

By: Senator(s) Fillingane

To: Judiciary, Division A;
Business and Financial
Institutions

SENATE BILL NO. 2419
(As Passed the Senate)

1 AN ACT TO CONFORM TO CERTAIN CHANGES TO THE MODEL ACT FOR THE
2 UNIFORM COMMERCIAL CODE; TO AMEND SECTION 11-7-18, MISSISSIPPI
3 CODE OF 1972, TO CONFORM THE LAW ON IMPLIED WARRANTIES,
4 LIMITATIONS AND DISCLAIMERS TO THE NONUNIFORM CHOICE OF LAW
5 PROVISIONS IN THE MISSISSIPPI ENACTMENT OF THE UNIFORM COMMERCIAL
6 CODE; TO CREATE NEW SECTION 15-1-81, MISSISSIPPI CODE OF 1972, TO
7 PROVIDE A SIX-YEAR STATUTE OF LIMITATIONS FOR NONNEGOTIABLE
8 PROMISSORY NOTES; TO CREATE NEW SECTION 75-1-101, MISSISSIPPI CODE
9 OF 1972, TO ENACT SHORT TITLES FOR THE UNIFORM COMMERCIAL CODE AND
10 FOR ARTICLE 1; TO CREATE NEW SECTION 75-1-102, MISSISSIPPI CODE OF
11 1972, TO PROVIDE FOR THE SCOPE OF THE GENERAL PROVISIONS OF
12 ARTICLE 1; TO CREATE NEW SECTION 75-1-103, MISSISSIPPI CODE OF
13 1972, TO PROVIDE FOR UNIFORM CONSTRUCTION OF THE UNIFORM
14 COMMERCIAL CODE; TO CREATE NEW SECTION 75-1-104, MISSISSIPPI CODE
15 OF 1972, TO PROHIBIT IMPLIED REPEAL; TO CREATE NEW SECTION
16 75-1-105, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR SEVERABILITY;
17 TO CREATE NEW SECTION 75-1-106, MISSISSIPPI CODE OF 1972, TO
18 PROVIDE FOR GRAMMATICAL CONSTRUCTION OF PERSONAL AND POSSESSIVE
19 PRONOUNS AS TO GENDER; TO CREATE NEW SECTION 75-1-107, MISSISSIPPI
20 CODE OF 1972, TO PROVIDE THAT SECTION CAPTIONS ARE PART OF THE
21 ACT; TO CREATE NEW SECTION 75-1-108, MISSISSIPPI CODE OF 1972, TO
22 PROVIDE FOR THE RELATIONSHIP BETWEEN THE ACT AND THE ELECTRONIC
23 SIGNATURES ACT; TO CREATE NEW SECTION 75-1-201, MISSISSIPPI CODE
24 OF 1972, TO ENACT GENERAL DEFINITIONS; TO CREATE NEW SECTION
25 75-1-202, MISSISSIPPI CODE OF 1972, TO SPECIFY WHEN BOTH NOTICE
26 AND KNOWLEDGE OCCUR; TO CREATE NEW SECTION 75-1-203, MISSISSIPPI
27 CODE OF 1972, TO DISTINGUISH A LEASE FROM A SECURITY INTEREST; TO
28 CREATE NEW SECTION 75-1-204, MISSISSIPPI CODE OF 1972, TO SPECIFY
29 WHEN A PERSON HAS GIVEN VALUE; TO CREATE NEW SECTION 75-1-205,
30 MISSISSIPPI CODE OF 1972, TO DEFINE REASONABLE TIME AND
31 SEASONABLENESS; TO CREATE NEW SECTION 75-1-206, MISSISSIPPI CODE
32 OF 1972, TO PROVIDE FOR PRESUMPTIONS OF FACT; TO CREATE NEW
33 SECTION 75-1-301, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CHOICE
34 OF LAW; TO CREATE NEW SECTION 75-1-302, MISSISSIPPI CODE OF 1972,
35 TO PROVIDE FOR VARIATION BY AGREEMENT; TO CREATE NEW SECTION
36 75-1-303, MISSISSIPPI CODE OF 1972, TO DEFINE COURSE OF
37 PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE; TO CREATE NEW
38 SECTION 75-1-304, MISSISSIPPI CODE OF 1972, TO REQUIRE GOOD FAITH;
39 TO CREATE NEW SECTION 75-1-305, MISSISSIPPI CODE OF 1972, TO
40 PROVIDE FOR LIBERAL ADMINISTRATION OF REMEDIES; TO CREATE NEW
41 SECTION 75-1-306, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR WAIVER
42 OR RENUNCIATION OF CLAIM OR RIGHT UPON BREACH; TO CREATE NEW
43 SECTION 75-1-307, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PRIMA
44 FACIE EVIDENCE BY THIRD-PARTY DOCUMENTS; TO CREATE NEW SECTION
45 75-1-308, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PERFORMANCE OR
46 ACCEPTANCE UNDER RESERVATION OF RIGHTS; TO CREATE NEW SECTION



47 75-1-309, MISSISSIPPI CODE OF 1972, TO ALLOW THE OPTION TO
48 ACCELERATE AT WILL; TO CREATE NEW SECTION 75-1-310, MISSISSIPPI
49 CODE OF 1972, TO PROVIDE FOR THE SUBORDINATION OF OBLIGATIONS; TO
50 AMEND SECTIONS 75-2-103, 75-2-107, 75-2-202, 75-2-315.1,
51 75-2A-103, 75-2A-501, 75-2A-51, 75-2A-518, 75-2A-527, 75-2A-528,
52 75-3-103, 75-3-106, 75-3-116, 75-3-119, 75-3-305, 75-3-309,
53 75-3-312, 75-3-415, 75-3-416, 75-3-417, 75-3-419, 75-3-602,
54 75-3-604, 75-3-605, 75-4-104, 75-4-105, 75-4-207, 75-4-208,
55 75-4-212, 75-4-301, 75-4-403, 75-4A-105, 75-4A-106, 75-4A-204,
56 75-5-103, 75-7-102, 75-8-102 AND 75-9-102, MISSISSIPPI CODE OF
57 1972, TO CONFORM; TO CREATE NEW SECTION 79-13-505, MISSISSIPPI
58 CODE OF 1972, TO PROVIDE FOR THE ENFORCEABILITY OF LIMITATIONS ON
59 ASSIGNMENTS OF PARTNERSHIP INTERESTS; TO CREATE NEW SECTION
60 79-14-706, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
61 ENFORCEABILITY OF LIMITATIONS ON ASSIGNMENTS OF LIMITED
62 PARTNERSHIP INTERESTS; TO AMEND SECTION 75-9-513, MISSISSIPPI CODE
63 OF 1972, TO IMPOSE A PENALTY FOR FAILURE TO FILE A TERMINATION
64 STATEMENT WHEN REQUIRED; TO REPEAL SECTIONS 75-1-101, 75-1-102,
65 75-1-103, 75-1-104, 75-1-105, 75-1-106, 75-1-107, 75-1-108,
66 75-1-109, 75-1-110, 75-1-201, 75-1-202, 75-1-203, 75-1-204,
67 75-1-205, 75-1-206, 75-1-207 AND 75-1-208, MISSISSIPPI CODE OF
68 1972, WHICH COMPRISE THE UNIFORM COMMERCIAL CODE ARTICLE 1 -
69 GENERAL PROVISIONS, AND ARE BEING REPLACED BY REVISED ARTICLE 1 -
70 GENERAL PROVISIONS; TO REPEAL SECTION 75-2-208, MISSISSIPPI CODE
71 OF 1972, WHICH PROVIDES FOR THE PRACTICAL CONSTRUCTION OF "COURSE
72 OF PERFORMANCE" FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE
73 ARTICLE 2 - SALES, THE SUBSTANCE THEREOF BEING REENACTED IN
74 REVISED ARTICLE 1 - GENERAL PROVISIONS; TO REPEAL SECTION
75 75-2A-207, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE
76 PRACTICAL CONSTRUCTION OF "COURSE OF PERFORMANCE" FOR PURPOSES OF
77 THE UNIFORM COMMERCIAL CODE ARTICLE 2A - LEASES, THE SUBSTANCE
78 THEREOF BEING REENACTED IN REVISED ARTICLE 1 - GENERAL PROVISIONS;
79 AND FOR RELATED PURPOSES.

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

81 **SECTION 1.** Section 11-7-18, Mississippi Code of 1972, is
82 amended as follows:

83 11-7-18. Except as otherwise provided in Sections 75-2-314,
84 75-2-315, 75-2-315.1 and 75-2-719, there shall be no limitation of
85 remedies or disclaimer of liability as to any implied warranty of
86 merchantability or fitness for a particular purpose in a sale to a
87 consumer, as defined in Section 75-1-201(b)(11), of consumer
88 goods, as defined in Section 75-9-102(a)(23). The provisions of
89 this section may not be waived or varied by agreement.

90 **SECTION 2.** The following shall be codified as Section
91 15-1-81, Mississippi Code of 1972:

92 15-1-81. **Actions on nonnegotiable promissory notes.** (1) An
93 action to enforce the obligations of a party to pay a



94 nonnegotiable promissory note payable at a definite time must be
95 commenced within six (6) years after the due date or dates stated
96 in the promissory note, or if a due date is accelerated, within
97 six (6) years after the accelerated date.

98 (2) If demand for payment is made to the maker of a
99 nonnegotiable promissory note payable on demand, an action to
100 enforce the obligation of a party to pay the promissory note must
101 be commenced within six (6) years after the demand. If no demand
102 for payment is made to the maker, an action to enforce the
103 promissory note is barred if neither principal nor interest on the
104 promissory note has been paid for a continuous period of ten (10)
105 years.

106 (3) For purposes of this section, a "nonnegotiable
107 promissory note" is an unconditional written undertaking to pay
108 absolutely and in any event a fixed amount of money signed by the
109 person undertaking to pay the money that is not an "instrument"
110 under Section 75-3-104(b). Nonnegotiable promissory notes for
111 purposes of this section include, but are not limited to,
112 promissory notes that: (a) bear a variable rate of interest or
113 provide for interest by reference to information not contained in
114 the promissory note; (b) provide for interest after default; (c)
115 are nonrecourse to the person undertaking to pay the money; or (d)
116 qualify as "instruments" under Section 75-9-102(a)(47).

117 (4) This section shall not apply to negotiable promissory
118 notes, drafts, checks, certificates of deposit or any other
119 instrument or item for which Section 75-3-118 provides the
120 applicable statute of limitations. Neither a lease nor a security
121 agreement is a promissory note for purposes of this section. A
122 promissory note is not investment property as defined in Section
123 75-9-102(a)(49), a letter of credit, or writings that evidence a
124 right to payment arising out of the use of a credit or charge card
125 or information contained on or for use with the card. It is the
126 intention of this section that a "note," as defined in Section



127 75-3-104(e), and nonnegotiable promissory notes, as defined in
128 this section, shall have the same statutes of limitations.

129 (5) This section shall not apply to obligations arising from
130 retail installment contracts. For purposes of this section, a
131 "retail installment contract" is a contract for the sale of goods
132 under which the buyer makes periodic payments and the seller
133 retains a security interest in the goods. For the purposes of
134 this section, "goods" have the same meaning as the definition of
135 "goods" in Section 75-9-102(a)(44).

136 (6) This section takes effect on July 1, 2012 and shall
137 apply to all nonnegotiable promissory notes for which the statute
138 of limitations in effect immediately prior to that date has not
139 run. This section shall have no application to promissory notes
140 for which the statute of limitations has run prior to July 1,
141 2012.

142 **SECTION 3.** The following is revised Article 1 - General
143 Provisions of the Uniform Commercial Code, and shall be codified
144 in Title 75, Chapter 1, Mississippi Code of 1972, to replace Title
145 75, Chapter 1, Parts 1 and 2, that are repealed in Section 44 of
146 this act:

147 PART 1.

148 GENERAL PROVISIONS.

149 **Section 75-1-101. Short title.** (a) Chapters 1 through 10
150 of Title 75 shall be known and may be cited as the Uniform
151 Commercial Code.

152 (b) This chapter may be cited as Article 1 when referring to
153 the general provisions of the Uniform Commercial Code or as
154 Uniform Commercial Code - General Provisions.

155 (c) Chapters 1 through 10 of Title 75 are numbered to
156 correspond to the numbering of the articles of the Uniform
157 Commercial Code and may be referred to as "Articles".



158 **Section 75-1-102. Scope of article.** Article 1 applies to a
159 transaction to the extent that it is governed by another article
160 of the Uniform Commercial Code.

161 **Section 75-1-103. Construction of Uniform Commercial Code to**
162 **promote its purposes and policies; applicability of supplemental**
163 **principles of law.** (a) The Uniform Commercial Code must be
164 liberally construed and applied to promote its underlying purposes
165 and policies, which are:

166 (1) To simplify, clarify, and modernize the law
167 governing commercial transactions;

168 (2) To permit the continued expansion of commercial
169 practices through custom, usage, and agreement of the parties; and

170 (3) To make uniform the law among the various
171 jurisdictions.

172 (b) Unless displaced by the particular provisions of the
173 Uniform Commercial Code, the principles of law and equity,
174 including the law merchant and the law relative to capacity to
175 contract, principal and agent, estoppel, fraud, misrepresentation,
176 duress, coercion, mistake, bankruptcy, and other validating or
177 invalidating cause supplement its provisions.

178 **Section 75-1-104. Construction against implied repeal.** The
179 Uniform Commercial Code being a general act intended as a unified
180 coverage of its subject matter, no part of it shall be deemed to
181 be impliedly repealed by subsequent legislation if such
182 construction can reasonably be avoided.

183 **Section 75-1-105. Severability.** If any provision or clause
184 of the Uniform Commercial Code or its application to any person or
185 circumstance is held invalid, the invalidity does not affect other
186 provisions or applications of the Uniform Commercial Code which
187 can be given effect without the invalid provision or application,
188 and to this end the provisions of the Uniform Commercial Code are
189 severable.



190 **Section 75-1-106. Use of singular and plural; gender.** In
191 the Uniform Commercial Code, unless the statutory context
192 otherwise requires:

193 (1) Words in the singular number include the plural,
194 and those in the plural include the singular; and

195 (2) Words of any gender also refer to any other gender.

196 **Section 75-1-107. Section captions.** Section captions are
197 part of the Uniform Commercial Code.

198 **Section 75-1-108. Relation to Electronic Signatures in**
199 **Global and National Commerce Act.** This article modifies, limits,
200 and supersedes the federal Electronic Signatures in Global and
201 National Commerce Act, 15 USC Section 7001 et seq., except that
202 nothing in this article modifies, limits, or supersedes Section
203 7001(c) of that act or authorizes electronic delivery of any of
204 the notices described in Section 7003(b) of that act.

205 PART 2.

206 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

207 **Section 75-1-201. General definitions.** (a) Unless the
208 context otherwise requires, words or phrases defined in this
209 section, or in the additional definitions contained in other
210 articles of the Uniform Commercial Code contained in other
211 chapters of this title that apply to particular chapters or parts
212 thereof, have the meanings stated.

213 (b) Subject to definitions contained in other articles of
214 the Uniform Commercial Code that apply to particular articles or
215 parts thereof:

216 (1) "Action," in the sense of a judicial proceeding,
217 includes recoupment, counterclaim, setoff, suit in equity, and any
218 other proceeding in which rights are determined.

219 (2) "Aggrieved party" means a party entitled to pursue
220 a remedy.

221 (3) "Agreement," as distinguished from "contract,"
222 means the bargain of the parties in fact, as found in their



223 language or inferred from other circumstances, including course of
224 performance, course of dealing, or usage of trade as provided in
225 Section 75-1-303.

226 (4) "Bank" means a person engaged in the business of
227 banking and includes a savings bank, savings and loan association,
228 credit union, and trust company.

229 (5) "Bearer" means a person in possession of a
230 negotiable instrument, document of title, or certificated security
231 that is payable to bearer or indorsed in blank.

232 (6) "Bill of lading" means a document evidencing the
233 receipt of goods for shipment issued by a person engaged in the
234 business of transporting or forwarding goods.

235 (7) "Branch" includes a separately incorporated foreign
236 branch of a bank.

237 (8) "Burden of establishing a fact" means the burden of
238 persuading the trier of fact that the existence of the fact is
239 more probable than its nonexistence.

240 (9) "Buyer in ordinary course of business" means a
241 person that buys goods in good faith, without knowledge that the
242 sale violates the rights of another person in the goods, and in
243 the ordinary course from a person, other than a pawnbroker, in the
244 business of selling goods of that kind. A person buys goods in
245 the ordinary course if the sale to the person comports with the
246 usual or customary practices in the kind of business in which the
247 seller is engaged or with the seller's own usual or customary
248 practices. A person that sells oil, gas, or other minerals at the
249 wellhead or minehead is a person in the business of selling goods
250 of that kind. A buyer in ordinary course of business may buy for
251 cash, by exchange of other property, or on secured or unsecured
252 credit, and may acquire goods or documents of title under a
253 preexisting contract for sale. Only a buyer that takes possession
254 of the goods or has a right to recover the goods from the seller
255 under Article 2 may be a buyer in ordinary course of business.



256 "Buyer in ordinary course of business" does not include a person
257 that acquires goods in a transfer in bulk or as security for or in
258 total or partial satisfaction of a money debt.

259 (10) "Conspicuous," with reference to a term, means so
260 written, displayed, or presented that a reasonable person against
261 which it is to operate ought to have noticed it. Whether a term
262 is "conspicuous" or not is a decision for the court. Conspicuous
263 terms include the following:

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

267 (B) Language in the body of a record or display in
268 larger type than the surrounding text, or in contrasting type,
269 font, or color to the surrounding text of the same size, or set
270 off from surrounding text of the same size by symbols or other
271 marks that call attention to the language.

272 (11) "Consumer" means an individual who enters into a
273 transaction primarily for personal, family, or household purposes.

274 (12) "Contract," as distinguished from "agreement,"
275 means the total legal obligation that results from the parties'
276 agreement as determined by the Uniform Commercial Code as
277 supplemented by any other applicable laws.

278 (13) "Creditor" includes a general creditor, a secured
279 creditor, a lien creditor, and any representative of creditors,
280 including an assignee for the benefit of creditors, a trustee in
281 bankruptcy, a receiver in equity, and an executor or administrator
282 of an insolvent debtor's or assignor's estate.

283 (14) "Defendant" includes a person in the position of
284 defendant in a counterclaim, cross-claim, or third-party claim.

285 (15) "Delivery," with respect to an instrument,
286 document of title, or chattel paper, means voluntary transfer of
287 possession.



288 (16) "Document of title" includes bill of lading, dock
289 warrant, dock receipt, warehouse receipt or order for the delivery
290 of goods, and also any other document which in the regular course
291 of business or financing is treated as adequately evidencing that
292 the person in possession of it is entitled to receive, hold, and
293 dispose of the document and the goods it covers. To be a document
294 of title, a document must purport to be issued by or addressed to
295 a bailee and purport to cover goods in the bailee's possession
296 which are either identified or are fungible portions of an
297 identified mass.

298 (17) "Fault" means a default, breach, or wrongful act
299 or omission.

300 (18) "Fungible goods" means:

301 (A) Goods of which any unit, by nature or usage of
302 trade, is the equivalent of any other like unit; or

303 (B) Goods that by agreement are treated as
304 equivalent.

305 (19) "Genuine" means free of forgery or counterfeiting.

306 (20) "Good faith," except as otherwise provided in
307 Article 5, means honesty in fact and the observance of reasonable
308 commercial standards of fair dealing.

309 (21) "Holder" means:

310 (A) The person in possession of a negotiable
311 instrument that is payable either to bearer or to an identified
312 person that is the person in possession; or

313 (B) The person in possession of a document of
314 title if the goods are deliverable either to bearer or to the
315 order of the person in possession.

