MISSISSIPPI LEGISLATURE

By: Senator(s) Carlton

REGULAR SESSION 2002

To: Judiciary

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2998

AN ACT TO AMEND SECTIONS 75-9-701, 75-9-705 AND 75-9-710, MISSISSIPPI CODE OF 1972, TO CONFORM THE TRANSITION DATES FOR THE CONVERSION FROM UNIFORM COMMERCIAL CODE FORMER ARTICLE 9 TO REVISED ARTICLE 9 TO THE JANUARY 1, 2002, EFFECTIVE DATE; TO FURTHER AMEND SECTION 75-9-705, MISSISSIPPI CODE OF 1972, TO CLARIFY THE TERMINATION OF A FINANCING STATEMENT COVERING A MANUFACTURED HOME NOT CONSTITUTING INVENTORY; TO FURTHER AMEND SECTION 75-9-710, MISSISSIPPI CODE OF 1972, TO CLARIFY LOCAL FILING OF A TERMINATION STATEMENT; TO AMEND SECTION 75-9-102, MISSISSIPPI CODE OF 1972, TO CLARIFY DEFINITIONS; TO AMEND SECTION 75-9-109, MISSISSIPPI CODE OF 1972, TO CLARIFY THE SCOPE OF ARTICLE 9 CONCERNING GOVERNMENTAL UNITS; TO AMEND SECTION 75-9-304, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PERFECTION OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS; TO AMEND SECTION 75-9-309, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PERFECTION UPON ATTACHMENT FOR LOTTERY WINNINGS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 75-9-701, Mississippi Code of 1972, is amended as follows:

75-9-701. (1) References in Part 7 to "this act" refer to the legislative enactment by which this part is added to Article 9 of the Uniform Commercial Code.

(2) References in this part to "former Article 9" are to Article 9 found in Chapter 9 of Title 75 as in effect on December 31, 2001.

SECTION 2. Section 75-9-705, Mississippi Code of 1972, is amended as follows:

[From January 1, 2002, until passage of Senate Bill No. 2998, 2002 Regular Session, this section shall read as follows:]

75-9-705. (a) If action, other than the filing of a financing statement, is taken before this act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect,
the action is effective to perfect a security interest that
attaches under this act within one (1) year after this act takes
effect. An attached security interest becomes unperfected one (1)
year after this act takes effect unless the security interest
becomes a perfected security interest under this act before the
expiration of that period.

(b) The filing of a financing statement before this act
takes effect is effective to perfect a security interest to the
extent the filing would satisfy the applicable requirements for
perfection under this act.

(c) This act does not render ineffective an effective
financing statement that, before this act takes effect, is filed
and satisfies the applicable requirements for perfection under the
law of the jurisdiction governing perfection as provided in former
Section 75-9-103. However, except as otherwise provided in
subsections (d) and (e) and Section 75-9-706, the financing
statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased
to be effective under the law of the jurisdiction in which it is
filed; or

(2) December 31, 2006.

(d) The filing of a continuation statement after this act
takes effect does not continue the effectiveness of the financing
statement filed before this act takes effect. However, upon the
timely filing of a continuation statement after this act takes
effect and in accordance with the law of the jurisdiction
governing perfection as provided in Part 3, the effectiveness of a
financing statement filed in the same office in that jurisdiction
before this act takes effect continues for the period provided by
the law of that jurisdiction.

(e) Subsection (c)(2) applies to a financing statement that,
before this act takes effect, is filed against a transmitting
utility and satisfies the applicable requirements for perfection
under the law of the jurisdiction governing perfection as provided
in former Section 75-9-103 only to the extent that Part 3 provides
that the law of a jurisdiction other than the jurisdiction in
which the financing statement is filed governs perfection of a
security interest in collateral covered by the financing
statement.

(f) A financing statement that includes a financing
statement filed before this act takes effect and a continuation
statement filed after this act takes effect is effective only to
the extent that it satisfies the requirements of Part 5 for an
initial financing statement.

