shall be effective
6976 against a third party only from the time a financing statement
6977 evidencing such lien is filed in the same manner as financing
6978 statements evidencing security interests in minerals are filed in
6979 accordance with the provisions of Section 75-9-501.

6980 (4) The lien provided by this section shall expire one (1)
6981 year after it becomes effective against a third party, unless
6982 judicial proceedings have been commenced to assert it or unless
6983 insolvency proceedings have been commenced by or against the
6984 disbursing agent, in which event the lien shall remain effective
6985 until termination of the insolvency proceedings or until
6986 expiration of the one-year period, whichever occurs later.

6987 (5) Whenever there is a conflict between a lien under this
6988 section and a security interest under Title 75, Chapter 9, the
6989 lien or security interest first to be filed has priority. Liens
6990 provided for in this section shall have priorities among
6991 themselves according to priority in time of filing of such liens.

6992 (6) The filing required by this section shall be a financing
6993 statement as provided for in Section 75-9-310 and shall be subject
6994 to the provisions of Part 5 of Article 9 of the Uniform Commercial
6995 Code, except that in order for the filing to be sufficient, it
6996 shall not be necessary for the debtor to sign the financing
6997 statement, and the filing shall be effective for a period of only
6998 one (1) year from the date of filing.

6999 (7) This section does not impair an operator's right to set
7000 off or withhold funds from other interest owners as security for
7001 or in satisfaction of any debt or security interest. This section
7002 does not impair a disbursing agent's right to withhold funds in
7003 the event a question is raised concerning the title or ownership
7004 of, or right to sell, the oil or gas production. In case of a
7005 dispute between interest owners, a good-faith tender by the

7006 disbursing agent of funds to the person the interest owners shall
7007 agree on, or to a court of competent jurisdiction in the event of
7008 litigation or bankruptcy, shall operate as a tender of the funds
7009 to both.

7010 (8) Nothing in this section shall be construed to enlarge or
7011 diminish the rights and obligations provided to or imposed on
7012 interest owners, royalty owners, disbursing agents, first
7013 purchasers, or operators by contract or otherwise by law. The
7014 sole purpose of this section is to provide royalty owners a lien
7015 under the conditions provided herein.

7016 SECTION 30. Section 75-11-106, Mississippi Code of 1972, is
7017 amended as follows:

7018 75-11-106. (1) If a security interest is perfected or has
7019 priority on April 1, 1978, as to all persons or as to certain
7020 persons without any filing or recording, and if the filing of a
7021 financing statement would be required for the perfection or
7022 priority of the security interest against those persons under the
7023 revised Uniform Commercial Code, the perfection and priority
7024 rights of the security interest shall continue until three (3)
7025 years after April 1, 1978. The perfection will then lapse unless
7026 a financing statement is filed as provided in Section 75-11-104 or
7027 unless the security interests is perfected otherwise than by
7028 filing.

7029 (2) A financing statement may be filed within six (6) months
7030 before the perfection of a security interest would otherwise
7031 lapse. Any such financing statement may be signed by either the
7032 debtor or the secured party. It must identify the security
7033 agreement, statement or notice (however denominated in any statute
7034 or other law repealed or modified by Chapter 452, Laws of 1977),
7035 state the office where and the date when the last filing, refiling
7036 or recording, if any, was made with respect thereto, and the
7037 filing number, if any, or book and page, if any, of recording and
7038 further state that the security agreement, statement or notice,

7039 however denominated, in another filing office under the old
7040 Uniform Commercial Code or under any statute or other law repealed
7041 or modified by Chapter 452, Laws of 1977, is still effective.
7042 Section 75-9-501 * * * determines the proper place to file such a
7043 financing statement. Except as specified in this subsection, the
7044 provisions of Section 75-9-510 for continuation statements apply
7045 to such a financing statement.

7046 SECTION 31. Section 85-8-9, Mississippi Code of 1972, is
7047 amended as follows:

7048 85-8-9. (1) If a notice of federal lien, a refiling of a
7049 notice of federal lien, or a notice of revocation of any
7050 certificate described in subsection (2) of this section is
7051 presented to the filing officer who is:

7052 (a) The Secretary of State, he shall cause the notice
7053 to be marked, held and indexed in accordance with the provisions
7054 of subsection (4) of Section 75-9-501, Mississippi Code of 1972,
7055 of the Uniform Commercial Code as if the notice were a financing
7056 statement within the meaning of that code; or

7057 (b) Chancery clerk, he shall endorse thereon his
7058 identification and the date and time of receipt and forthwith file
7059 it alphabetically or enter it in an alphabetical index showing the
7060 name and address of the person named in the notice, the date and
7061 time of receipt, the title and address of the official party
7062 certifying the lien, and the total amount appearing on the notice
7063 of lien.