316 (22) "Insolvency proceeding" includes an assignment for
317 the benefit of creditors or other proceeding intended to liquidate
318 or rehabilitate the estate of the person involved.

319 (23) "Insolvent" means:



320 (A) Having generally ceased to pay debts in the
321 ordinary course of business other than as a result of bona fide
322 dispute;

323 (B) Being unable to pay debts as they become due;
324 or

325 (C) Being insolvent within the meaning of federal
326 bankruptcy law.

327 (24) "Money" means a medium of exchange currently
328 authorized or adopted by a domestic or foreign government. The
329 term includes a monetary unit of account established by an
330 intergovernmental organization or by agreement between two (2) or
331 more countries.

332 (25) "Organization" means a person other than an
333 individual.

334 (26) "Party," as distinguished from "third party,"
335 means a person that has engaged in a transaction or made an
336 agreement subject to the Uniform Commercial Code.

337 (27) "Person" means an individual, corporation,
338 business trust, estate, trust, partnership, limited liability
339 company, association, joint venture, government, governmental
340 subdivision, agency, or instrumentality, public corporation, or
341 any other legal or commercial entity.

342 (28) "Present value" means the amount as of a date
343 certain of one or more sums payable in the future, discounted to
344 the date certain by use of either an interest rate specified by
345 the parties if that rate is not manifestly unreasonable at the
346 time the transaction is entered into or, if an interest rate is
347 not so specified, a commercially reasonable rate that takes into
348 account the facts and circumstances at the time the transaction is
349 entered into.

350 (29) "Purchase" means taking by sale, lease, discount,
351 negotiation, mortgage, pledge, lien, security interest, issue or



352 reissue, gift, or any other voluntary transaction creating an
353 interest in property.

354 (30) "Purchaser" means a person that takes by purchase.

355 (31) "Record" means information that is inscribed on a
356 tangible medium or that is stored in an electronic or other medium
357 and is retrievable in perceivable form.

358 (32) "Remedy" means any remedial right to which an
359 aggrieved party is entitled with or without resort to a tribunal.

360 (33) "Representative" means a person empowered to act
361 for another, including an agent, an officer of a corporation or
362 association, and a trustee, executor, or administrator of an
363 estate.

364 (34) "Right" includes remedy.

365 (35) "Security interest" means an interest in personal
366 property or fixtures which secures payment or performance of an
367 obligation. "Security interest" includes any interest of a
368 consignor and a buyer of accounts, chattel paper, a payment
369 intangible, or a promissory note in a transaction that is subject
370 to Article 9. "Security interest" does not include the special
371 property interest of a buyer of goods on identification of those
372 goods to a contract for sale under Section 75-2-401, but a buyer
373 may also acquire a "security interest" by complying with Article
374 9. Except as otherwise provided in Section 75-2-505, the right of
375 a seller or lessor of goods under Article 2 or 2A to retain or
376 acquire possession of the goods is not a "security interest," but
377 a seller or lessor may also acquire a "security interest" by
378 complying with Article 9. The retention or reservation of title
379 by a seller of goods notwithstanding shipment or delivery to the
380 buyer under Section 75-2-401 is limited in effect to a reservation
381 of a "security interest." Whether a transaction in the form of a
382 lease creates a "security interest" is determined pursuant to
383 Section 75-1-203.



384 (36) "Send" in connection with a writing, record, or
385 notice means:

386 (A) To deposit in the mail or deliver for
387 transmission by any other usual means of communication with
388 postage or cost of transmission provided for and properly
389 addressed and, in the case of an instrument, to an address
390 specified thereon or otherwise agreed, or if there be none to any
391 address reasonable under the circumstances; or

392 (B) In any other way to cause to be received any
393 record or notice within the time it would have arrived if properly
394 sent.

395 (37) "Signed" includes using any symbol executed or
396 adopted with present intention to adopt or accept a writing.

397 (38) "State" means a state of the United States, the
398 District of Columbia, Puerto Rico, the United States Virgin
399 Islands, or any territory or insular possession subject to the
400 jurisdiction of the United States.

401 (39) "Surety" includes a guarantor or other secondary
402 obligor.

403 (40) "Term" means a portion of an agreement that
404 relates to a particular matter.

405 (41) "Unauthorized signature" means a signature made
406 without actual, implied, or apparent authority. The term includes
407 a forgery.

408 (42) "Warehouse receipt" means a receipt issued by a
409 person engaged in the business of storing goods for hire.

410 (43) "Writing" includes printing, typewriting, or any
411 other intentional reduction to tangible form. "Written" has a
412 corresponding meaning.

413 **Section 75-1-202. Notice; knowledge.** (a) Subject to
414 subsection (f), a person has "notice" of a fact if the person:

415 (1) Has actual knowledge of it;

416 (2) Has received a notice or notification of it; or



417 (3) From all the facts and circumstances known to the
418 person at the time in question, has reason to know that it exists.

419 (b) "Knowledge" means actual knowledge. "Knows" has a
420 corresponding meaning.

421 (c) "Discover," "learn," or words of similar import refer to
422 knowledge rather than to reason to know.

423 (d) A person "notifies" or "gives" a notice or notification
424 to another person by taking such steps as may be reasonably
425 required to inform the other person in ordinary course, whether or
426 not the other person actually comes to know of it.

427 (e) Subject to subsection (f), a person "receives" a notice
428 or notification when:

429 (1) It comes to that person's attention; or

430 (2) It is duly delivered in a form reasonable under the
431 circumstances at the place of business through which the contract
432 was made or at another location held out by that person as the
433 place for receipt of such communications.

434 (f) Notice, knowledge, or a notice or notification received
435 by an organization is effective for a particular transaction from
436 the time it is brought to the attention of the individual
437 conducting that transaction and, in any event, from the time it
438 would have been brought to the individual's attention if the
439 organization had exercised due diligence. An organization
440 exercises due diligence if it maintains reasonable routines for
441 communicating significant information to the person conducting the
442 transaction and there is reasonable compliance with the routines.
443 Due diligence does not require an individual acting for the
444 organization to communicate information unless the communication
445 is part of the individual's regular duties or the individual has
446 reason to know of the transaction and that the transaction would
447 be materially affected by the information.

448 **Section 75-1-203. Lease distinguished from security**

449 **interest.** (a) Whether a transaction in the form of a lease



450 creates a lease or security interest is determined by the facts of
451 each case.

452 (b) A transaction in the form of a lease creates a security
453 interest if the consideration that the lessee is to pay the lessor
454 for the right to possession and use of the goods is an obligation
455 for the term of the lease and is not subject to termination by the
456 lessee, and:

457 (1) The original term of the lease is equal to or
458 greater than the remaining economic life of the goods;

459 (2) The lessee is bound to renew the lease for the
460 remaining economic life of the goods or is bound to become the
461 owner of the goods;

462 (3) The lessee has an option to renew the lease for the
463 remaining economic life of the goods for no additional
464 consideration or for nominal additional consideration upon
465 compliance with the lease agreement; or

466 (4) The lessee has an option to become the owner of the
467 goods for no additional consideration or for nominal additional
468 consideration upon compliance with the lease agreement.

469 (c) A transaction in the form of a lease does not create a
470 security interest merely because:

471 (1) The present value of the consideration the lessee
472 is obligated to pay the lessor for the right to possession and use
473 of the goods is substantially equal to or is greater than the fair
474 market value of the goods at the time the lease is entered into;

475 (2) The lessee assumes risk of loss of the goods;

476 (3) The lessee agrees to pay, with respect to the
477 goods, taxes, insurance, filing, recording, or registration fees,
478 or service or maintenance costs;

479 (4) The lessee has an option to renew the lease or to
480 become the owner of the goods;

481 (5) The lessee has an option to renew the lease for a
482 fixed rent that is equal to or greater than the reasonably



483 predictable fair market rent for the use of the goods for the term
484 of the renewal at the time the option is to be performed; or

485 (6) The lessee has an option to become the owner of the
486 goods for a fixed price that is equal to or greater than the
487 reasonably predictable fair market value of the goods at the time
488 the option is to be performed.

489 (d) Additional consideration is nominal if it is less than
490 the lessee's reasonably predictable cost of performing under the
491 lease agreement if the option is not exercised. Additional
492 consideration is not nominal if:

493 (1) When the option to renew the lease is granted to
494 the lessee, the rent is stated to be the fair market rent for the
495 use of the goods for the term of the renewal determined at the
496 time the option is to be performed; or

497 (2) When the option to become the owner of the goods is
498 granted to the lessee, the price is stated to be the fair market
499 value of the goods determined at the time the option is to be
500 performed.

501 (e) The "remaining economic life of the goods" and
502 "reasonably predictable" fair market rent, fair market value, or
503 cost of performing under the lease agreement must be determined
504 with reference to the facts and circumstances at the time the
505 transaction is entered into.

506 **Section 75-1-204. Value.** Except as otherwise provided in
507 Articles 3, 4, and 5, a person gives value for rights if the
508 person acquires them:

509 (1) In return for a binding commitment to extend credit
510 or for the extension of immediately available credit, whether or
511 not drawn upon and whether or not a charge-back is provided for in
512 the event of difficulties in collection;

513 (2) As security for, or in total or partial
514 satisfaction of, a preexisting claim;



515 (3) By accepting delivery under a preexisting contract
516 for purchase; or

517 (4) In return for any consideration sufficient to
518 support a simple contract.

519 **Section 75-1-205. Reasonable time; seasonableness.** (a)
520 Whether a time for taking an action required by the Uniform
521 Commercial Code is reasonable depends on the nature, purpose, and
522 circumstances of the action.

523 (b) An action is taken seasonably if it is taken at or
524 within the time agreed or, if no time is agreed, at or within a
525 reasonable time.

526 **Section 75-1-206. Presumptions.** Whenever the Uniform
527 Commercial Code creates a "presumption" with respect to a fact, or
528 provides that a fact is "presumed," the trier of fact must find
529 the existence of the fact unless and until evidence is introduced
530 that supports a finding of its nonexistence.

531 PART 3.

532 TERRITORIAL APPLICABILITY AND GENERAL RULES.

533 **Section 75-1-301. Territorial application of the code;**
534 **parties' power to choose applicable law.** (a) Except as provided
535 in subsection (b) of this section, when a transaction bears a
536 reasonable relation to this state and also to another state or
537 nation the parties may agree that the law either of this state or
538 of such other state or nation shall govern their rights and
539 duties. Failing such agreement, the Uniform Commercial Code
540 applies to transactions bearing an appropriate relation to this
541 state. Provided, however, the law of the State of Mississippi
542 shall always govern the rights and duties of the parties in regard
543 to disclaimers of implied warranties of merchantability or
544 fitness, limitations of remedies for breaches of implied
545 warranties of merchantability or fitness, or the necessity for
546 privity of contract to maintain a civil action for breach of
547 implied warranties of merchantability or fitness notwithstanding



548 any agreement by the parties that the laws of some other state or
549 nation shall govern the rights and duties of the parties.

550 (b) Where one (1) of the following provisions of the Uniform
551 Commercial Code specifies the applicable law, that provision
552 governs and a contrary agreement is effective only to the extent
553 permitted by the law (including the conflict of laws rules) so
554 specified:

555 Rights of creditors against sold goods (Section 75-2-402).

556 Applicability of the Article on Leases (Sections 75-2A-105
557 and 75-2A-106).

558 Applicability of the Article on Bank Deposits and Collections
559 (Section 75-4-102).

560 Governing law in the Article on Funds Transfers (Section
561 75-4A-507).

562 Letters of credit (Section 75-5-116).

563 Applicability of the Article on Investment Securities
564 (Section 75-8-110).

565 Law governing perfection, the effect of perfection or
566 nonperfection, and the priority of security interests and
567 agricultural liens (Sections 75-9-301 through 75-9-307).

568 **Section 75-1-302. Variation by agreement.** (a) Except as
569 otherwise provided in subsection (b) or elsewhere in the Uniform
570 Commercial Code, the effect of provisions of the Uniform
571 Commercial Code may be varied by agreement.

572 (b) The obligations of good faith, diligence,
573 reasonableness, and care prescribed by the Uniform Commercial Code
574 may not be disclaimed by agreement. The parties, by agreement,
575 may determine the standards by which the performance of those
576 obligations is to be measured if those standards are not
577 manifestly unreasonable. Whenever the Uniform Commercial Code
578 requires an action to be taken within a reasonable time, a time
579 that is not manifestly unreasonable may be fixed by agreement.



580 (c) The presence in certain provisions of the Uniform
581 Commercial Code of the phrase "unless otherwise agreed," or words
582 of similar import, does not imply that the effect of other
583 provisions may not be varied by agreement under this section.

584 **Section 75-1-303. Course of performance, course of dealing,**
585 **and usage of trade.** (a) A "course of performance" is a sequence
586 of conduct between the parties to a particular transaction that
587 exists if:

588 (1) The agreement of the parties with respect to the
589 transaction involves repeated occasions for performance by a
590 party; and

591 (2) The other party, with knowledge of the nature of
592 the performance and opportunity for objection to it, accepts the
593 performance or acquiesces in it without objection.

594 (b) A "course of dealing" is a sequence of conduct
595 concerning previous transactions between the parties to a
596 particular transaction that is fairly to be regarded as
597 establishing a common basis of understanding for interpreting
598 their expressions and other conduct.

599 (c) A "usage of trade" is any practice or method of dealing
600 having such regularity of observance in a place, vocation, or
601 trade as to justify an expectation that it will be observed with
602 respect to the transaction in question. The existence and scope
603 of such a usage must be proved as facts. If it is established
604 that such a usage is embodied in a trade code or similar record,
605 the interpretation of the record is a question of law.

606 (d) A course of performance or course of dealing between the
607 parties or usage of trade in the vocation or trade in which they
608 are engaged or of which they are or should be aware is relevant in
609 ascertaining the meaning of the parties' agreement, may give
610 particular meaning to specific terms of the agreement, and may
611 supplement or qualify the terms of the agreement. A usage of
612 trade applicable in the place in which part of the performance



613 under the agreement is to occur may be so utilized as to that part
614 of the performance.

615 (e) Except as otherwise provided in subsection (f), the
616 express terms of an agreement and any applicable course of
617 performance, course of dealing, or usage of trade must be
618 construed whenever reasonable as consistent with each other. If
619 such a construction is unreasonable:

620 (1) Express terms prevail over course of performance,
621 course of dealing, and usage of trade;

622 (2) Course of performance prevails over course of
623 dealing and usage of trade; and

624 (3) Course of dealing prevails over usage of trade.

625 (f) Subject to Section 75-2-209, a course of performance is
626 relevant to show a waiver or modification of any term inconsistent
627 with the course of performance.

628 (g) Evidence of a relevant usage of trade offered by one (1)
629 party is not admissible unless that party has given the other
630 party notice that the court finds sufficient to prevent unfair
631 surprise to the other party.

632 **Section 75-1-304. Obligation of good faith.** Every contract
633 or duty within the Uniform Commercial Code imposes an obligation
634 of good faith in its performance and enforcement.

635 **Section 75-1-305. Remedies to be liberally administered.**

636 (a) The remedies provided by the Uniform Commercial Code must be
637 liberally administered to the end that the aggrieved party may be
638 put in as good a position as if the other party had fully
639 performed but neither consequential or special damages nor penal
640 damages may be had except as specifically provided in the Uniform
641 Commercial Code or by other rule of law.

642 (b) Any right or obligation declared by the Uniform
643 Commercial Code is enforceable by action unless the provision
644 declaring it specifies a different and limited effect.



645 **Section 75-1-306. Waiver or renunciation of claim or right**
646 **after breach.** A claim or right arising out of an alleged breach
647 may be discharged in whole or in part without consideration by
648 agreement of the aggrieved party in an authenticated record.

649 **Section 75-1-307. Prima facie evidence by third-party**
650 **documents.** A document in due form purporting to be a bill of
651 lading, policy or certificate of insurance, official weigher's or
652 inspector's certificate, consular invoice, or any other document
653 authorized or required by the contract to be issued by a third
654 party is prima facie evidence of its own authenticity and
655 genuineness and of the facts stated in the document by the third
656 party.

657 **Section 75-1-308. Performance or acceptance under**
658 **reservation of rights.** (a) A party that with explicit
659 reservation of rights performs or promises performance or assents
660 to performance in a manner demanded or offered by the other party
661 does not thereby prejudice the rights reserved. Such words as
662 "without prejudice," "under protest," or the like are sufficient.

663 (b) Subsection (a) does not apply to an accord and
664 satisfaction.

665 **Section 75-1-309. Option to accelerate at will.** A term
666 providing that one (1) party or that party's successor in interest
667 may accelerate payment or performance or require collateral or
668 additional collateral "at will" or when the party "deems itself
669 insecure," or words of similar import, means that the party has
670 power to do so only if that party in good faith believes that the
671 prospect of payment or performance is impaired. The burden of
672 establishing lack of good faith is on the party against which the
673 power has been exercised.

674 **Section 75-1-310. Subordinated obligations.** An obligation
675 may be issued as subordinated to performance of another obligation
676 of the person obligated, or a creditor may subordinate its right
677 to performance of an obligation by agreement with either the



678 person obligated or another creditor of the person obligated.
679 Subordination does not create a security interest as against
680 either the common debtor or a subordinated creditor.

681 **SECTION 4.** Section 75-2-103, Mississippi Code of 1972, is
682 amended as follows:

683 75-2-103. (1) In this chapter unless the context otherwise
684 requires:

685 (a) "Buyer" means a person that buys or contracts to
686 buy goods.

687 (b) [Reserved]

688 (c) "Receipt" of goods means taking physical possession
689 of them.

690 (d) "Seller" means a person who sells or contracts to
691 sell goods.

692 (2) Other definitions applying to this chapter or to
693 specified parts thereof, and the sections in which they appear
694 are:

695	"Acceptance"	Section 75-2-606
696	"Banker's credit"	Section 75-2-325
697	"Between merchants"	Section 75-2-104
698	"Cancellation"	Section 75-2-106(4)
699	"Commercial unit"	Section 75-2-105
700	"Confirmed credit"	Section 75-2-325
701	"Conforming to contract"	Section 75-2-106
702	"Contract for sale"	Section 75-2-106
703	"Cover"	Section 75-2-712
704	"Entrusting"	Section 75-2-403
705	"Financing agency"	Section 75-2-104
706	"Future goods"	Section 75-2-105
707	"Goods"	Section 75-2-105
708	"Identification"	Section 75-2-501
709	"Installment contract"	Section 75-2-612
710	"Letter of Credit"	Section 75-2-325



711	"Lot"	Section 75-2-105
712	"Merchant"	Section 75-2-104
713	"Overseas"	Section 75-2-323
714	"Person in position of seller"	Section 75-2-707
715	"Present sale"	Section 75-2-106
716	"Sale"	Section 75-2-106
717	"Sale on approval"	Section 75-2-326
718	"Sale or return"	Section 75-2-326
719	"Termination"	Section 75-2-106

720 (3) The following definitions in other chapters apply to
721 this chapter:

722	"Check"	Section 75-3-104
723	"Consignee"	Section 75-7-102
724	"Consignor"	Section 75-7-102
725	"Consumer goods"	Section 75-9-102
726	"Control"	Section 75-7-106
727	"Dishonor"	Section 75-3-502
728	"Draft"	Section 75-3-104

729 (4) In addition Chapter 1 contains general definitions and
730 principles of construction and interpretation applicable
731 throughout this chapter.

732 **SECTION 5.** Section 75-2-107, Mississippi Code of 1972, is
733 amended as follows:

734 75-2-107. (1) A contract for the sale of minerals or the
735 like (including oil and gas) or a structure or its materials to be
736 removed from realty is a contract for the sale of goods within
737 this chapter if they are to be severed by the seller but until
738 severance a purported present sale thereof which is not effective
739 as a transfer of an interest in land is effective only as a
740 contract to sell.