[From and after passage of Senate Bill No. 2998, 2002 Regular
Session, this section shall read as follows:]

75-9-705. (a) If action, other than the filing of a
financing statement, is taken before January 1, 2002 and the
action would have resulted in priority of a security interest over
the rights of a person that becomes a lien creditor had the
security interest become enforceable before January 1, 2002, the
action is effective to perfect a security interest that attaches
under this act within one (1) year after January 1, 2002. An
attached security interest becomes unperfected one (1) year after
January 1, 2002 unless the security interest becomes a perfected
security interest under this act before the expiration of that
period.

(b) The filing of a financing statement before this act
takes effect is effective to perfect a security interest to the
extent the filing would satisfy the applicable requirements for
perfection under this act.

(c) This act does not render ineffective an effective
financing statement that, before January 1, 2002, is filed and
satisfies the applicable requirements for perfection under the law
of the jurisdiction governing perfection as provided in former
Section 75-9-103. However, except as otherwise provided in
subsections (d) and (e) and Section 75-9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) December 31, 2006.

Provided, however, a financing statement filed before January 1, 2002, covering a manufactured home, other than a manufactured home constituting inventory, remains effective, if it so states, until a termination statement is filed.

(d) The filing of a continuation statement after January 1, 2002 does not continue the effectiveness of the financing statement filed before January 1, 2002. However, upon the timely filing of a continuation statement after January 1, 2002 and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before January 1, 2002 continues for the period provided by the law of that jurisdiction.

(e) Subsection (c)(2) applies to a financing statement that, before January 1, 2002, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 75-9-103 only to the extent that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before January 1, 2002 and a continuation statement filed after January 1, 2002 is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement.
SECTION 3. Section 75-9-710, Mississippi Code of 1972, is amended as follows:

[From January 1, 2002, this section shall read as follows:]

75-9-710. (a) In this section:

(1) "Local-filing office" means a filing office, other than the statewide central filing office identified in Section 75-9-401(1) of former Chapter 9, that is designated as the proper place to file a financing statement under Section 75-9-401(1) of former Chapter 9. The term applies only with respect to a record that covers a type of collateral as to which the filing office is designated in that section as the proper place to file.

(2) "Former-Chapter-9 records" means:

(A) Financing statements and other records that have been filed in a local-filing office before January 1, 2002, and that are, or upon processing and indexing will be, reflected in the index maintained, as of December 31, 2001, by the local-filing office for financing statements and other records filed in the local-filing office before January 1, 2002, and

(B) The index as of December 31, 2001. The term does not include records presented to a local-filing office for filing after December 31, 2001, whether or not the records relate to financing statements filed in the local-filing office before January 1, 2002.

(3) "Mortgage," "as-extracted collateral," "fixture filing," "goods" and "fixtures" have the meanings set forth in Revised Article 9 for those terms.

(b) Except as expressly provided in Part 5 of Chapter 9 as effective on and after January 1, 2002, a local-filing office must not accept for filing a record presented after December 31, 2001, whether or not the record relates to a financing statement filed in the local-filing office before January 1, 2002, other than a termination statement filed in accordance with Section 75-9-707.
Until January 1, 2009, each local-filing office must maintain all former-Chapter-9 records in accordance with former Chapter 9. A former-Chapter-9 record that is not reflected on the index maintained at December 31, 2001, by the local-filing office must be processed and indexed, and reflected on the index as of December 31, 2001, as soon as practicable but in any event no later than January 31, 2002.

Until at least December 31, 2008, each local-filing office must respond to requests for information with respect to former-Chapter-9 records relating to a debtor and issue certificates in accordance with former Chapter 9.

(1) Upon request in writing of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any presently effective financing statements naming a particular debtor thereof, and if there is, giving the date and hour of filing and file number of each such financing statement and the name and address of each secured party or his assignee therein. Each such request shall be accompanied by a search fee of Five Dollars ($5.00) if the request is made on the standard form prescribed by the Secretary of State, and otherwise it shall be Ten Dollars ($10.00). An additional fee of Two Dollars ($2.00) shall be paid by the requesting party for each financing statement listed on the filing officer's certificate, the aggregate of which shall be billed to the requesting party at the time the filing officer's certificate is issued. Failure to pay the additional fee by any requesting party when due may result in denial of further service to the requesting party until the amount due has been paid.