7064 (2) If a certificate of release, nonattachment, discharge or
7065 subordination of any lien is presented to the Secretary of State
7066 for filing he shall:

7067 (a) Cause a certificate of release or nonattachment to
7068 be marked, held and indexed as if the certificate were a
7069 termination statement within the meaning of the Uniform Commercial
7070 Code, but the notice of lien to which the certificate relates may
7071 not be removed from the files; and

7072 (b) Cause a certificate of discharge or subordination
7073 to be held, marked and indexed as if the certificate were a
7074 release of collateral within the meaning of the Uniform Commercial
7075 Code.

7076 (3) If a refiled notice of federal lien referred to in
7077 subsection (1) of this section or any of the certificates or
7078 notices referred to in subsection (2) of this section is presented
7079 for filing with the chancery clerk, he shall permanently attach
7080 the refiled notice or the certificate to the original notice of
7081 lien and enter the refiled notice of the certificate with the date
7082 of filing in any alphabetical lien index on the line where the
7083 original notice of lien is entered.

7084 (4) Upon request of any person, the filing officer shall
7085 issue his certificate showing whether there is on file, on the
7086 date and hour stated therein, any notice of lien or certificate or
7087 notice affecting any lien, filed under this act, naming a
7088 particular person, and if a notice or certificate is on file,
7089 giving the date and hour of its filing. The fee for a certificate
7090 is Five Dollars (\$5.00). Upon request the filing officer shall
7091 furnish a copy of any notice of federal lien or notice or
7092 certificate affecting a federal lien for a fee of Two Dollars
7093 (\$2.00) per page.

7094 SECTION 32. Section 99-41-23, Mississippi Code of 1972, is
7095 amended as follows:

7096 99-41-23. (1) Compensation for work loss may not
7097 exceed Four Hundred Fifty Dollars (\$450.00) per week, not to
7098 exceed fifty-two (52) weeks; the total amount of the award may not
7099 exceed the aggregate limitation of this section.

7100 (2) Compensation for economic loss of a dependent may not
7101 exceed Four Hundred Fifty Dollars (\$450.00) per week not to exceed
7102 fifty-two (52) weeks; provided, however, if there is more than one
7103 (1) dependent per victim the amount of compensation awarded shall

7104 be prorated among the dependents and the total amount of the award
7105 may not exceed the aggregate limitation of this section.

7106 (3) In the event of the victim's death, compensation for
7107 work loss of claimant may not exceed Four Hundred Fifty Dollars
7108 (\$450.00) per week not to exceed one (1) week; provided, however,
7109 if there is more than one (1) claimant per victim, the amount of
7110 compensation awarded shall be prorated among the claimants and the
7111 total amount of the award may not exceed Four Hundred Fifty
7112 Dollars (\$450.00).

7113 (4) Compensation payable to a victim and to all other
7114 claimants sustaining economic loss because of injury to or death
7115 of that victim may not exceed Ten Thousand Dollars (\$10,000.00) in
7116 the aggregate.

7117 (5) A determination that compensation shall be awarded may
7118 provide for payment to a claimant in a lump sum or in
7119 installments. All medical bills may be paid directly to affected
7120 health care providers. At the request of the claimant, the
7121 director may convert future economic loss, other than allowable
7122 expense, to a lump sum, but only upon a finding of either of the
7123 following:

7124 (a) That the award in a lump sum will promote the
7125 interests of the claimant; or

7126 (b) That the present value of all future economic loss,
7127 other than allowable expense, does not exceed One Thousand Dollars
7128 (\$1,000.00).

7129 (6) An award payable in installments for future economic
7130 loss may be made only for a period as to which the future economic
7131 loss can reasonably be determined. An award payable in
7132 installments for future economic loss may be modified upon
7133 findings that a material and substantial change of circumstances
7134 has occurred.

7135 (7) An award shall not be subject to execution, attachment,
7136 garnishment or other process, except that an award shall not be

7137 exempt from orders for the withholding of support for minor
7138 children, and except that an award for allowable expense shall not
7139 be exempt from a claim of a creditor to the extent that such
7140 creditor has provided products, services or accommodations, the
7141 costs of which are included in the award.

7142 (8) An assignment by the claimant to any future award under
7143 the provisions of this chapter is unenforceable, except:

7144 (a) An assignment of any award for work loss to assure
7145 payment of court-ordered alimony, maintenance or child support; or

7146 (b) An assignment for any award for allowable expense
7147 to the extent that the benefits are for the cost of products,
7148 services or accommodations necessitated by the injury or death on
7149 which the claim is based and which are provided or are to be
7150 provided by the assignee.

7151 (9) Subsections (7) and (8) of this section prevail over
7152 Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform
7153 Commercial Code to the extent, if any, that Sections 75-9-406 and
7154 75-9-408 may otherwise be applicable.