741 (2) A contract for the sale apart from the land of growing
742 crops or other things attached to realty and capable of severance
743 without material harm thereto but not described in subsection (1)



744 or of timber to be cut is a contract for the sale of goods within
745 this chapter whether the subject matter is to be severed by the
746 buyer or by the seller even though it forms part of the realty at
747 the time of contracting, and the parties can by identification
748 effect a present sale before severance.

749 (3) The provisions of this section are subject to any third
750 party rights provided by the law relating to realty records,
751 including the priority of previously recorded deeds of trust under
752 Section 89-5-5, and the contract for sale may be executed and
753 recorded as a document transferring an interest in land and shall
754 then constitute notice to third parties of the buyer's rights
755 under the contract for sale.

756 **SECTION 6.** Section 75-2-202, Mississippi Code of 1972, is
757 amended as follows:

758 75-2-202. Terms with respect to which the confirmatory
759 memoranda of the parties agree or which are otherwise set forth in
760 a writing intended by the parties as a final expression of their
761 agreement with respect to such terms as are included therein may
762 not be contradicted by evidence of any prior agreement or of a
763 contemporaneous oral agreement but may be explained or
764 supplemented:

765 (a) By course of performance, course of dealing or
766 usage of trade * * * [Section 75-1-303] * * *; and

767 (b) By evidence of consistent additional terms unless
768 the court finds the writing to have been intended also as a
769 complete and exclusive statement of the terms of the agreement.

770 **SECTION 7.** Section 75-2-315.1, Mississippi Code of 1972, is
771 amended as follows:

772 75-2-315.1. (1) Any oral or written language used by a
773 seller of consumer goods and services, which attempts to exclude
774 or modify any implied warranties of merchantability and fitness
775 for a particular purpose or to exclude or modify the consumer's
776 remedies for breach of those warranties, is unenforceable.



777 However, the seller may recover from the manufacturer any damages
778 resulting from breach of the implied warranty of merchantability
779 or fitness for a particular purpose.

780 (2) Any oral or written language used by a manufacturer of
781 consumer goods, which attempts to limit or modify a consumer's
782 remedies for breach of the manufacturer's express warranties, is
783 unenforceable.

784 (3) (a) The provisions of this section do not apply to a
785 motor vehicle:

786 (i) Required to be titled under the state law;

787 (ii) That is over six (6) model years old or that
788 has been driven more than seventy-five thousand (75,000) miles;
789 and

790 (iii) If, at the time of the sale of the motor
791 vehicle, the seller gives the purchaser notice of the
792 inapplicability of this section on the form prescribed by the
793 State Attorney General.

794 (b) (i) An exclusion or modification of an implied
795 warranty of merchantability, or any part of a warranty under this
796 subsection shall be in writing, mention merchantability, and be
797 conspicuous.

798 (ii) An exclusion or modification of the implied
799 warranty of fitness shall be in writing and conspicuous.

800 (iii) Any exclusion or modification of either
801 warranty shall be separately acknowledged by the signature of the
802 buyer.

803 (4) If a remote purchaser who is a consumer asserts a claim
804 of breach of an implied warranty of merchantability or fitness for
805 a particular purpose against an intermediate buyer under this
806 chapter, the intermediate buyer can assert a claim of breach of
807 implied warranty against its seller, regardless of any waiver or
808 disclaimer of implied warranty by the intermediate buyer in the
809 contract between the intermediate buyer and its seller and



810 regardless of the choice of law in the contract between the
811 intermediate buyer and its seller. For purposes of this
812 subsection, "intermediate buyer" means a buyer that enters into a
813 contract with the seller, and "remote purchaser" means a person
814 that buys or leases goods from an intermediate buyer or other
815 person in the normal chain of distribution.

816 Nothing in this section shall prohibit the express disclaimer
817 or express modification of any implied warranties of
818 merchantability and fitness for a particular purpose or any
819 express limitation of remedies for breach of such warranties
820 concerning computer hardware, computer software, and services
821 performed on computer hardware and computer software which are
822 sold between merchants.

823 **SECTION 8.** Section 75-2A-103, Mississippi Code of 1972, is
824 amended as follows:

825 75-2A-103. (1) In this chapter unless the context otherwise
826 requires:

827 (a) "Buyer in ordinary course of business" means a
828 person who in good faith and without knowledge that the sale to
829 him is in violation of the ownership rights or security interest
830 or leasehold interest of a third party in the goods, buys in
831 ordinary course from a person in the business of selling goods of
832 that kind but does not include a pawnbroker. "Buying" may be for
833 cash or by exchange of other property or on secured or unsecured
834 credit and includes acquiring goods or documents of title under a
835 preexisting contract for sale but does not include a transfer in
836 bulk or as security for or in total or partial satisfaction of a
837 money debt.

838 (b) "Cancellation" occurs when either party puts an end
839 to the lease contract for default by the other party.

840 (c) "Commercial unit" means such a unit of goods as by
841 commercial usage is a single whole for purposes of lease and
842 division of which materially impairs its character or value on the



843 market or in use. A commercial unit may be a single article, as a
844 machine, or a set of articles, as a suite of furniture or a line
845 of machinery, or a quantity, as a gross or carload, or any other
846 unit treated in use or in the relevant market as a single whole.

847 (d) "Conforming" goods or performance under a lease
848 contract means goods or performance that are in accordance with
849 the obligations under the lease contract.

850 (e) "Consumer lease" means a lease that a lessor
851 regularly engaged in the business of leasing or selling makes to a
852 lessee who is an individual and who takes under the lease
853 primarily for a personal, family or household purpose, if the
854 total payments to be made under the lease contract, excluding
855 payments for options to renew or buy, do not exceed Twenty-five
856 Thousand Dollars (\$25,000.00).

857 (f) "Fault" means wrongful act, omission, breach or
858 default.

859 (g) "Finance lease" means a lease with respect to
860 which:

861 (i) The lessor does not select, manufacture, or
862 supply the goods;

863 (ii) The lessor acquires the goods or the right to
864 possession and use of the goods in connection with the lease; and

865 (iii) One (1) of the following occurs:

866 (A) The lessee receives a copy of the
867 contract by which the lessor acquired the goods or the right to
868 possession and use of the goods before signing the lease contract;

869 (B) The lessee's approval of the contract by
870 which the lessor acquired the goods or the right to possession and
871 use of the goods is a condition to effectiveness of the lease
872 contract;

873 (C) The lessee, before signing the lease
874 contract, receives an accurate and complete statement designating
875 the promises and warranties, and any disclaimers of warranties,



876 limitations or modifications of remedies, or liquidated damages,
877 including those of a third party, such as the manufacturer of the
878 goods, provided to the lessor by the person supplying the goods in
879 connection with or as part of the contract by which the lessor
880 acquired the goods or the right to possession and use of the
881 goods; or

882 (D) If the lease is not a consumer lease, the
883 lessor, before the lessee signs the lease contract, informs the
884 lessee in writing (a) of the identity of the person supplying the
885 goods to the lessor, unless the lessee has selected that person
886 and directed the lessor to acquire the goods or the right to
887 possession and use of the goods from that person, (b) that the
888 lessee is entitled under this chapter to the promises and
889 warranties, including those of any third party, provided to the
890 lessor by the person supplying the goods in connection with or as
891 part of the contract by which the lessor acquired the goods or the
892 right to possession and use of the goods, and (c) that the lessee
893 may communicate with the person supplying the goods to the lessor
894 and receive an accurate and complete statement of those promises
895 and warranties, including any disclaimers and limitations of them
896 or of remedies.

897 (h) "Goods" means all things that are movable at the
898 time of identification to the lease contract, or are fixtures
899 (Section 75-2A-309), but the term does not include money,
900 documents, instruments, accounts, chattel paper, general
901 intangibles or minerals or the like, including oil and gas, before
902 extraction. The term also includes the unborn young of animals.

903 (i) "Installment lease contract" means a lease contract
904 that authorizes or requires the delivery of goods in separate lots
905 to be separately accepted, even though the lease contract contains
906 a clause "each delivery is a separate lease" or its equivalent.

907 (j) "Lease" means a transfer of the right to possession
908 and use of goods for a term in return for consideration, but a



909 sale, including a sale on approval or a sale or return, or
910 retention or creation of a security interest is not a lease.
911 Unless the context clearly indicates otherwise, the term includes
912 a sublease.

913 (k) "Lease agreement" means the bargain, with respect
914 to the lease, of the lessor and the lessee in fact as found in
915 their language or by implication from other circumstances
916 including course of dealing or usage of trade or course of
917 performance as provided in this chapter. Unless the context
918 clearly indicates otherwise, the term includes a sublease
919 agreement.

920 (l) "Lease contract" means the total legal obligation
921 that results from the lease agreement as affected by this chapter
922 and any other applicable rules of law. Unless the context clearly
923 indicates otherwise, the term includes a sublease contract.

924 (m) "Leasehold interest" means the interest of the
925 lessor or the lessee under a lease contract.

926 (n) "Lessee" means a person who acquires the right to
927 possession and use of goods under a lease. Unless the context
928 clearly indicates otherwise, the term includes a sublease.

929 (o) "Lessee in ordinary course of business" means a
930 person who in good faith and without knowledge that the lease to
931 him is in violation of the ownership rights or security interest
932 or leasehold interest of a third party in the goods leases in
933 ordinary course from a person in the business of selling or
934 leasing goods of that kind but does not include a pawnbroker.
935 "Leasing" may be for cash or by exchange of other property or on
936 secured or unsecured credit and includes acquiring goods or
937 documents of title under a preexisting lease contract but does not
938 include a transfer in bulk or as security for or in total or
939 partial satisfaction of a money debt.



940 (p) "Lessor" means a person who transfers the right to
941 possession and use of goods under a lease. Unless the context
942 clearly indicates otherwise, the term includes a sublessor.

943 (q) "Lessor's residual interest" means the lessor's
944 interest in the goods after expiration, termination or
945 cancellation of the lease contract.

946 (r) "Lien" means a charge against or interest in goods
947 to secure payment of a debt or performance of an obligation, but
948 the term does not include a security interest.

949 (s) "Lot" means a parcel or a single article that is
950 the subject matter of a separate lease or delivery, whether or not
951 it is sufficient to perform the lease contract.

952 (t) "Merchant lessee" means a lessee that is a merchant
953 with respect to goods of the kind subject to the lease.

954 (u) "Present value" means the amount as of a date
955 certain of one or more sums payable in the future, discounted to
956 the date certain. The discount is determined by the interest rate
957 specified by the parties if the rate was not manifestly
958 unreasonable at the time the transaction was entered into;
959 otherwise, the discount is determined by a commercially reasonable
960 rate that takes into account the facts and circumstances of each
961 case at the time the transaction was entered into.

962 (v) "Purchase" includes taking by sale, lease,
963 mortgage, security interest, pledge, gift or any other voluntary
964 transaction creating an interest in goods.

965 (w) "Sublease" means a lease of goods the right to
966 possession and use of which was acquired by the lessor as a lessee
967 under an existing lease.

968 (x) "Supplier" means a person from whom a lessor buys
969 or leases goods to be leased under a finance lease.

970 (y) "Supply contract" means a contract under which a
971 lessor buys or leases goods to be leased.



972 (z) "Termination" occurs when either party pursuant to
973 a power created by agreement or law puts an end to the lease
974 contract otherwise than for default.

975 (2) Other definitions applying to this chapter and the
976 sections in which they appear are:

977	"Accessions"	Section 75-2A-310(1)
978	"Construction mortgage"	Section 75-2A-309(1) (d)
979	"Encumbrance"	Section 75-2A-309(1) (e)
980	"Fixtures"	Section 75-2A-309(1) (a)
981	"Fixture filing"	Section 75-2A-309(1) (b)
982	"Purchase money lease"	Section 75-2A-309(1) (c)

983 (3) The following definitions in other chapters apply to
984 this chapter:

985	"Account"	Section 75-9-102 (a) (2)
986	"Between merchants"	Section 75-2-104(3)
987	"Buyer"	Section 75-2-103(1) (a)
988	"Chattel paper"	Section 75-9-102 (a) (11)
989	"Consumer goods"	Section 75-9-102 (a) (23)
990	"Document"	Section 75-9-102 (a) (30)
991	"Entrusting"	Section 75-2-403(3)
992	"General intangible"	Section 75-9-102 (a) (42)

993 * * *

994	"Instrument"	Section 75-9-102 (a) (47)
995	"Merchant"	Section 75-2-104(1)
996	"Mortgage"	Section 75-9-102 (a) (55)
997	"Pursuant to commitment"	Section 75-9-102 (a) (68)
998	"Receipt"	Section 75-2-103(1) (c)
999	"Sale"	Section 75-2-106(1)
1000	"Sale on approval"	Section 75-2-326
1001	"Sale or return"	Section 75-2-326
1002	"Seller"	Section 75-2-103(1) (d)



1003 (4) In addition, Chapter 1 contains general definitions and
1004 principles of construction and interpretation applicable
1005 throughout this chapter.

1006 **SECTION 9.** Section 75-2A-501, Mississippi Code of 1972, is
1007 amended as follows:

1008 75-2A-501. (1) Whether the lessor or the lessee is in
1009 default under a lease contract is determined by the lease
1010 agreement and this chapter.

1011 (2) If the lessor or the lessee is in default under the
1012 lease contract, the party seeking enforcement has rights and
1013 remedies as provided in this chapter and, except as limited by
1014 this chapter, as provided in the lease agreement.

1015 (3) If the lessor or the lessee is in default under the
1016 lease contract, the party seeking enforcement may reduce the
1017 party's claim to judgment, or otherwise enforce the lease contract
1018 by self-help or any available judicial procedure or nonjudicial
1019 procedure, including administrative proceeding, arbitration, or
1020 the like, in accordance with this chapter.

1021 (4) Except as otherwise provided in Section 75-1-305(a) or
1022 this chapter or the lease agreement, the rights and remedies
1023 referred to in subsections (2) and (3) are cumulative.

1024 (5) If the lease agreement covers both real property and
1025 goods, the party seeking enforcement may proceed under this part
1026 as to the goods, or under other applicable law as to both the real
1027 property and the goods in accordance with that party's rights and
1028 remedies in respect of the real property, in which case this part
1029 does not apply.

1030 **SECTION 10.** Section 75-2A-518, Mississippi Code of 1972, is
1031 amended as follows:

1032 75-2A-518. (1) After a default by a lessor under the lease
1033 contract of the type described in Section 75-2A-508(1), or, if
1034 agreed, after other default by the lessor, the lessee may cover by



1035 making any purchase or lease of or contract to purchase or lease
1036 goods in substitution for those due from the lessor.

1037 (2) Except as otherwise provided with respect to damages
1038 liquidated in the lease agreement (Section 75-2A-504) or otherwise
1039 determined pursuant to agreement of the parties (Sections 75-1-302
1040 and 75-2A-503), if a lessee's cover is by a lease agreement
1041 substantially similar to the original lease agreement and the new
1042 lease agreement is made in good faith and in a commercially
1043 reasonable manner, the lessee may recover from the lessor as
1044 damages (i) the present value, as of the date of the commencement
1045 of the term of the new lease agreement, of the rent under the new
1046 lease agreement applicable to that period of the new lease term
1047 which is comparable to the then remaining term of the original
1048 lease agreement minus the present value as of the same date of the
1049 total rent for the then remaining lease term of the original lease
1050 agreement, and (ii) any incidental or consequential damages, less
1051 expenses saved in consequence of the lessor's default.

1052 (3) If a lessee's cover is by lease agreement that for any
1053 reason does not qualify for treatment under subsection (2), or is
1054 by purchase or otherwise, the lessee may recover from the lessor
1055 as if the lessee had elected not to cover and Section 75-2A-519
1056 governs.

1057 **SECTION 11.** Section 75-2A-519, Mississippi Code of 1972, is
1058 amended as follows:

1059 75-2A-519. (1) Except as otherwise provided with respect to
1060 damages liquidated in the lease agreement (Section 75-2A-504) or
1061 otherwise determined pursuant to agreement of the parties
1062 (Sections 75-1-302 and 75-2A-503), if a lessee elects not to cover
1063 or a lessee elects to cover and the cover is by lease agreement
1064 that for any reason does not qualify for treatment under Section
1065 75-2A-518(2), or is by purchase or otherwise, the measure of
1066 damages for nondelivery or repudiation by the lessor or for
1067 rejection or revocation of acceptance by the lessee is the present



1068 value, as of the date of the default, of the then market rent
1069 minus the present value as of the same date of the original rent,
1070 computed for the remaining lease term of the original lease
1071 agreement, together with incidental and consequential damages,
1072 less expenses saved in consequence of the lessor's default.

1073 (2) Market rent is to be determined as of the place for
1074 tender or, in cases of rejection after arrival or revocation of
1075 acceptance, as of the place of arrival.

1076 (3) Except as otherwise agreed, if the lessee has accepted
1077 goods and given notification (Section 75-2A-516(3)), the measure
1078 of damages for nonconforming tender or delivery or other default
1079 by a lessor is the loss resulting in the ordinary course of events
1080 from the lessor's default as determined in any manner that is
1081 reasonable together with incidental and consequential damages,
1082 less expenses saved in consequence of the lessor's default.

1083 (4) Except as otherwise agreed, the measure of damages for
1084 breach of warranty is the present value at the time and place of
1085 acceptance of the difference between the value of the use of the
1086 goods accepted and the value if they had been as warranted for the
1087 lease term, unless special circumstances show proximate damages of
1088 a different amount, together with incidental and consequential
1089 damages, less expenses saved in consequence of the lessor's
1090 default or breach of warranty.

1091 **SECTION 12.** Section 75-2A-527, Mississippi Code of 1972, is
1092 amended as follows:

1093 75-2A-527. (1) After a default by a lessee under the lease
1094 contract of the type described in Section 75-2A-523(1) or
1095 75-2A-523(3)(a) or after the lessor refuses to deliver or takes
1096 possession of goods (Section 75-2A-525 or 75-2A-526), or, if
1097 agreed, after other default by a lessee, the lessor may dispose of
1098 the goods concerned or the undelivered balance thereof by lease,
1099 sale or otherwise.



1100 (2) Except as otherwise provided with respect to damages
1101 liquidated in the lease agreement (Section 75-2A-504) or otherwise
1102 determined pursuant to agreement of the parties (Sections 75-1-302
1103 and 75-2A-503), if the disposition is by lease agreement
1104 substantially similar to the original lease agreement and the new
1105 lease agreement is made in good faith and in a commercially
1106 reasonable manner, the lessor may recover from the lessee as
1107 damages (i) accrued and unpaid rent as of the date of the
1108 commencement of the term of the new lease agreement, (ii) the
1109 present value, as of the same date, of the total rent for the then
1110 remaining lease term of the original lease agreement minus the
1111 present value, as of the same date, of the rent under the new
1112 lease agreement applicable to that period of the new lease term
1113 which is comparable to the then remaining term of the original
1114 lease agreement, and (iii) any incidental damages allowed under
1115 Section 75-2A-530, less expenses saved in consequence of the
1116 lessee's default.

1117 (3) If the lessor's disposition is by lease agreement that
1118 for any reason does not qualify for treatment under subsection
1119 (2), or is by sale or otherwise, the lessor may recover from the
1120 lessee as if the lessor had elected not to dispose of the goods
1121 and Section 75-2A-528 governs.

1122 (4) A subsequent buyer or lessee who buys or leases from the
1123 lessor in good faith for value as a result of a disposition under
1124 this section takes the goods free of the original lease contract
1125 and any rights of the original lessee even though the lessor fails
1126 to comply with one or more of the requirements of this chapter.

1127 (5) The lessor is not accountable to the lessee for any
1128 profit made on any disposition. A lessee who has rightfully
1129 rejected or justifiably revoked acceptance shall account to the
1130 lessor for any excess over the amount of the lessee's security
1131 interest (Section 75-2A-508(5)).