(2) Upon request, the filing officer shall furnish a copy of any presently effective financing statements on file for a uniform fee of Two Dollars ($2.00) per page naming a particular debtor when the request is made on the form and in the manner hereinbefore provided for listing the same.
(e) After December 31, 2008, each local-filing office may remove and destroy, in accordance with any then applicable record retention law of this state, all former-Chapter-9 records, including the related index.

(f) This section does not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:

(1) The collateral is timber to be cut or as-extracted collateral, or

(2) The record is or relates to a financing statement filed as a fixture filing and the collateral is goods that are or are to become fixtures.

SECTION 4. Section 75-9-102, Mississippi Code of 1972, is amended as follows:

75-9-102. (a) In this article:

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

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

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

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

(A) Authenticated by a secured party;

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

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

(5) "Agricultural lien" means an interest ★★★ in farm
products:

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

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

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

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

(i) In the ordinary course of its business
furnished goods or services to a debtor in connection with a
debtor's farming operation; or
(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

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

(6) "As-extracted collateral" means:

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

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

(ii) Attaches to the minerals as extracted;

or

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

(7) "Authenticate" means:

(A) To sign; or

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

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

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

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

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

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

(A) Proceeds to which a security interest attaches;

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

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

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

(A) The claimant is an organization; or

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

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

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

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

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

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

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

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

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

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

(18) "Communicate" means:

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

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

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

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

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

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;
(ii) Is not an auctioneer; and
(iii) Is not generally known by its creditors
to be substantially engaged in selling the goods of others;
(B) With respect to each delivery, the aggregate
value of the goods is One Thousand Dollars ($1,000.00) or more at
the time of delivery;
(C) The goods are not consumer goods immediately
before delivery; and
(D) The transaction does not create a security
interest that secures an obligation.
(21) "Consignor" means a person that delivers goods to
a consignee in a consignment.
(22) "Consumer debtor" means a debtor in a consumer
transaction.
(23) "Consumer goods" means goods that are used or
bought for use primarily for personal, family, or household
purposes.
(24) "Consumer-goods transaction" means a consumer
transaction in which:
(A) An individual incurs an obligation primarily
for personal, family, or household purposes; and
(B) A security interest in consumer goods secures
the obligation.
(25) "Consumer obligor" means an obligor who is an
individual and who incurred the obligation as part of a
transaction entered into primarily for personal, family, or
household purposes.
(26) "Consumer transaction" means a transaction in
which (i) an individual incurs an obligation primarily for
personal, family, or household purposes, (ii) a security interest
secures the obligation, and (iii) the collateral is held or
acquired primarily for personal, family, or household purposes.
The term includes consumer-goods transactions.
(27) "Continuation statement" means an amendment of a financing statement which:
(A) Identifies, by its file number, the initial financing statement to which it relates; and
(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:
(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
(C) A consignee.

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

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

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

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

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

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
(A) Crops grown, growing, or to be grown,
(i) Crops produced on trees, vines, and 
bushes; and

(ii) Aquatic goods produced in aquacultural 
operations;

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

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

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

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

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

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

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

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

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

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

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

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

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, (v) farm-raised fish produced in fresh water according to the usual and customary techniques of commercial agriculture, (vi) manufactured homes and (vii) marine vessels (herein defined as every type of watercraft used, or capable of being used, as a means of transportation on water) including both marine vessels under construction, including engines and all items of equipment installed or to be installed therein, whether such vessels are being constructed by the shipbuilder for his own use or for sale (said vessels under construction being classified as inventory within the meaning of Section 75-9-102(48)), and marine vessels after completion of construction so long as such vessels have not become "vessels of the United States" within the meaning of the Ship Mortgage Act of 1920, 46 USCS, Section 911(4), as same is now written or may hereafter be amended (said completed vessels being classified as equipment within the meaning of Section 75-9-102(33)). The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.

The term does not include a computer program embedded in goods
that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

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

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

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

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

(A) Are leased by a person as lessor;

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

(C) Are furnished by a person under a contract of service; or
(D) Consist of raw materials, work in process or materials used or consumed in a business.