7155 SECTION 33. Section 85-7-1, Mississippi Code of 1972, is
7156 amended as follows:

7157 85-7-1. (1) Every employer shall have a lien on the share
7158 or interest of his employee in any crop made under such
7159 employment, for all advances of money, and for the fair market
7160 value of other things advanced by him, or anyone at his request,
7161 for supplies for himself, his family and business during the
7162 existence of such employment, which lien the employer may offset,
7163 recoup, or otherwise assert and maintain.

7164 (2) Every employee, laborer, cropper, part owner, overseer
7165 or manager, or other person who may aid by his labor to make,
7166 gather, or prepare for sale or market any crop, shall have a lien
7167 on the interest of the person who contracts with him for such
7168 labor for his wages, share or interest in such crop, whatever may
7169 be the kind of wages or the nature of the interest, which lien

7170 such employee, laborer, cropper, part owner, overseer or manager,
7171 or other person may offset, recoup or otherwise assert and
7172 maintain.

7173 (3) Except as provided in subsection (4) of this section,
7174 any lien arising under the provisions of this section shall be
7175 paramount to all liens and encumbrances or rights of any kind
7176 created by or against the person so contracting for such
7177 assistance when perfected in accordance with Uniform Commercial
7178 Code Article 9 - Secured Transactions (Section 75-9-101 et seq.),
7179 except the lien of the lessor of the land on which the crop is
7180 made, for rent and supplies furnished, as provided in the chapter
7181 on "Landlord and Tenant," appearing as Chapter 7 of Title 89,
7182 Mississippi Code of 1972.

7183 (4) Any lien arising under the provisions of subsection (2)
7184 of this section in favor of any person other than an employee,
7185 laborer, cropper, part owner, overseer or manager as to crops or
7186 the proceeds thereof shall be effective against a third party only
7187 for a period of twenty-one (21) days from and after the time the
7188 labor is completed, unless within such period of time * * * the
7189 lien is perfected in accordance with * * * Uniform Commercial Code
7190 Article 9 - Secured Transactions (Section 75-9-101 et seq.). Any
7191 such lien in favor of any person other than an employee, laborer,
7192 cropper, overseer or manager * * * which * * * has not been
7193 perfected within the twenty-one-day period as herein provided
7194 shall, upon * * * subsequent perfection of such lien, have the
7195 priority as against a third party to which a perfected security
7196 interest may be entitled under Uniform Commercial Code Article 9 -
7197 Secured Transactions (Section 75-9-101 et seq.).

7198 SECTION 34. Section 89-7-51, Mississippi Code of 1972, is
7199 amended as follows:

7200 89-7-51. (1) Every lessor of land shall have a lien on the
7201 agricultural products of the leased premises, however and by
7202 whomsoever produced, to secure the payment of the rent and of

7203 money advanced to the tenant, and the fair market value of all
7204 advances made by him to his tenant for supplies for the tenant and
7205 others for whom he may contract, and for his business carried on
7206 upon the leased premises. This lien shall be paramount to all
7207 other liens, claims, or demands upon such products when perfected
7208 in accordance with Uniform Commercial Code Article 9 - Secured
7209 Transactions (Section 75-9-101, et seq.). The claim of the lessor
7210 for supplies furnished may be enforced in the same manner and
7211 under the same circumstances as his claim for rent may be; and all
7212 the provisions of law as to attachment for rent and proceedings
7213 under it shall be applicable to a claim for supplies furnished,
7214 and such attachment may be levied on any goods and chattels liable
7215 for rent, as well as on the agricultural products.

7216 (2) All articles of personal property, except a stock of
7217 merchandise sold in the normal course of business, owned by the
7218 lessee of real property and situated on the leased premises shall
7219 be subject to a lien in favor of the lessor to secure the payment
7220 of rent for such premises as has been contracted to be paid,
7221 whether or not then due. Such lien shall be subject to all prior
7222 liens or other security interests perfected according to law. No
7223 such articles of personal property may be removed from the leased
7224 premises until such rent is paid except with the written consent
7225 of the lessor. All of the provisions of law as to attachment for
7226 rent and proceedings thereunder shall be applicable with reference
7227 to the lessor's lien under this subsection.

7228 SECTION 35. Section 89-7-53, Mississippi Code of 1972, is
7229 amended as follows:

7230 89-7-53. A landlord shall have, for one (1) year, a lien for
7231 the reasonable value of all live stock, farming tools, implements
7232 and vehicles furnished by him to his tenant, upon the property so
7233 furnished and, as an additional security therefor, upon all the
7234 agricultural products raised upon the leased premises. The said
7235 property so furnished shall be considered as supplies and the lien

7236 therefor may be enforced accordingly. Such lien shall be a
7237 superior and first lien when perfected in accordance with Uniform
7238 Commercial Code Article 9 - Secured Transactions (Section 75-9-101
7239 et seq.), and need not otherwise be evidenced by writing * * *.