1132 **SECTION 13.** Section 75-2A-528, Mississippi Code of 1972, is
1133 amended as follows:

1134 75-2A-528. (1) Except as otherwise provided with respect to
1135 damages liquidated in the lease agreement (Section 75-2A-504) or
1136 otherwise determined pursuant to agreement of the parties
1137 (Sections 75-1-302 and 75-2A-503), if a lessor elects to retain
1138 the goods or a lessor elects to dispose of the goods and the
1139 disposition is by lease agreement that for any reason does not
1140 qualify for treatment under Section 75-2A-527(2), or is by sale or
1141 otherwise, the lessor may recover from the lessee as damages for a
1142 default of the type described in Section 75-2A-523(1) or
1143 75-2A-523(3) (a), or, if agreed, for other default of the lessee,
1144 (i) accrued and unpaid rent as of the date of default if the
1145 lessee has never taken possession of the goods, or, if the lessee
1146 has taken possession of the goods, as of the date the lessor
1147 repossesses the goods or an earlier date on which the lessee makes
1148 a tender of the goods to the lessor, (ii) the present value as of
1149 the date determined under clause (i) of the total rent for the
1150 then remaining lease term of the original lease agreement minus
1151 the present value as of the same date of the market rent at the
1152 place where the goods are located computed for the same lease
1153 term, and (iii) any incidental damages allowed under Section
1154 75-2A-530, less expenses saved in consequence of the lessee's
1155 default.

1156 (2) If the measure of damages provided in subsection (1) is
1157 inadequate to put a lessor in as good a position as performance
1158 would have, the measure of damages is the present value of the
1159 profit, including reasonable overhead, the lessor would have made
1160 from full performance by the lessee, together with any incidental
1161 damages allowed under Section 75-2A-530, due allowance for costs
1162 reasonably incurred and due credit for payments or proceeds of
1163 disposition.



1164 **SECTION 14.** Section 75-3-103, Mississippi Code of 1972, is
1165 amended as follows:

1166 75-3-103. (a) In this chapter:

1167 (1) "Acceptor" means a drawee who has accepted a draft.

1168 (2) "Consumer account" means an account established by
1169 an individual primarily for personal, family, or household
1170 purposes.

1171 (3) "Consumer transaction" means a transaction in which
1172 an individual incurs an obligation primarily for personal, family,
1173 or household purposes.

1174 (4) "Drawee" means a person ordered in a draft to make
1175 payment.

1176 (5) "Drawer" means a person who signs or is identified
1177 in a draft as a person ordering payment.

1178 (6) [Reserved].

1179 (7) "Maker" means a person who signs or is identified
1180 in a note as a person undertaking to pay.

1181 (8) "Order" means a written instruction to pay money
1182 signed by the person giving the instruction. The instruction may
1183 be addressed to any person, including the person giving the
1184 instruction, or to one or more persons jointly or in the
1185 alternative but not in succession. An authorization to pay is not
1186 an order unless the person authorized to pay is also instructed to
1187 pay.

1188 (9) "Ordinary care" in the case of a person engaged in
1189 business means observance of reasonable commercial standards,
1190 prevailing in the area in which the person is located, with
1191 respect to the business in which the person is engaged. In the
1192 case of a bank that takes an instrument for processing for
1193 collection or payment by automated means, reasonable commercial
1194 standards do not require the bank to examine the instrument if the
1195 failure to examine does not violate the bank's prescribed
1196 procedures and the bank's procedures do not vary unreasonably from



1197 general banking usage not disapproved by this chapter or Chapter
1198 4.

1199 (10) "Party" means a party to an instrument.

1200 (11) "Principal obligor," with respect to an
1201 instrument, means the accommodated party or any other party to the
1202 instrument against whom a secondary obligor has recourse under
1203 this article.

1204 (12) "Promise" means a written undertaking to pay money
1205 signed by the person undertaking to pay. An acknowledgment of an
1206 obligation by the obligor is not a promise unless the obligor also
1207 undertakes to pay the obligation.

1208 (13) "Prove" with respect to a fact means to meet the
1209 burden of establishing the fact (Section 75-1-201(8), Mississippi
1210 Code of 1972).

1211 (14) [Reserved]

1212 (15) "Remitter" means a person who purchases an
1213 instrument from its issuer if the instrument is payable to an
1214 identified person other than the purchaser.

1215 (16) "Remotely created check" means a check that is not
1216 created by the paying bank and that does not bear a signature
1217 applied, or purported to be applied, by the person on whose
1218 account the check is drawn.

1219 (17) "Secondary obligor," with respect to an instrument,
1220 means (i) an indorser or an accommodation party, (ii) a drawer
1221 having the obligation described in Section 75-3-414(d), or (iii)
1222 any other party to the instrument that has recourse against
1223 another party to the instrument pursuant to Section 75-3-116(b).

1224 (b) Other definitions applying to this chapter and the
1225 sections in which they appear are:

1226	"Acceptance"	Section 75-3-409
1227	"Accommodated party"	Section 75-3-419
1228	"Accommodation party"	Section 75-3-419
1229	<u>"Account"</u>	<u>Section 75-4-104</u>



1230	"Alteration"	Section 75-3-407
1231	"Anomalous indorsement"	Section 75-3-205
1232	"Blank indorsement"	Section 75-3-205
1233	"Cashier's check"	Section 75-3-104
1234	"Certificate of deposit"	Section 75-3-104
1235	"Certified check"	Section 75-3-409
1236	"Check"	Section 75-3-104
1237	"Consideration"	Section 75-3-303
1238	"Draft"	Section 75-3-104
1239	"Holder in due course"	Section 75-3-302
1240	"Incomplete instrument"	Section 75-3-115
1241	"Indorsement"	Section 75-3-204
1242	"Indorser"	Section 75-3-204
1243	"Instrument"	Section 75-3-104
1244	"Issue"	Section 75-3-105
1245	"Issuer"	Section 75-3-105
1246	"Negotiable instrument"	Section 75-3-104
1247	"Negotiation"	Section 75-3-201
1248	"Note"	Section 75-3-104
1249	"Payable at a definite time"	Section 75-3-108
1250	"Payable on demand"	Section 75-3-108
1251	"Payable to bearer"	Section 75-3-109
1252	"Payable to order"	Section 75-3-109
1253	"Payment"	Section 75-3-602
1254	"Person entitled to enforce"	Section 75-3-301
1255	"Presentment"	Section 75-3-501
1256	"Reacquisition"	Section 75-3-207
1257	"Special indorsement"	Section 75-3-205
1258	"Teller's check"	Section 75-3-104
1259	"Transfer of instrument"	Section 75-3-203
1260	"Traveler's check"	Section 75-3-104
1261	"Value"	Section 75-3-303



1262 (c) The following definitions in other chapters apply to
1263 this chapter:

1264 * * *

1265	"Banking day"	Section 75-4-104
1266	"Clearinghouse"	Section 75-4-104
1267	"Collecting bank"	Section 75-4-105
1268	"Depository bank"	Section 75-4-105
1269	"Documentary draft"	Section 75-4-104
1270	"Intermediary bank"	Section 75-4-105
1271	"Item"	Section 75-4-104
1272	"Payor bank"	Section 75-4-105
1273	"Suspends payments"	Section 75-4-104

1274 (d) In addition, Chapter 1 contains general definitions and
1275 principles of construction and interpretation applicable
1276 throughout this chapter.

1277 **SECTION 15.** Section 75-3-106, Mississippi Code of 1972, is
1278 amended as follows:

1279 75-3-106. (a) Except as provided in this section, for the
1280 purposes of Section 75-3-104(a), a promise or order is
1281 unconditional unless it states (i) an express condition to
1282 payment, (ii) that the promise or order is subject to or governed
1283 by another record, or (iii) that rights or obligations with
1284 respect to the promise or order are stated in another record. A
1285 reference to another record does not of itself make the promise or
1286 order conditional.

1287 (b) A promise or order is not made conditional (i) by a
1288 reference to another record for a statement of rights with respect
1289 to collateral, prepayment, or acceleration, or (ii) because
1290 payment is limited to resort to a particular fund or source.

1291 (c) If a promise or order requires, as a condition to
1292 payment, a countersignature by a person whose specimen signature
1293 appears on the promise or order, the condition does not make the
1294 promise or order conditional for the purposes of Section



1295 75-3-104(a). If the person whose specimen signature appears on an
1296 instrument fails to countersign the instrument, the failure to
1297 countersign is a defense to the obligation of the issuer, but the
1298 failure does not prevent a transferee of the instrument from
1299 becoming a holder of the instrument.

1300 (d) If a promise or order at the time it is issued or first
1301 comes into possession of a holder contains a statement, required
1302 by applicable statutory or administrative law, to the effect that
1303 the rights of a holder or transferee are subject to claims or
1304 defenses that the issuer could assert against the original payee,
1305 the promise or order is not thereby made conditional for the
1306 purposes of Section 75-3-104(a); but if the promise or order is an
1307 instrument, there cannot be a holder in due course of the
1308 instrument.

1309 **SECTION 16.** Section 75-3-116, Mississippi Code of 1972, is
1310 amended as follows:

1311 75-3-116. (a) Except as otherwise provided in the
1312 instrument, two (2) or more persons who have the same liability on
1313 an instrument as makers, drawers, acceptors, indorsers who indorse
1314 as joint payees, or anomalous indorsers are jointly and severally
1315 liable in the capacity in which they sign.

1316 (b) Except as provided in Section 75-3-419(f) or by
1317 agreement of the affected parties, a party having joint and
1318 several liability who pays the instrument is entitled to receive
1319 from any party having the same joint and several liability
1320 contribution in accordance with applicable law.

1321 * * *

1322 **SECTION 17.** Section 75-3-119, Mississippi Code of 1972, is
1323 amended as follows:

1324 75-3-119. In an action for breach of an obligation for which
1325 a third person is answerable over pursuant to this chapter or
1326 Chapter 4, the defendant may give the third person * * * notice of
1327 the litigation in a record, and the person notified may then give



1328 similar notice to any other person who is answerable over. If the
1329 notice states (i) that the person notified may come in and defend
1330 and (ii) that failure to do so will bind the person notified in an
1331 action later brought by the person giving the notice as to any
1332 determination of fact common to the two (2) litigations, the
1333 person notified is so bound unless after seasonable receipt of the
1334 notice the person notified does come in and defend.

1335 **SECTION 18.** Section 75-3-305, Mississippi Code of 1972, is
1336 amended as follows:

1337 75-3-305. (a) Except as otherwise provided in this section,
1338 the right to enforce the obligation of a party to pay an
1339 instrument is subject to the following:

1340 (1) A defense of the obligor based on (i) infancy of
1341 the obligor to the extent it is a defense to a simple contract,
1342 (ii) duress, lack of legal capacity, or illegality of the
1343 transaction which, under other law, nullifies the obligation of
1344 the obligor, (iii) fraud that induced the obligor to sign the
1345 instrument with neither knowledge nor reasonable opportunity to
1346 learn of its character or its essential terms, or (iv) discharge
1347 of the obligor in insolvency proceedings;

1348 (2) A defense of the obligor stated in another section
1349 of this chapter or a defense of the obligor that would be
1350 available if the person entitled to enforce the instrument were
1351 enforcing a right to payment under a simple contract; and

1352 (3) A claim in recoupment of the obligor against the
1353 original payee of the instrument if the claim arose from the
1354 transaction that gave rise to the instrument; but the claim of the
1355 obligor may be asserted against a transferee of the instrument
1356 only to reduce the amount owing on the instrument at the time the
1357 action is brought.

1358 (b) The right of a holder in due course to enforce the
1359 obligation of a party to pay the instrument is subject to defenses
1360 of the obligor stated in subsection (a) (1), but is not subject to



1361 defenses of the obligor stated in subsection (a)(2) or claims in
1362 recoupment stated in subsection (a)(3) against a person other than
1363 the holder.

1364 (c) Except as stated in subsection (d), in an action to
1365 enforce the obligation of a party to pay the instrument, the
1366 obligor may not assert against the person entitled to enforce the
1367 instrument a defense, claim in recoupment, or claim to the
1368 instrument (Section 75-3-306) of another person, but the other
1369 person's claim to the instrument may be asserted by the obligor if
1370 the other person is joined in the action and personally asserts
1371 the claim against the person entitled to enforce the instrument.
1372 An obligor is not obliged to pay the instrument if the person
1373 seeking enforcement of the instrument does not have rights of a
1374 holder in due course and the obligor proves that the instrument is
1375 a lost or stolen instrument.

1376 (d) In an action to enforce the obligation of an
1377 accommodation party to pay an instrument, the accommodation party
1378 may assert against the person entitled to enforce the instrument
1379 any defense or claim in recoupment under subsection (a) that the
1380 accommodated party could assert against the person entitled to
1381 enforce the instrument, except the defenses of discharge in
1382 insolvency proceedings, infancy, and lack of legal capacity.

1383 (e) In a consumer transaction, if law other than this
1384 chapter requires that an instrument include a statement to the
1385 effect that the rights of a holder or transferee are subject to a
1386 claim or defense that the issuer could assert against the original
1387 payee, and the instrument does not include such a statement:

1388 (1) The instrument has the same effect as if the
1389 instrument included such a statement;

1390 (2) The issuer may assert against the holder or
1391 transferee all claims and defenses that would have been available
1392 if the instrument included such a statement; and



1393 (3) The extent to which claims may be asserted against
1394 the holder or transferee is determined as if the instrument
1395 included such a statement.

1396 (f) This section is subject to law other than this chapter
1397 that establishes a different rule for consumer transactions.

1398 **SECTION 19.** Section 75-3-309, Mississippi Code of 1972, is
1399 amended as follows:

1400 75-3-309. (a) A person not in possession of an instrument
1401 is entitled to enforce the instrument if:

1402 (1) The person seeking to enforce the instrument:

1403 (i) * * * Was entitled to enforce the instrument
1404 when loss of possession occurred; or

1405 (ii) Has directly or indirectly acquired ownership
1406 of the instrument from a person who was entitled to enforce the
1407 instrument when loss of possession occurred;

1408 (2) The loss of possession was not the result of a
1409 transfer by the person or a lawful seizure; and

1410 (3) The person cannot reasonably obtain possession of
1411 the instrument because the instrument was destroyed, its
1412 whereabouts cannot be determined, or it is in the wrongful
1413 possession of an unknown person or a person that cannot be found
1414 or is not amenable to service of process.

1415 (b) A person seeking enforcement of an instrument under
1416 subsection (a) must prove the terms of the instrument and the
1417 person's right to enforce the instrument. If that proof is made,
1418 Section 75-3-308 applies to the case as if the person seeking
1419 enforcement had produced the instrument. The court may not enter
1420 judgment in favor of the person seeking enforcement unless it
1421 finds that the person required to pay the instrument is adequately
1422 protected against loss that might occur by reason of a claim by
1423 another person to enforce the instrument. Adequate protection may
1424 be provided by any reasonable means.



1425 **SECTION 20.** Section 75-3-312, Mississippi Code of 1972, is
1426 amended as follows:

1427 75-3-312. (a) In this section:

1428 (1) "Check" means a cashier's check, teller's check, or
1429 certified check.

1430 (2) "Claimant" means a person who claims the right to
1431 receive the amount of a cashier's check, teller's check, or
1432 certified check that was lost, destroyed, or stolen.

1433 (3) "Declaration of loss" means a * * * statement, made
1434 in a record under penalty of perjury, to the effect that (i) the
1435 declarer lost possession of a check, (ii) the declarer is the
1436 drawer or payee of the check, in the case of a certified check, or
1437 the remitter or payee of the check, in the case of a cashier's
1438 check or teller's check, (iii) the loss of possession was not the
1439 result of a transfer by the declarer or a lawful seizure, and (iv)
1440 the declarer cannot reasonably obtain possession of the check
1441 because the check was destroyed, its whereabouts cannot be
1442 determined, or it is in the wrongful possession of an unknown
1443 person or a person that cannot be found or is not amenable to
1444 service of process.

1445 (4) "Obligated bank" means the issuer of a cashier's
1446 check or teller's check or the acceptor of a certified check.

1447 (b) A claimant may assert a claim to the amount of a check
1448 by a communication to the obligated bank describing the check with
1449 reasonable certainty and requesting payment of the amount of the
1450 check, if (i) the claimant is the drawer or payee of a certified
1451 check or the remitter or payee of a cashier's check or teller's
1452 check, (ii) the communication contains or is accompanied by a
1453 declaration of loss of the claimant with respect to the check,
1454 (iii) the communication is received at a time and in a manner
1455 affording the bank a reasonable time to act on it before the check
1456 is paid, and (iv) the claimant provides reasonable identification
1457 if requested by the obligated bank. Delivery of a declaration of



1458 loss is a warranty of the truth of the statements made in the
1459 declaration. If a claim is asserted in compliance with this
1460 subsection, the following rules apply:

1461 (1) The claim becomes enforceable at the later of (i)
1462 the time the claim is asserted, or (ii) the ninetieth day
1463 following the date of the check, in the case of a cashier's check
1464 or teller's check, or the ninetieth day following the date of
1465 acceptance, in the case of a certified check.

1466 (2) Until the claim becomes enforceable, it has no
1467 legal effect and the obligated bank may pay the check or, in the
1468 case of a teller's check, may permit the drawee to pay the check.
1469 Payment to a person entitled to enforce the check discharges all
1470 liability of the obligated bank with respect to the check.

1471 (3) If the claim becomes enforceable before the check
1472 is presented for payment, the obligated bank is not obliged to pay
1473 the check.

1474 (4) When the claim becomes enforceable, the obligated
1475 bank becomes obliged to pay the amount of the check to the
1476 claimant if payment of the check has not been made to a person
1477 entitled to enforce the check. Subject to Section 75-4-302(a)(1),
1478 payment to the claimant discharges all liability of the obligated
1479 bank with respect to the check.

1480 (c) If the obligated bank pays the amount of a check to a
1481 claimant under subsection (b)(4) and the check is presented for
1482 payment by a person having rights of a holder in due course, the
1483 claimant is obliged to (i) refund the payment to the obligated
1484 bank if the check is paid, or (ii) pay the amount of the check to
1485 the person having rights of a holder in due course if the check is
1486 dishonored.

1487 (d) If a claimant has the right to assert a claim under
1488 subsection (b) and is also a person entitled to enforce a
1489 cashier's check, teller's check, or certified check which is lost,



1490 destroyed, or stolen, the claimant may assert rights with respect
1491 to the check either under this section or Section 75-3-309.

1492 **SECTION 21.** Section 75-3-415, Mississippi Code of 1972, is
1493 amended as follows:

1494 75-3-415. (a) Subject to subsections (b), (c), and (d) and
1495 to Section 75-3-419(d), if an instrument is dishonored, an
1496 indorser is obliged to pay the amount due on the instrument (i)
1497 according to the terms of the instrument at the time it was
1498 indorsed, or (ii) if the indorser indorsed an incomplete
1499 instrument, according to its terms when completed, to the extent
1500 stated in Sections 75-3-115 and 75-3-407. The obligation of the
1501 indorser is owed to a person entitled to enforce the instrument or
1502 to a subsequent indorser who paid the instrument under this
1503 section.

1504 (b) If an indorsement states that it is made "without
1505 recourse" or otherwise disclaims liability of the indorser, the
1506 indorser is not liable under subsection (a) to pay the instrument.

1507 (c) If notice of dishonor of an instrument is required by
1508 Section 75-3-503 and notice of dishonor complying with that
1509 section is not given to an indorser, the liability of the indorser
1510 under subsection (a) is discharged.

1511 (d) If a draft is accepted by a bank after an indorsement is
1512 made, the liability of the indorser under subsection (a) is
1513 discharged.