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

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

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

(52) "Lien creditor" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization; 
(B) An officer or director of, or a person performing similar functions with respect to, the organization; 
(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A); 
(D) The spouse of an individual described in subparagraph (A), (B), or (C); or 
(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.
"Proceeds," except as used in Section 75-9-609(b), means the following property:

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

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

(C) Rights arising out of collateral;

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

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

"Production-money crops" means crops that secure a production-money obligation incurred with respect to the production of those crops.

"Production-money obligation" means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

"Production of crops" includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops, and protecting them from damage or disease.

"Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
"Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 75-9-620, 75-9-621, and 75-9-622.

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

(A) Debt securities are issued;

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

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

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

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

"Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

"Secondary obligor" means an obligor to the extent:

(A) The obligor's obligation is secondary; or
(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

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

(B) A person that holds an agricultural lien;

(C) A consignor;

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

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

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

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

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

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

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

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.
"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

"Termination statement" means an amendment of a financing statement which:

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

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

"Transmitting utility" means a person primarily engaged in the business of:

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

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

(C) Transmitting goods by pipeline or sewer; or

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

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

"Applicant" Section 75-5-102.

"Beneficiary" Section 75-5-102.

"Broker" Section 75-8-102.

"Certificated security" Section 75-8-102.
"Check" Section 75-3-104.
"Clearing corporation" Section 75-8-102.
"Contract for sale" Section 75-2-106.
"Customer" Section 75-4-104.
"Entitlement holder" Section 75-8-102.
"Financial asset" Section 75-8-102.
"Holder in due course" Section 75-3-302.
"Issuer" (with respect to
a letter of credit or
letter-of-credit right) Section 75-5-102.
"Issuer" (with respect to a
security Section 75-8-201.
"Lease" Section 75-2A-103.
"Lease agreement" Section 75-2A-103.
"Lease contract" Section 75-2A-103.
"Leasehold interest" Section 75-2A-103.
"Lessee" Section 75-2A-103.
"Lessee in ordinary course
of business" Section 75-2A-103.
"Lessor" Section 75-2A-103.
"Lessor's residual interest" Section 75-2A-103.
"Letter of credit" Section 75-5-102.
"Merchant" Section 75-2-104.
"Negotiable instrument" Section 75-3-104.
"Nominated person" Section 75-5-102.
"Note" Section 75-3-104.
"Proceeds of a letter of
credit" Section 75-5-114.
"Prove" Section 75-3-103.
"Sale" Section 75-2-106.
"Securities account" Section 75-8-501.
"Securities intermediary" Section 75-8-102.
"Security" Section 75-8-102.
"Security certificate" Section 75-8-102.

"Security entitlement" Section 75-8-102.

"Uncertificated security" Section 75-8-102.

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

SECTION 5. Section 75-9-109, Mississippi Code of 1972, is amended as follows:

75-9-109. (a) Except as otherwise provided in subsections (c) and (d), this article applies to:

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

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) A consignment;

(5) A security interest arising under Section 75-2-401, 75-2-505, 75-2-711(3), or 75-2A-508(5), as provided in Section 75-9-110; and

(6) A security interest arising under Section 75-4-210 or 75-5-118.

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

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

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

(2) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement...
of a security interest created by the state, country, or governmental unit; or

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

(d) This article does not apply to:

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

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

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

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

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

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

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

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

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
(10) A right of recoupment or set-off, but:

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

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

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

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

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

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

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

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

(13) To a transfer by this state or a governmental unit of this state.

SECTION 6. Section 75-9-304, Mississippi Code of 1972, is amended as follows:

75-9-304. (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

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

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

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

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

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

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

SECTION 7. Section 75-9-309, Mississippi Code of 1972, is
amended as follows:

75-9-309. The following security interests are perfected
when they attach:

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

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

(3) A sale of a payment intangible;

(4) A sale of a promissory note;
(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

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

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

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

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

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

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

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

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

(14) A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

SECTION 8. Sections 1, 2 and 3 of this act shall take effect and be in force from and after January 1, 2002; the remainder of this act shall take effect and be in force from and after its passage.