7240 SECTION 36. The following provision shall be codified as
7241 Section 7-3-59, Mississippi Code of 1972:

7242 7-3-59. (1) All fees collected by the office of the
7243 Secretary of State under Section 75-9-525 shall be deposited in a
7244 special fund which is hereby created in the State Treasury to be
7245 designated as the UCC Article 9 Fund. Money in this fund shall be
7246 used to operate the activities of the office of the Secretary of
7247 State as necessary to administer the filing and research
7248 provisions of Revised Article 9 of the Uniform Commercial Code and
7249 to pay to each chancery clerk such amounts as that clerk shall be
7250 owed under subsection (2) of this section. The expenditure of the
7251 funds deposited in this fund shall be paid by the State Treasurer
7252 upon requisition signed by the office of the Secretary of State.

7253 (2) For each filing and indexing of a financing statement
7254 under Part 5 (Filing) of Title 75, Chapter 9 (Uniform Commercial
7255 Code Revised Article 9 - Secured Transactions), the Secretary of
7256 State shall remit the following fee to the chancery clerk of the
7257 Mississippi county, if any, indicated on the face of the financing
7258 statement by county code or county name as the domicile of the
7259 debtor, or, if no county is so indicated, the Mississippi county
7260 of the address of the debtor stated on the financing statement.

7261 (a) Five Dollars (\$5.00), when the financing statement
7262 is communicated in writing, either in the standard form prescribed
7263 by the Secretary of State or not in the standard form so
7264 prescribed, plus Two Dollars (\$2.00) for each additional debtor
7265 name more than one (1) required to be indexed.

7266 (b) Five Dollars (\$5.00) if the financing statement is
7267 communicated by another medium authorized by filing-office rule.

7268 (3) The Secretary of State shall remit to each chancery
7269 clerk not less than monthly the amount owed under subsection (2)
7270 of this section. Each payment shall be accompanied by a detailed
7271 accounting of the transactions represented by that payment.

7272 SECTION 37. The following shall be codified as Section
7273 75-77-6, Mississippi Code of 1972:

7274 75-77-6. This section applies to a warranty claim submitted
7275 by a retailer:

7276 (a) Claims filed for payment under warranty agreements
7277 shall either be approved or disapproved within thirty (30) days of
7278 receipt by the supplier. All claims for payment shall be paid
7279 within thirty (30) days of their approval. When any such claim is
7280 disapproved, the supplier shall notify the retailer within thirty
7281 (30) days stating the specific grounds upon which the disapproval
7282 is based. If a claim is not specifically disapproved within
7283 thirty (30) days of receipt, it shall be deemed approved and
7284 payment by the supplier shall be within thirty (30) days.

7285 (b) If after termination of a contract the retailer
7286 submits a claim to the supplier for warranty work performed prior
7287 to the effective date of the termination, the supplier shall
7288 accept or reject the claim within thirty (30) days of receipt.

7289 (c) Warranty work performed by the retailer shall be
7290 compensated in accordance with the reasonable and customary amount
7291 of time required to complete the work, expressed in hours and
7292 fractions thereof, multiplied by the retailer's established
7293 customer hourly retail labor rate, which shall have previously
7294 been made known to the supplier.

7295 (d) Expenses expressly excluded under the supplier's
7296 warranty to the customer shall not be included nor required to be
7297 paid on requests for compensation from the retailer for warrant
7298 work performed.

7299 (e) All parts used by the retailer in performing
7300 warranty work shall be paid to the retailer in the amount equal to

7301 the retailer's net price for parts used, plus a minimum of fifteen
7302 percent (15%). The percentage additive is to reimburse the
7303 retailer for reasonable costs of doing business in performing
7304 warranty service on the suppliers behalf, including, but not
7305 limited to, freight and handling costs incurred.

7306 (f) The supplier has the right to adjust for errors
7307 discovered during audit, and if necessary, to adjust claims paid
7308 in error.

7309 (g) The retailer shall have the right to accept the
7310 manufacturer's reimbursement terms and conditions in lieu of the
7311 provisions of this section.

7312 SECTION 38. Section 75-77-19, Mississippi Code of 1972, is
7313 amended as follows:

7314 75-77-19. (1) Except as otherwise provided in Section
7315 75-77-6, the provisions of this chapter shall not be waivable in
7316 any contract, and any such attempted waiver shall be null and
7317 void.

7318 (2) If any provision or item of this chapter or the
7319 application thereof is held invalid, it shall not affect other
7320 provisions, items or applications of this chapter which can be
7321 given effect without the invalid provisions, items or
7322 applications, and to this end the provisions of this chapter are
7323 hereby declared severable.

7324 SECTION 39. This act shall take effect and be in force from
7325 and after July 1, 2001.