1514 * * *

1515 **SECTION 22.** Section 75-3-416, Mississippi Code of 1972, is
1516 amended as follows:

1517 75-3-416. (a) A person who transfers an instrument for
1518 consideration warrants to the transferee and, if the transfer is
1519 by indorsement, to any subsequent transferee that:

1520 (1) The warrantor is a person entitled to enforce the
1521 instrument;



1522 (2) All signatures on the instrument are authentic and
1523 authorized;

1524 (3) The instrument has not been altered;

1525 (4) The instrument is not subject to a defense or claim
1526 in recoupment of any party which can be asserted against the
1527 warrantor; * * *

1528 (5) The warrantor has no knowledge of any insolvency
1529 proceeding commenced with respect to the maker or acceptor or, in
1530 the case of an unaccepted draft, the drawer; and

1531 (6) With respect to a remotely created check, that the
1532 person on whose account the remotely created check is drawn
1533 authorized the issuance of the check in the amount stated on the
1534 check and to the payee stated on the check.

1535 (b) A person to whom the warranties under subsection (a) are
1536 made and who took the instrument in good faith may recover from
1537 the warrantor as damages for breach of warranty an amount equal to
1538 the loss suffered as a result of the breach, but not more than the
1539 amount of the instrument plus expenses and loss of interest
1540 incurred as a result of the breach.

1541 (c) The warranties stated in subsection (a) cannot be
1542 disclaimed with respect to checks. Unless notice of a claim for
1543 breach of warranty is given to the warrantor within thirty (30)
1544 days after the claimant has reason to know of the breach and the
1545 identity of the warrantor, the liability of the warrantor under
1546 subsection (b) is discharged to the extent of any loss caused by
1547 the delay in giving notice of the claim.

1548 (d) A cause of action for breach of warranty under this
1549 section accrues when the claimant has reason to know of the
1550 breach.

1551 **SECTION 23.** Section 75-3-417, Mississippi Code of 1972, is
1552 amended as follows:

1553 75-3-417. (a) If an unaccepted draft is presented to the
1554 drawee for payment or acceptance and the drawee pays or accepts



1555 the draft, (i) the person obtaining payment or acceptance, at the
1556 time of presentment, and (ii) a previous transferor of the draft,
1557 at the time of transfer, warrant to the drawee making payment or
1558 accepting the draft in good faith that:

1559 (1) The warrantor is, or was, at the time the warrantor
1560 transferred the draft, a person entitled to enforce the draft or
1561 authorized to obtain payment or acceptance of the draft on behalf
1562 of a person entitled to enforce the draft;

1563 (2) The draft has not been altered; * * *

1564 (3) The warrantor has no knowledge that the signature
1565 of the drawer of the draft is unauthorized; and

1566 (4) With respect to a remotely created check, that the
1567 person on whose account the remotely created check is drawn
1568 authorized the issuance of the check in the amount stated on the
1569 check and to the payee stated on the check.

1570 (b) A drawee making payment may recover from any warrantor
1571 damages for breach of warranty equal to the amount paid by the
1572 drawee less the amount the drawee received or is entitled to
1573 receive from the drawer because of the payment. In addition, the
1574 drawee is entitled to compensation for expenses and loss of
1575 interest resulting from the breach. The right of the drawee to
1576 recover damages under this subsection is not affected by any
1577 failure of the drawee to exercise ordinary care in making payment.
1578 If the drawee accepts the draft, breach of warranty is a defense
1579 to the obligation of the acceptor. If the acceptor makes payment
1580 with respect to the draft, the acceptor is entitled to recover
1581 from any warrantor for breach of warranty the amounts stated in
1582 this subsection.

1583 (c) If a drawee asserts a claim for breach of warranty under
1584 subsection (a) based on an unauthorized indorsement of the draft
1585 or an alteration of the draft, the warrantor may defend by proving
1586 that the indorsement is effective under Section 75-3-404 or
1587 75-3-405 or the drawer is precluded under Section 75-3-406 or



1588 75-4-406 from asserting against the drawee the unauthorized
1589 indorsement or alteration.

1590 (d) If (i) a dishonored draft is presented for payment to
1591 the drawer or an indorser or (ii) any other instrument is
1592 presented for payment to a party obliged to pay the instrument,
1593 and (iii) payment is received, the following rules apply:

1594 (1) The person obtaining payment and a prior transferor
1595 of the instrument warrant to the person making payment in good
1596 faith that the warrantor is, or was, at the time the warrantor
1597 transferred the instrument, a person entitled to enforce the
1598 instrument or authorized to obtain payment on behalf of a person
1599 entitled to enforce the instrument.

1600 (2) The person making payment may recover from any
1601 warrantor for breach of warranty an amount equal to the amount
1602 paid plus expenses and loss of interest resulting from the breach.

1603 (e) The warranties stated in subsections (a) and (d) cannot
1604 be disclaimed with respect to checks. Unless notice of a claim
1605 for breach of warranty is given to the warrantor within thirty
1606 (30) days after the claimant has reason to know of the breach and
1607 the identity of the warrantor, the liability of the warrantor
1608 under subsection (b) or (d) is discharged to the extent of any
1609 loss caused by the delay in giving notice of the claim.

1610 (f) A cause of action for breach of warranty under this
1611 section accrues when the claimant has reason to know of the
1612 breach.

1613 **SECTION 24.** Section 75-3-419, Mississippi Code of 1972, is
1614 amended as follows:

1615 75-3-419. (a) If an instrument is issued for value given
1616 for the benefit of a party to the instrument ("accommodated
1617 party") and another party to the instrument ("accommodation
1618 party") signs the instrument for the purpose of incurring
1619 liability on the instrument without being a direct beneficiary of



1620 the value given for the instrument, the instrument is signed by
1621 the accommodation party "for accommodation."

1622 (b) An accommodation party may sign the instrument as maker,
1623 drawer, acceptor, or indorser and, subject to subsection (d), is
1624 obliged to pay the instrument in the capacity in which the
1625 accommodation party signs. The obligation of an accommodation
1626 party may be enforced notwithstanding any statute of frauds and
1627 whether or not the accommodation party receives consideration for
1628 the accommodation.

1629 (c) A person signing an instrument is presumed to be an
1630 accommodation party and there is notice that the instrument is
1631 signed for accommodation if the signature is an anomalous
1632 indorsement or is accompanied by words indicating that the signer
1633 is acting as surety or guarantor with respect to the obligation of
1634 another party to the instrument. Except as provided in Section
1635 75-3-605, the obligation of an accommodation party to pay the
1636 instrument is not affected by the fact that the person enforcing
1637 the obligation had notice when the instrument was taken by that
1638 person that the accommodation party signed the instrument for
1639 accommodation.

1640 (d) If the signature of a party to an instrument is
1641 accompanied by words indicating unambiguously that the party is
1642 guaranteeing collection rather than payment of the obligation of
1643 another party to the instrument, the signer is obliged to pay the
1644 amount due on the instrument to a person entitled to enforce the
1645 instrument only if (i) execution of judgment against the other
1646 party has been returned unsatisfied, (ii) the other party is
1647 insolvent or in an insolvency proceeding, (iii) the other party
1648 cannot be served with process, or (iv) it is otherwise apparent
1649 that payment cannot be obtained from the other party.

1650 (e) If the signature of a party to an instrument is
1651 accompanied by words indicating that the party guarantees payment
1652 or the signer signs the instrument as an accommodation party in



1653 some other manner that does not unambiguously indicate an
1654 intention to guarantee collection rather than payment, the signer
1655 is obliged to pay the amount due on the instrument to a person
1656 entitled to enforce the instrument in the same circumstances as
1657 the accommodated party would be obliged, without prior resort to
1658 the accommodated party by the person entitled to enforce the
1659 instrument.

1660 (f) An accommodation party who pays the instrument is
1661 entitled to reimbursement from the accommodated party and is
1662 entitled to enforce the instrument against the accommodated party.
1663 In proper circumstances, an accommodation party may obtain relief
1664 that requires the accommodated party to perform its obligations on
1665 the instrument. An accommodated party who pays the instrument has
1666 no right of recourse against, and is not entitled to contribution
1667 from, an accommodation party.

1668 **SECTION 25.** Section 75-3-602, Mississippi Code of 1972, is
1669 amended as follows:

1670 75-3-602. (a) Subject to subsection (e), an instrument is
1671 paid to the extent payment is made * * * by or on behalf of a
1672 party obliged to pay the instrument, and * * * to a person
1673 entitled to enforce the instrument. * * *

1674 (b) Subject to subsection (e), a note is paid to the extent
1675 payment is made by or on behalf of a party obliged to pay the note
1676 to a person that formerly was entitled to enforce the note only if
1677 at the time of the payment the party obliged to pay has not
1678 received adequate notification that the note has been transferred
1679 and that payment is to be made to the transferee. A notification
1680 is adequate only if it is signed by the transferor or the
1681 transferee; reasonably identifies the transferred note; and
1682 provides an address at which payments subsequently are to be made.
1683 Upon request, a transferee shall seasonably furnish reasonable
1684 proof that the note has been transferred. Unless the transferee
1685 complies with the request, a payment to the person that formerly



1686 was entitled to enforce the note is effective for purposes of
1687 subsection (c) even if the party obliged to pay the note has
1688 received a notification under this subsection.

1689 (c) Subject to subsection (e), to the extent of a payment
1690 under subsections (a) and (b), the obligation of the party obliged
1691 to pay the instrument is discharged even though payment is made
1692 with knowledge of a claim to the instrument under Section 75-3-306
1693 by another person.

1694 (d) Subject to subsection (e), a transferee, or any party
1695 that has acquired rights in the instrument directly or indirectly
1696 from a transferee, including any such party that has rights as a
1697 holder in due course, is deemed to have notice of any payment that
1698 is made under subsection (b) after the date that the note is
1699 transferred to the transferee but before the party obliged to pay
1700 the note receives adequate notification of the transfer.

1701 (e) The obligation of a party to pay the instrument is not
1702 discharged under subsections (a) through (d) if:

1703 (1) A claim to the instrument under Section 75-3-306 is
1704 enforceable against the party receiving payment and (i) payment is
1705 made with knowledge by the payor that payment is prohibited by
1706 injunction or similar process of a court of competent
1707 jurisdiction, or (ii) in the case of an instrument other than a
1708 cashier's check, teller's check, or certified check, the party
1709 making payment accepted, from the person having a claim to the
1710 instrument, indemnity against loss resulting from refusal to pay
1711 the person entitled to enforce the instrument; or

1712 (2) The person making payment knows that the instrument
1713 is a stolen instrument and pays a person it knows is in wrongful
1714 possession of the instrument.

1715 (f) As used in this section, "signed," with respect to a
1716 record that is not a writing, includes the attachment to or
1717 logical association with the record of an electronic symbol,



1718 sound, or process with the present intent to adopt or accept the
1719 record.

1720 **SECTION 26.** Section 75-3-604, Mississippi Code of 1972, is
1721 amended as follows:

1722 75-3-604. (a) A person entitled to enforce an instrument,
1723 with or without consideration, may discharge the obligation of a
1724 party to pay the instrument (i) by an intentional voluntary act,
1725 such as surrender of the instrument to the party, destruction,
1726 mutilation, or cancellation of the instrument, cancellation or
1727 striking out of the party's signature, or the addition of words to
1728 the instrument indicating discharge, or (ii) by agreeing not to
1729 sue or otherwise renouncing rights against the party by a signed
1730 record.

1731 (b) Cancellation or striking out of an indorsement pursuant
1732 to subsection (a) does not affect the status and rights of a party
1733 derived from the indorsement.

1734 (c) In this section, "signed," with respect to a record that
1735 is not a writing, includes the attachment to or logical
1736 association with the record of an electronic symbol, sound, or
1737 process with the present intent to adopt or accept the record.

1738 **SECTION 27.** Section 75-3-605, Mississippi Code of 1972, is
1739 amended as follows:

1740 75-3-605. **Discharge of secondary obligors.** (a) If a person
1741 entitled to enforce an instrument releases the obligation of a
1742 principal obligor in whole or in part, and another party to the
1743 instrument is a secondary obligor with respect to the obligation
1744 of that principal obligor, the following rules apply:

1745 (1) Any obligations of the principal obligor to the
1746 secondary obligor with respect to any previous payment by the
1747 secondary obligor are not affected. Unless the terms of the
1748 release preserve the secondary obligor's recourse, the principal
1749 obligor is discharged, to the extent of the release, from any
1750 other duties to the secondary obligor under this article.



1751 (2) Unless the terms of the release provide that the
1752 person entitled to enforce the instrument retains the right to
1753 enforce the instrument against the secondary obligor, the
1754 secondary obligor is discharged to the same extent as the
1755 principal obligor from any unperformed portion of its obligation
1756 on the instrument. If the instrument is a check and the
1757 obligation of the secondary obligor is based on an indorsement of
1758 the check, the secondary obligor is discharged without regard to
1759 the language or circumstances of the discharge or other release.

1760 (3) If the secondary obligor is not discharged under
1761 paragraph (2), the secondary obligor is discharged to the extent
1762 of the value of the consideration for the release, and to the
1763 extent that the release would otherwise cause the secondary
1764 obligor a loss.

1765 (b) If a person entitled to enforce an instrument grants a
1766 principal obligor an extension of the time at which one or more
1767 payments are due on the instrument and another party to the
1768 instrument is a secondary obligor with respect to the obligation
1769 of that principal obligor, the following rules apply:

1770 (1) Any obligations of the principal obligor to the
1771 secondary obligor with respect to any previous payment by the
1772 secondary obligor are not affected. Unless the terms of the
1773 extension preserve the secondary obligor's recourse, the extension
1774 correspondingly extends the time for performance of any other
1775 duties owed to the secondary obligor by the principal obligor
1776 under this article.

1777 (2) The secondary obligor is discharged to the extent
1778 that the extension would otherwise cause the secondary obligor a
1779 loss.

1780 (3) To the extent that the secondary obligor is not
1781 discharged under paragraph (2), the secondary obligor may perform
1782 its obligations to a person entitled to enforce the instrument as
1783 if the time for payment had not been extended or, unless the terms



1784 of the extension provide that the person entitled to enforce the
1785 instrument retains the right to enforce the instrument against the
1786 secondary obligor as if the time for payment had not been
1787 extended, treat the time for performance of its obligations as
1788 having been extended correspondingly.

1789 (c) If a person entitled to enforce an instrument agrees,
1790 with or without consideration, to a modification of the obligation
1791 of a principal obligor other than a complete or partial release or
1792 an extension of the due date and another party to the instrument
1793 is a secondary obligor with respect to the obligation of that
1794 principal obligor, the following rules apply:

1795 (1) Any obligations of the principal obligor to the
1796 secondary obligor with respect to any previous payment by the
1797 secondary obligor are not affected. The modification
1798 correspondingly modifies any other duties owed to the secondary
1799 obligor by the principal obligor under this article.

1800 (2) The secondary obligor is discharged from any
1801 unperformed portion of its obligation to the extent that the
1802 modification would otherwise cause the secondary obligor a loss.

1803 (3) To the extent that the secondary obligor is not
1804 discharged under paragraph (2), the secondary obligor may satisfy
1805 its obligation on the instrument as if the modification had not
1806 occurred, or treat its obligation on the instrument as having been
1807 modified correspondingly.

1808 (d) If the obligation of a principal obligor is secured by
1809 an interest in collateral, another party to the instrument is a
1810 secondary obligor with respect to that obligation, and a person
1811 entitled to enforce the instrument impairs the value of the
1812 interest in collateral, the obligation of the secondary obligor is
1813 discharged to the extent of the impairment. The value of an
1814 interest in collateral is impaired to the extent the value of the
1815 interest is reduced to an amount less than the amount of the
1816 recourse of the secondary obligor, or the reduction in value of



1817 the interest causes an increase in the amount by which the amount
1818 of the recourse exceeds the value of the interest. For purposes
1819 of this subsection, impairing the value of an interest in
1820 collateral includes failure to obtain or maintain perfection or
1821 recordation of the interest in collateral, release of collateral
1822 without substitution of collateral of equal value or equivalent
1823 reduction of the underlying obligation, failure to perform a duty
1824 to preserve the value of collateral owed, under Article 9 or other
1825 law, to a debtor or other person secondarily liable, and failure
1826 to comply with applicable law in disposing of or otherwise
1827 enforcing the interest in collateral.

1828 (e) A secondary obligor is not discharged under subsection
1829 (a) (3), (b), (c), or (d) unless the person entitled to enforce the
1830 instrument knows that the person is a secondary obligor or has
1831 notice under Section 75-3-419(c) that the instrument was signed
1832 for accommodation.

1833 (f) A secondary obligor is not discharged under this section
1834 if the secondary obligor consents to the event or conduct that is
1835 the basis of the discharge, or the instrument or a separate
1836 agreement of the party provides for waiver of discharge under this
1837 section specifically or by general language indicating that
1838 parties waive defenses based on suretyship or impairment of
1839 collateral. Unless the circumstances indicate otherwise, consent
1840 by the principal obligor to an act that would lead to a discharge
1841 under this section constitutes consent to that act by the
1842 secondary obligor if the secondary obligor controls the principal
1843 obligor or deals with the person entitled to enforce the
1844 instrument on behalf of the principal obligor.

1845 (g) A release or extension preserves a secondary obligor's
1846 recourse if the terms of the release or extension provide that:

1847 (1) The person entitled to enforce the instrument
1848 retains the right to enforce the instrument against the secondary
1849 obligor; and



1850 (2) The recourse of the secondary obligor continues as
1851 if the release or extension had not been granted.

1852 (h) Except as otherwise provided in subsection (i), a
1853 secondary obligor asserting discharge under this section has the
1854 burden of persuasion both with respect to the occurrence of the
1855 acts alleged to harm the secondary obligor and loss or prejudice
1856 caused by those acts.

1857 (i) If the secondary obligor demonstrates prejudice caused
1858 by an impairment of its recourse, and the circumstances of the
1859 case indicate that the amount of loss is not reasonably
1860 susceptible of calculation or requires proof of facts that are not
1861 ascertainable, it is presumed that the act impairing recourse
1862 caused a loss or impairment equal to the liability of the
1863 secondary obligor on the instrument. In that event, the burden of
1864 persuasion as to any lesser amount of the loss is on the person
1865 entitled to enforce the instrument.

1866 **SECTION 28.** Section 75-4-104, Mississippi Code of 1972, is
1867 amended as follows:

1868 75-4-104. (a) In this chapter, unless the context otherwise
1869 requires:

1870 (1) "Account" means any deposit or credit account with
1871 a bank, including a demand, time, savings, passbook, share draft,
1872 or like account, other than an account evidenced by a certificate
1873 of deposit.

1874 (2) "Afternoon" means the period of a day between noon
1875 and midnight.

1876 (3) "Banking day" means the part of a day on which a
1877 bank is open to the public for carrying on substantially all of
1878 its banking functions.

1879 (4) "Clearinghouse" means an association of banks or
1880 other payors regularly clearing items.



1881 (5) "Customer" means a person having an account with a
1882 bank or for whom a bank has agreed to collect items, including a
1883 bank that maintains an account at another bank.

1884 (6) "Documentary draft" means a draft to be presented
1885 for acceptance or payment if specified documents, certificated
1886 securities (Section 75-8-102) or instructions for uncertificated
1887 securities (Section 75-8-102), or other certificates, statements,
1888 or the like are to be received by the drawee or other payor before
1889 acceptance or payment of the draft.

1890 (7) "Draft" means a draft as defined in Section
1891 75-3-104 or an item, other than an instrument, that is an order.

1892 (8) "Drawee" means a person ordered in a draft to make
1893 payment.

1894 (9) "Item" means an instrument or a promise or order to
1895 pay money handled by a bank for collection or payment. The term
1896 does not include a payment order governed by Chapter 4A or a
1897 credit or debit card slip.

1898 (10) "Midnight deadline" with respect to a bank is
1899 midnight on its next banking day following the banking day on
1900 which it receives the relevant item or notice or from which the
1901 time for taking action commences to run, whichever is later.

1902 (11) "Settle" means to pay in cash, by clearinghouse
1903 settlement, in a charge or credit or by remittance, or otherwise
1904 as agreed. A settlement may be either provisional or final.

1905 (12) "Suspends payments" with respect to a bank means
1906 that it has been closed by order of the supervisory authorities,
1907 that a public officer has been appointed to take it over, or that
1908 it ceases or refuses to make payments in the ordinary course of
1909 business.

1910 (b) Other definitions applying to this chapter and the
1911 sections in which they appear are:

1912 "Agreement for electronic

1913 presentment"

Section 75-4-110



1914	* * *	
1915	"Collecting bank"	Section 75-4-105
1916	"Depository bank"	Section 75-4-105
1917	"Intermediary bank"	Section 75-4-105
1918	"Payor bank"	Section 75-4-105
1919	"Presenting bank"	Section 75-4-105
1920	"Presentment notice"	Section 75-4-110
1921	(c) The following definitions in other chapters apply to	
1922	this chapter:	
1923	"Acceptance"	Section 75-3-409
1924	"Alteration"	Section 75-3-407
1925	"Cashier's check"	Section 75-3-104
1926	"Certificate of deposit"	Section 75-3-104
1927	"Certified check"	Section 75-3-409
1928	"Check"	Section 75-3-104
1929	"Control"	Section 75-7-106
1930	* * *	
1931	"Holder in due course"	Section 75-3-302
1932	"Instrument"	Section 75-3-104
1933	"Notice of dishonor"	Section 75-3-503
1934	"Order"	Section 75-3-103
1935	"Ordinary care"	Section 75-3-103
1936	"Person entitled to enforce"	Section 75-3-301
1937	"Presentment"	Section 75-3-501
1938	"Promise"	Section 75-3-103
1939	"Prove"	Section 75-3-103
1940	<u>"Remotely created check"</u>	<u>Section 75-3-103</u>
1941	"Teller's check"	Section 75-3-104
1942	"Unauthorized signature"	Section 75-3-403
1943	(d) In addition, Chapter 1 contains general definitions and	
1944	principles of construction and interpretation applicable	
1945	throughout this chapter.	



1946 **SECTION 29.** Section 75-4-105, Mississippi Code of 1972, is
1947 amended as follows:

1948 75-4-105. **Definitions of types of banks.** In this chapter:

1949 (1) [Reserved]

1950 (2) "Depository bank" means the first bank to take an
1951 item even though it is also the payor bank, unless the item is
1952 presented for immediate payment over the counter.

1953 (3) "Payor bank" means a bank that is the drawee of a
1954 draft.

1955 (4) "Intermediary bank" means a bank to which an item
1956 is transferred in course of collection except the depository or
1957 payor bank.

1958 (5) "Collecting bank" means a bank handling an item for
1959 collection except the payor bank.

1960 (6) "Presenting bank" means a bank presenting an item
1961 except a payor bank.

1962 **SECTION 30.** Section 75-4-207, Mississippi Code of 1972, is
1963 amended as follows:

1964 75-4-207. (a) A customer or collecting bank that transfers
1965 an item and receives a settlement or other consideration warrants
1966 to the transferee and to any subsequent collecting bank that:

1967 (1) The warrantor is a person entitled to enforce the
1968 item;

1969 (2) All signatures on the item are authentic and
1970 authorized;

1971 (3) The item has not been altered;

1972 (4) The item is not subject to a defense or claim in
1973 recoupment (Section 75-3-305(a)) of any party that can be asserted
1974 against the warrantor; * * *

1975 (5) The warrantor has no knowledge of any insolvency
1976 proceeding commenced with respect to the maker or acceptor or, in
1977 the case of an unaccepted draft, the drawer; and



1978 (6) With respect to a remotely created check, that the
1979 person on whose account the remotely created check is drawn
1980 authorized the issuance of the check in the amount stated on the
1981 check and to the payee stated on the check.

1982 (b) If an item is dishonored, a customer or collecting bank
1983 transferring the item and receiving settlement or other
1984 consideration is obliged to pay the amount due on the item (i)
1985 according to the terms of the item at the time it was transferred,
1986 or (ii) if the transfer was of an incomplete item, according to
1987 its terms when completed as stated in Sections 75-3-115 and
1988 75-3-407. The obligation of a transferor is owed to the
1989 transferee and to any subsequent collecting bank that takes the
1990 item in good faith. A transferor cannot disclaim its obligation
1991 under this subsection by an indorsement stating that it is made
1992 "without recourse" or otherwise disclaiming liability.

1993 (c) A person to whom the warranties under subsection (a) are
1994 made and who took the item in good faith may recover from the
1995 warrantor as damages for breach of warranty an amount equal to the
1996 loss suffered as a result of the breach, but not more than the
1997 amount of the item plus expenses and loss of interest incurred as
1998 a result of the breach.

1999 (d) The warranties stated in subsection (a) cannot be
2000 disclaimed with respect to checks. Unless notice of a claim for
2001 breach of warranty is given to the warrantor within thirty (30)
2002 days after the claimant has reason to know of the breach and the
2003 identity of the warrantor, the warrantor is discharged to the
2004 extent of any loss caused by the delay in giving notice of the
2005 claim.

2006 (e) A cause of action for breach of warranty under this
2007 section accrues when the claimant has reason to know of the
2008 breach.

2009 **SECTION 31.** Section 75-4-208, Mississippi Code of 1972, is
2010 amended as follows:



2011 75-4-208. (a) If an unaccepted draft is presented to the
2012 drawee for payment or acceptance and the drawee pays or accepts
2013 the draft, (i) the person obtaining payment or acceptance, at the
2014 time of presentment, and (ii) a previous transferor of the draft,
2015 at the time of transfer, warrant to the drawee that pays or
2016 accepts the draft in good faith that:

2017 (1) The warrantor is, or was, at the time the warrantor
2018 transferred the draft, a person entitled to enforce the draft or
2019 authorized to obtain payment or acceptance of the draft on behalf
2020 of a person entitled to enforce the draft;

2021 (2) The draft has not been altered; * * *

2022 (3) The warrantor has no knowledge that the signature
2023 of the purported drawer of the draft is unauthorized; and

2024 (4) With respect to a remotely created check, that the
2025 person on whose account the remotely created check is drawn
2026 authorized the issuance of the check in the amount stated on the
2027 check and to the payee stated on the check.

2028 (b) A drawee making payment may recover from a warrantor
2029 damages for breach of warranty equal to the amount paid by the
2030 drawee less the amount the drawee received or is entitled to
2031 receive from the drawer because of the payment. In addition, the
2032 drawee is entitled to compensation for expenses and loss of
2033 interest resulting from the breach. The right of the drawee to
2034 recover damages under this subsection is not affected by any
2035 failure of the drawee to exercise ordinary care in making payment.
2036 If the drawee accepts the draft (i) breach of warranty is a
2037 defense to the obligation of the acceptor, and (ii) if the
2038 acceptor makes payment with respect to the draft, the acceptor is
2039 entitled to recover from a warrantor for breach of warranty the
2040 amounts stated in this subsection.

2041 (c) If a drawee asserts a claim for breach of warranty under
2042 subsection (a) based on an unauthorized indorsement of the draft
2043 or an alteration of the draft, the warrantor may defend by proving



2044 that the indorsement is effective under Section 75-3-404 or
2045 75-3-405 or the drawer is precluded under Section 75-3-406 or
2046 75-4-406 from asserting against the drawee the unauthorized
2047 indorsement or alteration.

2048 (d) If (i) a dishonored draft is presented for payment to
2049 the drawer or an indorser or (ii) any other item is presented for
2050 payment to a party obliged to pay the item, and the item is paid,
2051 the person obtaining payment and a prior transferor of the item
2052 warrant to the person making payment in good faith that the
2053 warrantor is, or was, at the time the warrantor transferred the
2054 item, a person entitled to enforce the item or authorized to
2055 obtain payment on behalf of a person entitled to enforce the item.
2056 The person making payment may recover from any warrantor for
2057 breach of warranty an amount equal to the amount paid plus
2058 expenses and loss of interest resulting from the breach.

2059 (e) The warranties stated in subsections (a) and (d) cannot
2060 be disclaimed with respect to checks. Unless notice of a claim
2061 for breach of warranty is given to the warrantor within thirty
2062 (30) days after the claimant has reason to know of the breach and
2063 the identity of the warrantor, the warrantor is discharged to the
2064 extent of any loss caused by the delay in giving notice of the
2065 claim.

2066 (f) A cause of action for breach of warranty under this
2067 section accrues when the claimant has reason to know of the
2068 breach.

2069 **SECTION 32.** Section 75-4-212, Mississippi Code of 1972, is
2070 amended as follows:

2071 75-4-212. (a) Unless otherwise instructed, a collecting
2072 bank may present an item not payable by, through, or at a bank by
2073 sending to the party to accept or pay a record providing notice
2074 that the bank holds the item for acceptance or payment. The
2075 notice must be sent in time to be received on or before the day
2076 when presentment is due and the bank must meet any requirement of



2077 the party to accept or pay under Section 75-3-501 by the close of
2078 the bank's next banking day after it knows of the requirement.

2079 (b) If presentment is made by notice and payment,
2080 acceptance, or request for compliance with a requirement under
2081 Section 75-3-501 is not received by the close of business on the
2082 day after maturity or, in the case of demand items, by the close
2083 of business on the third banking day after notice was sent, the
2084 presenting bank may treat the item as dishonored and charge any
2085 drawer or indorser by sending it notice of the facts.

2086 **SECTION 33.** Section 75-4-301, Mississippi Code of 1972, is
2087 amended as follows:

2088 75-4-301. (a) If a payor bank settles for a demand item
2089 other than a documentary draft presented otherwise than for
2090 immediate payment over the counter before midnight of the banking
2091 day of receipt, the payor bank may revoke the settlement and
2092 recover the settlement if, before it has made final payment and
2093 before its midnight deadline, it:

2094 (1) Returns the item; * * *

2095 (2) Returns an image of the item, if the party to which
2096 the return is made has entered into an agreement to accept an
2097 image as a return of the item and the image is returned in
2098 accordance with that agreement; or

2099 (3) Sends a record providing notice of dishonor or
2100 nonpayment if the item is unavailable for return.

2101 (b) If a demand item is received by a payor bank for credit
2102 on its books, it may return the item or send notice of dishonor
2103 and may revoke any credit given or recover the amount thereof
2104 withdrawn by its customer, if it acts within the time limit and in
2105 the manner specified in subsection (a).

2106 (c) Unless previous notice of dishonor has been sent, an
2107 item is dishonored at the time when for purposes of dishonor it is
2108 returned or notice sent in accordance with this section.

2109 (d) An item is returned:



2110 (1) As to an item presented through a clearinghouse,
2111 when it is delivered to the presenting or last collecting bank or
2112 to the clearinghouse or is sent or delivered in accordance with
2113 clearinghouse rules; or

2114 (2) In all other cases, when it is sent or delivered to
2115 the bank's customer or transferor or pursuant to instructions.

2116 **SECTION 34.** Section 75-4-403, Mississippi Code of 1972, is
2117 amended as follows:

2118 75-4-403. (a) A customer or any person authorized to draw
2119 on the account if there is more than one person may stop payment
2120 of any item drawn on the customer's account or close the account
2121 by an order to the bank describing the item or account with
2122 reasonable certainty received at a time and in a manner that
2123 affords the bank a reasonable opportunity to act on it before any
2124 action by the bank with respect to the item described in Section
2125 75-4-303. If the signature of more than one person is required to
2126 draw on an account, any of these persons may stop payment or close
2127 the account.

2128 (b) A stop-payment order is effective for six (6) months,
2129 but it lapses after fourteen (14) calendar days if the original
2130 order was oral and was not confirmed in writing within that
2131 period. A stop-payment order may be renewed for additional
2132 six-month periods by a record given to the bank within a period
2133 during which the stop-payment order is effective.

2134 (c) The burden of establishing the fact and amount of loss
2135 resulting from the payment of an item contrary to a stop-payment
2136 order or order to close an account is on the customer. The loss
2137 from payment of an item contrary to a stop-payment order may
2138 include damages for dishonor of subsequent items under Section
2139 75-4-402.

2140 **SECTION 35.** Section 75-4A-105, Mississippi Code of 1972, is
2141 amended as follows:

2142 75-4A-105. (a) In this chapter:



2143 (1) "Authorized account" means a deposit account of a
2144 customer in a bank designated by the customer as a source of
2145 payment of payment orders issued by the customer to the bank. If
2146 a customer does not so designate an account, any account of the
2147 customer is an authorized account if payment of a payment order
2148 from that account is not inconsistent with a restriction on the
2149 use of that account.

2150 (2) "Bank" means a person engaged in the business of
2151 banking and includes a savings bank, savings and loan association,
2152 credit union, and trust company. A branch or separate office of a
2153 bank is a separate bank for purposes of this chapter.

2154 (3) "Customer" means a person, including a bank, having
2155 an account with a bank or from whom a bank has agreed to receive
2156 payment orders.

2157 (4) "Funds-transfer business day" of a receiving bank
2158 means the part of a day during which the receiving bank is open
2159 for the receipt, processing, and transmittal of payment orders and
2160 cancellations and amendments of payment orders.

2161 (5) "Funds-transfer system" means a wire transfer
2162 network, automated clearinghouse, or other communication system of
2163 a clearinghouse or other association of banks through which a
2164 payment order by a bank may be transmitted to the bank to which
2165 the order is addressed.

2166 (6) [Reserved]

2167 (7) "Prove" with respect to a fact means to meet the
2168 burden of establishing the fact (Section 75-1-201**(b)**(8)).

2169 (b) Other definitions applying to this chapter and the
2170 sections in which they appear are:

2171	"Acceptance"	Section 75-4A-209
2172	"Beneficiary"	Section 75-4A-103
2173	"Beneficiary's bank"	Section 75-4A-103
2174	"Executed"	Section 75-4A-301
2175	"Execution date"	Section 75-4A-301



2176	"Funds transfer"	Section 75-4A-104
2177	"Funds-transfer system rule"	Section 75-4A-501
2178	"Intermediary bank"	Section 75-4A-104
2179	"Originator"	Section 75-4A-104
2180	"Originator's bank"	Section 75-4A-104
2181	"Payment by beneficiary's	
2182	bank to beneficiary"	Section 75-4A-405
2183	"Payment by originator to	
2184	beneficiary"	Section 75-4A-406
2185	"Payment by sender to	
2186	receiving bank"	Section 75-4A-403
2187	"Payment date"	Section 75-4A-401
2188	"Payment order"	Section 75-4A-103
2189	"Receiving bank"	Section 75-4A-103
2190	"Security procedure"	Section 75-4A-201
2191	"Sender"	Section 75-4A-103

2192 (c) The following definitions in Title 75, Chapter 4, apply
2193 to this chapter:

2194	"Clearinghouse"	Section 75-4-104
2195	"Item"	Section 75-4-104
2196	"Suspends payments"	Section 75-4-104

2197 (d) In addition Title 75, Chapter 1, contains general
2198 definitions and principles of construction and interpretation
2199 applicable throughout this chapter.

2200 **SECTION 36.** Section 75-4A-106, Mississippi Code of 1972, is
2201 amended as follows:

2202 75-4A-106. (a) The time of receipt of a payment order or
2203 communication cancelling or amending a payment order is determined
2204 by the rules applicable to receipt of a notice stated in Section
2205 75-1-202. A receiving bank may fix a cut-off time or times on a
2206 funds-transfer business day for the receipt and processing of
2207 payment orders and communications cancelling or amending payment
2208 orders. Different cut-off times may apply to payment orders,



2209 cancellations, or amendments, or to different categories of
2210 payment orders, cancellations, or amendments. A cut-off time may
2211 apply to senders generally or different cut-off times may apply to
2212 different senders or categories of payment orders. If a payment
2213 order or communication cancelling or amending a payment order is
2214 received after the close of a funds-transfer business day or after
2215 the appropriate cut-off time on a funds-transfer business day, the
2216 receiving bank may treat the payment order or communication as
2217 received at the opening of the next funds-transfer business day.

2218 (b) If this chapter refers to an execution date or payment
2219 date or states a day on which a receiving bank is required to take
2220 action, and the date or day does not fall on a funds-transfer
2221 business day, the next day that is a funds-transfer business day
2222 is treated as the date or day stated, unless the contrary is
2223 stated in this chapter.

2224 **SECTION 37.** Section 75-4A-204, Mississippi Code of 1972, is
2225 amended as follows:

2226 75-4A-204. (a) If a receiving bank accepts a payment order
2227 issued in the name of its customer as sender which is (i) not
2228 authorized and not effective as the order of the customer under
2229 Section 75-4A-202, or (ii) not enforceable, in whole or in part,
2230 against the customer under Section 75-4A-203, the bank shall
2231 refund any payment of the payment order received from the customer
2232 to the extent the bank is not entitled to enforce payment and
2233 shall pay interest on the refundable amount calculated from the
2234 date the bank received payment to the date of the refund.

2235 However, the customer is not entitled to interest from the bank on
2236 the amount to be refunded if the customer fails to exercise
2237 ordinary care to determine that the order was not authorized by
2238 the customer and to notify the bank of the relevant facts within a
2239 reasonable time not exceeding ninety (90) days after the date the
2240 customer received notification from the bank that the order was
2241 accepted or that the customer's account was debited with respect



2242 to the order. The bank is not entitled to any recovery from the
2243 customer on account of a failure by the customer to give
2244 notification as stated in this section.

2245 (b) Reasonable time under subsection (a) may be fixed by
2246 agreement as stated in Section 75-1-302(b), but the obligation of
2247 a receiving bank to refund payment as stated in subsection (a) may
2248 not otherwise be varied by agreement.

2249 **SECTION 38.** Section 75-5-103, Mississippi Code of 1972, is
2250 amended as follows:

2251 75-5-103. (a) This chapter applies to letters of credit and
2252 to certain rights and obligations arising out of transactions
2253 involving letters of credit.

2254 (b) The statement of a rule in this chapter does not by
2255 itself require, imply, or negate application of the same or a
2256 different rule to a situation not provided for, or to a person not
2257 specified, in this chapter.

2258 (c) With the exception of this subsection, subsections (a)
2259 and (d), Sections 75-5-102(a)(9) and (10), 75-5-106(d), and
2260 75-5-114(d), and except to the extent prohibited in Sections
2261 75-1-302 and 75-5-117(d), the effect of this chapter may be varied
2262 by agreement or by a provision stated or incorporated by reference
2263 in an undertaking. A term in an agreement or undertaking
2264 generally excusing liability or generally limiting remedies for
2265 failure to perform obligations is not sufficient to vary
2266 obligations prescribed by this chapter.

2267 (d) Rights and obligations of an issuer to a beneficiary or
2268 a nominated person under a letter of credit are independent of the
2269 existence, performance or nonperformance of a contract or
2270 arrangement out of which the letter of credit arises or which
2271 underlies it, including contracts or arrangements between the
2272 issuer and the applicant and between the applicant and the
2273 beneficiary.



2274 **SECTION 39.** Section 75-7-102, Mississippi Code of 1972, is
2275 amended as follows:

2276 75-7-102. (a) In this chapter, unless the context otherwise
2277 requires:

2278 (1) "Bailee" means a person that by a warehouse
2279 receipt, bill of lading, or other document of title acknowledges
2280 possession of goods and contracts to deliver them.

2281 (2) "Carrier" means a person that issues a bill of
2282 lading.

2283 (3) "Consignee" means a person named in a bill of
2284 lading to which or to whose order the bill promises delivery.

2285 (4) "Consignor" means a person named in a bill of
2286 lading as the person from which the goods have been received for
2287 shipment.

2288 (5) "Delivery order" means a record that contains an
2289 order to deliver goods directed to a warehouse, carrier, or other
2290 person that in the ordinary course of business issues warehouse
2291 receipts or bills of lading.

2292 (6) [Reserved]

2293 (7) "Goods" means all things that are treated as
2294 movable for the purposes of a contract for storage or
2295 transportation.

2296 (8) "Issuer" means a bailee that issues a document of
2297 title or, in the case of an unaccepted delivery order, the person
2298 that orders the possessor of goods to deliver. The term includes
2299 a person for which an agent or employee purports to act in issuing
2300 a document if the agent or employee has real or apparent authority
2301 to issue documents, even if the issuer did not receive any goods,
2302 the goods were misdescribed, or in any other respect the agent or
2303 employee violated the issuer's instructions.

2304 (9) "Person entitled under the document" means the
2305 holder, in the case of a negotiable document of title, or the
2306 person to which delivery of the goods is to be made by the terms



2307 of, or pursuant to instructions in a record under, a nonnegotiable
2308 document of title.

2309 (10) [Reserved]

2310 (11) "Sign" means, with present intent to authenticate
2311 or adopt a record:

2312 (A) To execute or adopt a tangible symbol; or

2313 (B) To attach to or logically associate with the
2314 record an electronic sound, symbol, or process.

2315 (12) "Shipper" means a person that enters into a
2316 contract of transportation with a carrier.

2317 (13) "Warehouse" means a person engaged in the business
2318 of storing goods for hire.

2319 (b) Definitions in other chapters applying to this chapter
2320 and the sections in which they appear are:

2321 (1) "Contract for sale," Section 75-2-106.

2322 (2) "Lessee in the ordinary course of business,"
2323 Section 75-2A-103.

2324 (3) "'Receipt' of goods," Section 75-2-103.

2325 (c) In addition, Chapter 1 of this title contains general
2326 definitions and principles of construction and interpretation
2327 applicable throughout this chapter.

2328 **SECTION 40.** Section 75-8-102, Mississippi Code of 1972, is
2329 amended as follows:

2330 75-8-102. (a) In this chapter:

2331 (1) "Adverse claim" means a claim that a claimant has a
2332 property interest in a financial asset and that it is a violation
2333 of the rights of the claimant for another person to hold,
2334 transfer, or deal with the financial asset.

2335 (2) "Bearer form," as applied to a certificated
2336 security, means a form in which the security is payable to the
2337 bearer of the security certificate according to its terms but not
2338 by reason of an indorsement.



2339 (3) "Broker" means a person defined as a broker or
2340 dealer under the federal securities laws, but without excluding a
2341 bank acting in that capacity.

2342 (4) "Certificated security" means a security that is
2343 represented by a certificate.

2344 (5) "Clearing corporation" means:

2345 (i) A person that is registered as a "clearing
2346 agency" under the federal securities laws;

2347 (ii) A federal reserve bank; or

2348 (iii) Any other person that provides clearance or
2349 settlement services with respect to financial assets that would
2350 require it to register as a clearing agency under the federal
2351 securities laws but for an exclusion or exemption from the
2352 registration requirement, if its activities as a clearing
2353 corporation, including promulgation of rules, are subject to
2354 regulation by a federal or state governmental authority.

2355 (6) "Communicate" means to:

2356 (i) Send a signed writing; or

2357 (ii) Transmit information by any mechanism agreed
2358 upon by the persons transmitting and receiving the information.

2359 (7) "Entitlement holder" means a person identified in
2360 the records of a securities intermediary as the person having a
2361 security entitlement against the securities intermediary. If a
2362 person acquires a security entitlement by virtue of Section
2363 75-8-501(b) (2) or (3), that person is the entitlement holder.

2364 (8) "Entitlement order" means a notification
2365 communicated to a securities intermediary directing transfer or
2366 redemption of a financial asset to which the entitlement holder
2367 has a security entitlement.

2368 (9) "Financial asset," except as otherwise provided in
2369 Section 75-8-103, means:

2370 (i) A security;



2371 (ii) An obligation of a person or a share,
2372 participation, or other interest in a person or in property or an
2373 enterprise of a person, which is, or is of a type, dealt in or
2374 traded on financial markets, or which is recognized in any area in
2375 which it is issued or dealt in as a medium for investment; or

2376 (iii) Any property that is held by a securities
2377 intermediary for another person in a securities account if the
2378 securities intermediary has expressly agreed with the other person
2379 that the property is to be treated as a financial asset under this
2380 chapter. As context requires, the term means either the interest
2381 itself or the means by which a person's claim to it is evidenced,
2382 including a certificated or uncertificated security, a security
2383 certificate, or a security entitlement.

2384 (10) [Reserved]

2385 (11) "Indorsement" means a signature that alone or
2386 accompanied by other words is made on a security certificate in
2387 registered form or on a separate document for the purpose of
2388 assigning, transferring, or redeeming the security or granting a
2389 power to assign, transfer, or redeem it.

2390 (12) "Instruction" means a notification communicated to
2391 the issuer of an uncertificated security which directs that the
2392 transfer of the security be registered or that the security be
2393 redeemed.

2394 (13) "Registered form," as applied to a certificated
2395 security, means a form in which:

2396 (i) The security certificate specifies a person
2397 entitled to the security; and

2398 (ii) A transfer of the security may be registered
2399 upon books maintained for that purpose by or on behalf of the
2400 issuer, or the security certificate so states.

2401 (14) "Securities intermediary" means:

2402 (i) A clearing corporation; or



2403 (ii) A person, including a bank or broker, that in
2404 the ordinary course of its business maintains securities accounts
2405 for others and is acting in that capacity.

2406 (15) "Security," except as otherwise provided in
2407 Section 75-8-103, means an obligation of an issuer or a share,
2408 participation, or other interest in an issuer or in property or an
2409 enterprise of an issuer:

2410 (i) Which is represented by a security certificate
2411 in bearer or registered form, or the transfer of which may be
2412 registered upon books maintained for that purpose by or on behalf
2413 of the issuer;

2414 (ii) Which is one of a class or series or by its
2415 terms is divisible into a class or series of shares,
2416 participations, interests, or obligations; and

2417 (iii) Which:

2418 (A) Is, or is of a type, dealt in or traded
2419 on securities exchanges or securities markets; or

2420 (B) Is a medium for investment and by its
2421 terms expressly provides that it is a security governed by this
2422 chapter.

2423 (16) "Security certificate" means a certificate
2424 representing a security.

2425 (17) "Security entitlement" means the rights and
2426 property interest of an entitlement holder with respect to a
2427 financial asset specified in Part 5 of this chapter.

2428 (18) "Uncertificated security" means a security that is
2429 not represented by a certificate.

2430 (b) Other definitions applying to this chapter and the
2431 sections in which they appear are:

2432	Appropriate person	Section 75-8-107
2433	Control	Section 75-8-106
2434	Delivery	Section 75-8-301
2435	Investment company security	Section 75-8-103



2436	Issuer	Section 75-8-201
2437	Overissue	Section 75-8-210
2438	Protected purchaser	Section 75-8-303
2439	Securities account	Section 75-8-501

2440 (c) In addition, Chapter 1 contains general definitions and
 2441 principles of construction and interpretation applicable
 2442 throughout this chapter.

2443 (d) The characterization of a person, business, or
 2444 transaction for purposes of this chapter does not determine the
 2445 characterization of the person, business, or transaction for
 2446 purposes of any other law, regulation, or rule.

2447 **SECTION 41.** Section 75-9-102, Mississippi Code of 1972, is
 2448 amended as follows:

2449 75-9-102. (a) In this article:

2450 (1) "Accession" means goods that are physically united
 2451 with other goods in such a manner that the identity of the
 2452 original goods is not lost.

2453 (2) "Account," except as used in "account for," means a
 2454 right to payment of a monetary obligation, whether or not earned
 2455 by performance, (i) for property that has been or is to be sold,
 2456 leased, licensed, assigned, or otherwise disposed of, (ii) for
 2457 services rendered or to be rendered, (iii) for a policy of
 2458 insurance issued or to be issued, (iv) for a secondary obligation
 2459 incurred or to be incurred, (v) for energy provided or to be
 2460 provided, (vi) for the use or hire of a vessel under a charter or
 2461 other contract, (vii) arising out of the use of a credit or charge
 2462 card or information contained on or for use with the card, or
 2463 (viii) as winnings in a lottery or other game of chance operated
 2464 or sponsored by a state, governmental unit of a state, or person
 2465 licensed or authorized to operate the game by a state or
 2466 governmental unit of a state. The term includes
 2467 health-care-insurance receivables. The term does not include (i)
 2468 rights to payment evidenced by chattel paper or an instrument,



2469 (ii) commercial tort claims, (iii) deposit accounts, (iv)
2470 investment property, (v) letter-of-credit rights or letters of
2471 credit, or (vi) rights to payment for money or funds advanced or
2472 sold, other than rights arising out of the use of a credit or
2473 charge card or information contained on or for use with the card.

2474 (3) "Account debtor" means a person obligated on an
2475 account, chattel paper, or general intangible. The term does not
2476 include persons obligated to pay a negotiable instrument, even if
2477 the instrument constitutes part of chattel paper.

2478 (4) "Accounting," except as used in "accounting for,"
2479 means a record:

2480 (A) Authenticated by a secured party;

2481 (B) Indicating the aggregate unpaid secured
2482 obligations as of a date not more than thirty-five (35) days
2483 earlier or thirty-five (35) days later than the date of the
2484 record; and

2485 (C) Identifying the components of the obligations
2486 in reasonable detail.

2487 (5) "Agricultural lien" means an interest in farm
2488 products:

2489 (A) Which secures payment or performance of an
2490 obligation for:

2491 (i) Goods or services furnished in connection
2492 with a debtor's farming operation; or

2493 (ii) Rent on real property leased by a debtor
2494 in connection with its farming operation;

2495 (B) Which is created by statute in favor of a
2496 person that:

2497 (i) In the ordinary course of its business
2498 furnished goods or services to a debtor in connection with a
2499 debtor's farming operation; or

2500 (ii) Leased real property to a debtor in
2501 connection with the debtor's farming operation; and



2502 (C) Whose effectiveness does not depend on the
2503 person's possession of the personal property.

2504 (6) "As-extracted collateral" means:

2505 (A) Oil, gas, or other minerals that are subject
2506 to a security interest that:

2507 (i) Is created by a debtor having an interest
2508 in the minerals before extraction; and

2509 (ii) Attaches to the minerals as extracted;

2510 or

2511 (B) Accounts arising out of the sale at the
2512 wellhead or minehead of oil, gas, or other minerals in which the
2513 debtor had an interest before extraction.

2514 (7) "Authenticate" means:

2515 (A) To sign; or

2516 (B) To execute or otherwise adopt a symbol, or
2517 encrypt or similarly process a record in whole or in part, with
2518 the present intent of the authenticating person to identify the
2519 person and adopt or accept a record.

2520 (8) "Bank" means an organization that is engaged in the
2521 business of banking. The term includes savings banks, savings and
2522 loan associations, credit unions, and trust companies.

2523 (9) "Cash proceeds" means proceeds that are money,
2524 checks, deposit accounts, or the like.

2525 (10) "Certificate of title" means a certificate of
2526 title with respect to which a statute provides for the security
2527 interest in question to be indicated on the certificate as a
2528 condition or result of the security interest's obtaining priority
2529 over the rights of a lien creditor with respect to the collateral.

2530 (11) "Chattel paper" means a record or records that
2531 evidence both a monetary obligation and a security interest in
2532 specific goods, a security interest in specific goods and software
2533 used in the goods, a security interest in specific goods and
2534 license of software used in the goods, a lease of specific goods,



2535 or a lease of specific goods and license of software used in the
2536 goods. In this paragraph, "monetary obligation" means a monetary
2537 obligation secured by the goods or owed under a lease of the goods
2538 and includes a monetary obligation with respect to software used
2539 in the goods. The term does not include (i) charters or other
2540 contracts involving the use or hire of a vessel or (ii) records
2541 that evidence a right to payment arising out of the use of a
2542 credit or charge card or information contained on or for use with
2543 the card. If a transaction is evidenced by records that include
2544 an instrument or series of instruments, the group of records taken
2545 together constitutes chattel paper.

2546 (12) "Collateral" means the property subject to a
2547 security interest or agricultural lien. The term includes:

2548 (A) Proceeds to which a security interest
2549 attaches;

2550 (B) Accounts, chattel paper, payment intangibles,
2551 and promissory notes that have been sold; and

2552 (C) Goods that are the subject of a consignment.

2553 (13) "Commercial tort claim" means a claim arising in
2554 tort with respect to which:

2555 (A) The claimant is an organization; or

2556 (B) The claimant is an individual and the claim:

2557 (i) Arose in the course of the claimant's
2558 business or profession; and

2559 (ii) Does not include damages arising out of
2560 personal injury to or the death of an individual.

2561 (14) "Commodity account" means an account maintained by
2562 a commodity intermediary in which a commodity contract is carried
2563 for a commodity customer.

2564 (15) "Commodity contract" means a commodity futures
2565 contract, an option on a commodity futures contract, a commodity
2566 option, or another contract if the contract or option is:



2567 (A) Traded on or subject to the rules of a board
2568 of trade that has been designated as a contract market for such a
2569 contract pursuant to federal commodities laws; or

2570 (B) Traded on a foreign commodity board of trade,
2571 exchange, or market, and is carried on the books of a commodity
2572 intermediary for a commodity customer.

2573 (16) "Commodity customer" means a person for which a
2574 commodity intermediary carries a commodity contract on its books.

2575 (17) "Commodity intermediary" means a person that:

2576 (A) Is registered as a futures commission merchant
2577 under federal commodities law; or

2578 (B) In the ordinary course of its business
2579 provides clearance or settlement services for a board of trade
2580 that has been designated as a contract market pursuant to federal
2581 commodities law.

2582 (18) "Communicate" means:

2583 (A) To send a written or other tangible record;

2584 (B) To transmit a record by any means agreed upon
2585 by the persons sending and receiving the record; or

2586 (C) In the case of transmission of a record to or
2587 by a filing office, to transmit a record by any means prescribed
2588 by filing-office rule.

2589 (19) "Consignee" means a merchant to which goods are
2590 delivered in a consignment.

2591 (20) "Consignment" means a transaction, regardless of
2592 its form, in which a person delivers goods to a merchant for the
2593 purpose of sale and:

2594 (A) The merchant:

2595 (i) Deals in goods of that kind under a name
2596 other than the name of the person making delivery;

2597 (ii) Is not an auctioneer; and

2598 (iii) Is not generally known by its creditors
2599 to be substantially engaged in selling the goods of others;



2600 (B) With respect to each delivery, the aggregate
2601 value of the goods is One Thousand Dollars (\$1,000.00) or more at
2602 the time of delivery;

2603 (C) The goods are not consumer goods immediately
2604 before delivery; and

2605 (D) The transaction does not create a security
2606 interest that secures an obligation.

2607 (21) "Consignor" means a person that delivers goods to
2608 a consignee in a consignment.

2609 (22) "Consumer debtor" means a debtor in a consumer
2610 transaction.

2611 (23) "Consumer goods" means goods that are used or
2612 bought for use primarily for personal, family, or household
2613 purposes.

2614 (24) "Consumer-goods transaction" means a consumer
2615 transaction in which:

2616 (A) An individual incurs an obligation primarily
2617 for personal, family, or household purposes; and

2618 (B) A security interest in consumer goods secures
2619 the obligation.

2620 (25) "Consumer obligor" means an obligor who is an
2621 individual and who incurred the obligation as part of a
2622 transaction entered into primarily for personal, family, or
2623 household purposes.

2624 (26) "Consumer transaction" means a transaction in
2625 which (i) an individual incurs an obligation primarily for
2626 personal, family, or household purposes, (ii) a security interest
2627 secures the obligation, and (iii) the collateral is held or
2628 acquired primarily for personal, family, or household purposes.
2629 The term includes consumer-goods transactions.

2630 (27) "Continuation statement" means an amendment of a
2631 financing statement which:



2632 (A) Identifies, by its file number, the initial
2633 financing statement to which it relates; and

2634 (B) Indicates that it is a continuation statement
2635 for, or that it is filed to continue the effectiveness of, the
2636 identified financing statement.

2637 (28) "Debtor" means:

2638 (A) A person having an interest, other than a
2639 security interest or other lien, in the collateral, whether or not
2640 the person is an obligor;

2641 (B) A seller of accounts, chattel paper, payment
2642 intangibles, or promissory notes; or

2643 (C) A consignee.

2644 (29) "Deposit account" means a demand, time, savings,
2645 passbook, or similar account maintained with a bank. The term
2646 does not include investment property or accounts evidenced by an
2647 instrument.

2648 (30) "Document" means a document of title or a receipt
2649 of the type described in Section 75-7-201(b).

2650 (31) "Electronic chattel paper" means chattel paper
2651 evidenced by a record or records consisting of information stored
2652 in an electronic medium.

2653 (32) "Encumbrance" means a right, other than an
2654 ownership interest, in real property. The term includes mortgages
2655 and other liens on real property.

2656 (33) "Equipment" means goods other than inventory, farm
2657 products, or consumer goods.

2658 (34) "Farm products" means goods, other than standing
2659 timber, with respect to which the debtor is engaged in a farming
2660 operation and which are:

2661 (A) Crops grown, growing, or to be grown,
2662 including:

2663 (i) Crops produced on trees, vines, and
2664 bushes; and



2665 (ii) Aquatic goods produced in aquacultural
2666 operations;

2667 (B) Livestock, born or unborn, including aquatic
2668 goods produced in aquacultural operations;

2669 (C) Supplies used or produced in a farming
2670 operation; or

2671 (D) Products of crops or livestock in their
2672 unmanufactured states.

2673 (35) "Farming operation" means raising, cultivating,
2674 propagating, fattening, grazing, or any other farming, livestock
2675 or aquacultural operation.

2676 (36) "File number" means the number assigned to an
2677 initial financing statement pursuant to Section 75-9-519(a).

2678 (37) "Filing office" means an office designated in
2679 Section 75-9-501 as the place to file a financing statement.

2680 (38) "Filing-office rule" means a rule adopted pursuant
2681 to Section 75-9-526.

2682 (39) "Financing statement" means a record or records
2683 composed of an initial financing statement and any filed record
2684 relating to the initial financing statement.

2685 (40) "Fixture filing" means the filing of a financing
2686 statement covering goods that are or are to become fixtures and
2687 satisfying Section 75-9-502(a) and (b). The term includes the
2688 filing of a financing statement covering goods of a transmitting
2689 utility which are or are to become fixtures.

2690 (41) "Fixtures" means goods that have become so related
2691 to particular real property that an interest in them arises under
2692 real property law.

2693 (42) "General intangible" means any personal property,
2694 including things in action, other than accounts, chattel paper,
2695 commercial tort claims, deposit accounts, documents, goods,
2696 instruments, investment property, letter-of-credit rights, letters



2697 of credit, money, and oil, gas, or other minerals before
2698 extraction. The term includes payment intangibles and software.

2699 (43) [Reserved]

2700 (44) "Goods" means all things that are movable when a
2701 security interest attaches. The term includes (i) fixtures, (ii)
2702 standing timber that is to be cut and removed under a conveyance
2703 or contract for sale, (iii) the unborn young of animals, (iv)
2704 crops grown, growing, or to be grown, even if the crops are
2705 produced on trees, vines, or bushes, (v) farm-raised fish produced
2706 in fresh water according to the usual and customary techniques of
2707 commercial agriculture, (vi) manufactured homes and (vii) marine
2708 vessels (herein defined as every type of watercraft used, or
2709 capable of being used, as a means of transportation on water)
2710 including both marine vessels under construction, including
2711 engines and all items of equipment installed or to be installed
2712 therein, whether such vessels are being constructed by the
2713 shipbuilder for his own use or for sale (said vessels under
2714 construction being classified as inventory within the meaning of
2715 Section 75-9-102(48)), and marine vessels after completion of
2716 construction so long as such vessels have not become "vessels of
2717 the United States" within the meaning of the Ship Mortgage Act of
2718 1920, 46 USCS, Section 911(4), as same is now written or may
2719 hereafter be amended (said completed vessels being classified as
2720 equipment within the meaning of Section 75-9-102(33)). The term
2721 also includes a computer program embedded in goods and any
2722 supporting information provided in connection with a transaction
2723 relating to the program if (i) the program is associated with the
2724 goods in such a manner that it customarily is considered part of
2725 the goods, or (ii) by becoming the owner of the goods, a person
2726 acquires a right to use the program in connection with the goods.
2727 The term does not include a computer program embedded in goods
2728 that consist solely of the medium in which the program is
2729 embedded. The term also does not include accounts, chattel paper,



2730 commercial tort claims, deposit accounts, documents, general
2731 intangibles, instruments, investment property, letter-of-credit
2732 rights, letters of credit, money, or oil, gas, or other minerals
2733 before extraction.

2734 (45) "Governmental unit" means a subdivision, agency,
2735 department, county, parish, municipality or other unit of the
2736 government of the United States, a state, or a foreign country.
2737 The term includes an organization having a separate corporate
2738 existence if the organization is eligible to issue debt on which
2739 interest is exempt from income taxation under the laws of the
2740 United States.

2741 (46) "Health-care-insurance receivable" means an
2742 interest in or claim under a policy of insurance which is a right
2743 to payment of a monetary obligation for health-care goods or
2744 services provided or to be provided.

2745 (47) "Instrument" means a negotiable instrument or any
2746 other writing that evidences a right to the payment of a monetary
2747 obligation, is not itself a security agreement or lease, and is of
2748 a type that in ordinary course of business is transferred by
2749 delivery with any necessary endorsement or assignment. The term
2750 does not include (i) investment property, (ii) letters of credit,
2751 or (iii) writings that evidence a right to payment arising out of
2752 the use of a credit or charge card or information contained on or
2753 for use with the card.

2754 (48) "Inventory" means goods, other than farm products,
2755 which:

2756 (A) Are leased by a person as lessor;

2757 (B) Are held by a person for sale or lease or to
2758 be furnished under a contract of service;

2759 (C) Are furnished by a person under a contract of
2760 service; or

2761 (D) Consist of raw materials, work in process or
2762 materials used or consumed in a business.



2763 (49) "Investment property" means a security, whether
2764 certificated or uncertificated, security entitlement, securities
2765 account, commodity contract, or commodity account.

2766 (50) "Jurisdiction of organization," with respect to a
2767 registered organization, means the jurisdiction under whose law
2768 the organization is organized.

2769 (51) "Letter-of-credit right" means a right to payment
2770 or performance under a letter of credit, whether or not the
2771 beneficiary has demanded or is at the time entitled to demand
2772 payment or performance. The term does not include the right of a
2773 beneficiary to demand payment or performance under a letter of
2774 credit.

2775 (52) "Lien creditor" means:

2776 (A) A creditor that has acquired a lien on the
2777 property involved by attachment, levy, or the like;

2778 (B) An assignee for benefit of creditors from the
2779 time of assignment;

2780 (C) A trustee in bankruptcy from the date of the
2781 filing of the petition; or

2782 (D) A receiver in equity from the time of
2783 appointment.

2784 (53) "Manufactured home" means a structure,
2785 transportable in one or more sections, which, in the traveling
2786 mode, is eight (8) body feet or more in width or forty (40) body
2787 feet or more in length, or, when erected on site, is three hundred
2788 twenty (320) or more square feet, and which is built on a
2789 permanent chassis and designed to be used as a dwelling with or
2790 without a permanent foundation when connected to the required
2791 utilities, and includes the plumbing, heating, air-conditioning,
2792 and electrical systems contained therein. The term includes any
2793 structure that meets all of the requirements of this paragraph
2794 except the size requirements and with respect to which the
2795 manufacturer voluntarily files a certification required by the



2796 United States Secretary of Housing and Urban Development and
2797 complies with the standards established under Title 42 of the
2798 United States Code.

2799 (54) "Manufactured-home transaction" means a secured
2800 transaction:

2801 (A) That creates a purchase-money security
2802 interest in a manufactured home, other than a manufactured home
2803 held as inventory; or

2804 (B) In which a manufactured home, other than a
2805 manufactured home held as inventory, is the primary collateral.

2806 (55) "Mortgage" means a consensual interest in real
2807 property, including fixtures, which secures payment or performance
2808 of an obligation. "Mortgage" shall mean and include a deed of
2809 trust.

2810 (56) "New debtor" means a person that becomes bound as
2811 debtor under Section 75-9-203(d) by a security agreement
2812 previously entered into by another person.

2813 (57) "New value" means (i) money, (ii) money's worth in
2814 property, services, or new credit, or (iii) release by a
2815 transferee of an interest in property previously transferred to
2816 the transferee. The term does not include an obligation
2817 substituted for another obligation.

2818 (58) "Noncash proceeds" means proceeds other than cash
2819 proceeds.

2820 (59) "Obligor" means a person that, with respect to an
2821 obligation secured by a security interest in or an agricultural
2822 lien on the collateral, (i) owes payment or other performance of
2823 the obligation, (ii) has provided property other than the
2824 collateral to secure payment or other performance of the
2825 obligation, or (iii) is otherwise accountable in whole or in part
2826 for payment or other performance of the obligation. The term does
2827 not include issuers or nominated persons under a letter of credit.



2828 (60) "Original debtor," except as used in Section
2829 75-9-310(c), means a person that, as debtor, entered into a
2830 security agreement to which a new debtor has become bound under
2831 Section 75-9-203(d).

2832 (61) "Payment intangible" means a general intangible
2833 under which the account debtor's principal obligation is a
2834 monetary obligation.

2835 (62) "Person related to," with respect to an
2836 individual, means:

2837 (A) The spouse of the individual;

2838 (B) A brother, brother-in-law, sister, or
2839 sister-in-law of the individual;

2840 (C) An ancestor or lineal descendant of the
2841 individual or the individual's spouse; or

2842 (D) Any other relative, by blood or marriage, of
2843 the individual or the individual's spouse who shares the same home
2844 with the individual.

2845 (63) "Person related to," with respect to an
2846 organization, means:

2847 (A) A person directly or indirectly controlling,
2848 controlled by, or under common control with the organization;

2849 (B) An officer or director of, or a person
2850 performing similar functions with respect to, the organization;

2851 (C) An officer or director of, or a person
2852 performing similar functions with respect to, a person described
2853 in subparagraph (A);

2854 (D) The spouse of an individual described in
2855 subparagraph (A), (B), or (C); or

2856 (E) An individual who is related by blood or
2857 marriage to an individual described in subparagraph (A), (B), (C),
2858 or (D) and shares the same home with the individual.

2859 (64) "Proceeds," except as used in Section 75-9-609(b),
2860 means the following property:



2861 (A) Whatever is acquired upon the sale, lease,
2862 license, exchange or other disposition of collateral;

2863 (B) Whatever is collected on, or distributed on
2864 account of, collateral;

2865 (C) Rights arising out of collateral;

2866 (D) To the extent of the value of collateral,
2867 claims arising out of the loss, nonconformity, or interference
2868 with the use of, defects or infringement of rights in, or damage
2869 to, the collateral; or

2870 (E) To the extent of the value of collateral and
2871 to the extent payable to the debtor or the secured party,
2872 insurance payable by reason of the loss or nonconformity of,
2873 defects or infringement of rights in, or damage to, the
2874 collateral.

2875 (64A) "Production-money crops" means crops that secure
2876 a production-money obligation incurred with respect to the
2877 production of those crops.

2878 (64B) "Production-money obligation" means an obligation
2879 of an obligor incurred for new value given to enable the debtor to
2880 produce crops if the value is in fact used for the production of
2881 the crops.

2882 (64C) "Production of crops" includes tilling and
2883 otherwise preparing land for growing, planting, cultivating,
2884 fertilizing, irrigating, harvesting and gathering crops, and
2885 protecting them from damage or disease.

2886 (65) "Promissory note" means an instrument that
2887 evidences a promise to pay a monetary obligation, does not
2888 evidence an order to pay, and does not contain an acknowledgment
2889 by a bank that the bank has received for deposit a sum of money or
2890 funds.

2891 (66) "Proposal" means a record authenticated by a
2892 secured party which includes the terms on which the secured party
2893 is willing to accept collateral in full or partial satisfaction of



2894 the obligation it secures pursuant to Sections 75-9-620, 75-9-621,
2895 and 75-9-622.

2896 (67) "Public-finance transaction" means a secured
2897 transaction in connection with which:

2898 (A) Debt securities are issued;

2899 (B) All or a portion of the securities issued have
2900 an initial stated maturity of at least twenty (20) years; and

2901 (C) The debtor, obligor, secured party, account
2902 debtor or other person obligated on collateral, assignor or
2903 assignee of a secured obligation, or assignor or assignee of a
2904 security interest is a state or a governmental unit of a state.

2905 (68) "Pursuant to commitment," with respect to an
2906 advance made or other value given by a secured party, means
2907 pursuant to the secured party's obligation, whether or not a
2908 subsequent event of default or other event not within the secured
2909 party's control has relieved or may relieve the secured party from
2910 its obligation.

2911 (69) "Record," except as used in "for record," "of
2912 record," "record or legal title," and "record owner," means
2913 information that is inscribed on a tangible medium or which is
2914 stored in an electronic or other medium and is retrievable in
2915 perceivable form.

2916 (70) "Registered organization" means an organization
2917 organized solely under the law of a single state or the United
2918 States and as to which the state or the United States must
2919 maintain a public record showing the organization to have been
2920 organized.

2921 (71) "Secondary obligor" means an obligor to the extent
2922 that:

2923 (A) The obligor's obligation is secondary; or

2924 (B) The obligor has a right of recourse with
2925 respect to an obligation secured by collateral against the debtor,
2926 another obligor, or property of either.



2927 (72) "Secured party" means:

2928 (A) A person in whose favor a security interest is

2929 created or provided for under a security agreement, whether or not

2930 any obligation to be secured is outstanding;

2931 (B) A person that holds an agricultural lien;

2932 (C) A consignor;

2933 (D) A person to which accounts, chattel paper,

2934 payment intangibles, or promissory notes have been sold;

2935 (E) A trustee, indenture trustee, agent,

2936 collateral agent, or other representative in whose favor a

2937 security interest or agricultural lien is created or provided for;

2938 or

2939 (F) A person that holds a security interest

2940 arising under Section 75-2-401, 75-2-505, 75-2-711(3),

2941 75-2A-508(5), 75-4-210, or 75-5-118.

2942 (73) "Security agreement" means an agreement that

2943 creates or provides for a security interest.

2944 (74) "Send," in connection with a record or

2945 notification, means:

2946 (A) To deposit in the mail, deliver for

2947 transmission, or transmit by any other usual means of

2948 communication, with postage or cost of transmission provided for,

2949 addressed to any address reasonable under the circumstances; or

2950 (B) To cause the record or notification to be

2951 received within the time that it would have been received if

2952 properly sent under subparagraph (A).

2953 (75) "Software" means a computer program and any

2954 supporting information provided in connection with a transaction

2955 relating to the program. The term does not include a computer

2956 program that is included in the definition of goods.

2957 (76) "State" means a state of the United States, the

2958 District of Columbia, Puerto Rico, the United States Virgin



2959 Islands, or any territory or insular possession subject to the
2960 jurisdiction of the United States.

2961 (77) "Supporting obligation" means a letter-of-credit
2962 right or secondary obligation that supports the payment or
2963 performance of an account, chattel paper, a document, a general
2964 intangible, an instrument, or investment property.

2965 (78) "Tangible chattel paper" means chattel paper
2966 evidenced by a record or records consisting of information that is
2967 inscribed on a tangible medium.

2968 (79) "Termination statement" means an amendment of a
2969 financing statement which:

2970 (A) Identifies, by its file number, the initial
2971 financing statement to which it relates; and

2972 (B) Indicates either that it is a termination
2973 statement or that the identified financing statement is no longer
2974 effective.

2975 (80) "Transmitting utility" means a person primarily
2976 engaged in the business of:

2977 (A) Operating a railroad, subway, street railway,
2978 or trolley bus;

2979 (B) Transmitting communications electrically,
2980 electromagnetically, or by light;

2981 (C) Transmitting goods by pipeline or sewer; or

2982 (D) Transmitting or producing and transmitting
2983 electricity, steam, gas, or water.

2984 (b) The following definitions in other articles apply to
2985 this article:

2986 "Applicant" Section 75-5-102

2987 "Beneficiary" Section 75-5-102

2988 "Broker" Section 75-8-102

2989 "Certificated security" Section 75-8-102

2990 "Check" Section 75-3-104

2991 "Clearing corporation" Section 75-8-102



2992	"Contract for sale"	Section 75-2-106
2993	"Control"	Section 75-7-106
2994	"Customer"	Section 75-4-104
2995	"Entitlement holder"	Section 75-8-102
2996	"Financial asset"	Section 75-8-102
2997	"Holder in due course"	Section 75-3-302
2998	"Issuer" (with respect to	
2999	a letter of credit or	
3000	letter-of-credit right)	Section 75-5-102
3001	"Issuer" (with respect to a	
3002	security)	Section 75-8-201
3003	"Issuer" (with respect to	
3004	documents of title)	Section 75-7-102
3005	"Lease"	Section 75-2A-103
3006	"Lease agreement"	Section 75-2A-103
3007	"Lease contract"	Section 75-2A-103
3008	"Leasehold interest"	Section 75-2A-103
3009	"Lessee"	Section 75-2A-103
3010	"Lessee in ordinary course	
3011	of business"	Section 75-2A-103
3012	"Lessor"	Section 75-2A-103
3013	"Lessor's residual interest"	Section 75-2A-103
3014	"Letter of credit"	Section 75-5-102
3015	"Merchant"	Section 75-2-104
3016	"Negotiable instrument"	Section 75-3-104
3017	"Nominated person"	Section 75-5-102
3018	"Note"	Section 75-3-104
3019	"Proceeds of a letter of	
3020	credit"	Section 75-5-114
3021	"Prove"	Section 75-3-103
3022	"Sale"	Section 75-2-106
3023	"Securities account"	Section 75-8-501
3024	"Securities intermediary"	Section 75-8-102



3025 "Security" Section 75-8-102
3026 "Security certificate" Section 75-8-102
3027 "Security entitlement" Section 75-8-102
3028 "Uncertificated security" Section 75-8-102

3029 (c) Article 1 contains general definitions and principles of
3030 construction and interpretation applicable throughout this
3031 article.

3032 **SECTION 42.** The following shall be codified as Section
3033 79-13-505, Mississippi Code of 1972:

3034 79-13-505. **Enforceability of limitations on assignments of**
3035 **partnership interests.** Sections 75-9-406 and 75-9-408 do not
3036 apply to a partnership interest in a partnership formed under the
3037 laws of Mississippi, including the rights, powers and interests
3038 arising under a certificate of partnership or partnership
3039 agreement or under this chapter. To the extent of any conflict or
3040 inconsistency between this section and Sections 75-9-406 and
3041 75-9-408, this section prevails. It is the express intent of this
3042 section to permit the enforcement, as a contract among the
3043 partners of a partnership, of any provision of a partnership
3044 agreement that would otherwise be ineffective under Sections
3045 75-9-406 and 75-9-408.

3046 **SECTION 43.** The following shall be codified as Section
3047 79-14-706, Mississippi Code of 1972:

3048 79-14-706. **Enforceability of limitations on assignments of**
3049 **limited partnership interests.** Sections 75-9-406 and 75-9-408 do
3050 not apply to a limited partnership interest in a limited
3051 partnership formed under the laws of Mississippi, including the
3052 rights, powers and interests arising under the certificate of
3053 limited partnership or limited partnership agreement or under this
3054 chapter. To the extent of any conflict or inconsistency between
3055 this section and Sections 75-9-406 and 75-9-408, this section
3056 prevails. It is the express intent of this section to permit the
3057 enforcement, as a contract among the partners of a limited



3058 partnership, of any provision of a limited partnership agreement
3059 that would otherwise be ineffective under Sections 75-9-406 and
3060 75-9-408.

3061 **SECTION 44.** Section 75-9-513, Mississippi Code of 1972, is
3062 amended as follows:

3063 75-9-513. **Termination statement.** (a) A secured party shall
3064 cause the secured party of record for a financing statement to
3065 file a termination statement for the financing statement if the
3066 financing statement covers consumer goods and:

3067 (1) There is no obligation secured by the collateral
3068 covered by the financing statement and no commitment to make an
3069 advance, incur an obligation, or otherwise give value; or

3070 (2) The debtor did not authorize the filing of the
3071 initial financing statement.

3072 (b) To comply with subsection (a), a secured party shall
3073 cause the secured party of record to file the termination
3074 statement:

3075 (1) Within one (1) month after there is no obligation
3076 secured by the collateral covered by the financing statement and
3077 no commitment to make an advance, incur an obligation, or
3078 otherwise give value; or

3079 (2) If earlier, within twenty (20) days after the
3080 secured party receives an authenticated demand from a debtor.

3081 (c) In cases not governed by subsection (a), within twenty
3082 (20) days after a secured party receives an authenticated demand
3083 from a debtor, the secured party shall cause the secured party of
3084 record for a financing statement to send to the debtor a
3085 termination statement for the financing statement or file the
3086 termination statement in the filing office if:

3087 (1) Except in the case of a financing statement
3088 covering accounts or chattel paper that has been sold or goods
3089 that are the subject of a consignment, there is no obligation
3090 secured by the collateral covered by the financing statement and



3091 no commitment to make an advance, incur an obligation, or
3092 otherwise give value;

3093 (2) The financing statement covers accounts or chattel
3094 paper that has been sold but as to which the account debtor or
3095 other person obligated has discharged its obligation;

3096 (3) The financing statement covers goods that were the
3097 subject of a consignment to the debtor but are not in the debtor's
3098 possession; or

3099 (4) The debtor did not authorize the filing of the
3100 initial financing statement.

3101 (d) Except as otherwise provided in Section 75-9-510, upon
3102 the filing of a termination statement with the filing office, the
3103 financing statement to which the termination statement relates
3104 ceases to be effective. Except as otherwise provided in Section
3105 75-9-510, for purposes of Sections 75-9-519(g), 75-9-522(a) and
3106 75-9-523(c), the filing with the filing office of a termination
3107 statement relating to a financing statement that indicates that
3108 the debtor is a transmitting utility also causes the effectiveness
3109 of the financing statement to lapse.

3110 (e) A secured party of record that does not file a
3111 termination statement when required under this section shall be
3112 liable for a civil penalty of Five Hundred Dollars (\$500.00) per
3113 violation to be assessed by the Office of the Secretary of State.
3114 Civil penalties assessed under this subsection may be recovered in
3115 a civil action brought by the Attorney General on behalf of the
3116 Secretary of State in the Chancery Court of the First Judicial
3117 District of Hinds County.

3118 **SECTION 45.** Sections 75-1-101, 75-1-102, 75-1-103, 75-1-104,
3119 75-1-105, 75-1-106, 75-1-107, 75-1-108, 75-1-109, 75-1-110,
3120 75-1-201, 75-1-202, 75-1-203, 75-1-204, 75-1-205, 75-1-206,
3121 75-1-207 and 75-1-208, Mississippi Code of 1972, which comprise
3122 the Uniform Commercial Code Article 1 - General Provisions, are
3123 repealed.



3124 **SECTION 46**. Section 75-2-208, Mississippi Code of 1972,
3125 which provides for the practical construction of "course of
3126 performance" for purposes of the Uniform Commercial Code Article 2
3127 - Sales, is repealed, the substance thereof being reenacted in
3128 Article 1 - General Provisions.

3129 **SECTION 47**. Section 75-2A-207, Mississippi Code of 1972,
3130 which provides for the practical construction of "course of
3131 performance" for purposes of the Uniform Commercial Code Article
3132 2A - Leases, is repealed, the substance thereof being reenacted in
3133 Article 1 - General Provisions.

3134 **SECTION 48**. This act shall take effect and be in force from
3135 and after July 1, 2010.

