

By: Senator(s) Fillingane

To: Judiciary, Division A;  
Business and Financial  
Institutions

SENATE BILL NO. 2419  
(As Sent to Governor)

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, 75-2A-103, 75-2A-501,  
51 75-2A-51, 75-2A-518, 75-2A-527, 75-2A-528, 75-3-103, 75-3-106,  
52 75-3-116, 75-3-119, 75-3-305, 75-3-309, 75-3-312, 75-3-415,  
53 75-3-416, 75-3-417, 75-3-419, 75-3-602, 75-3-604, 75-3-605,  
54 75-4-104, 75-4-105, 75-4-207, 75-4-208, 75-4-212, 75-4-301,  
55 75-4-403, 75-4A-105, 75-4A-106, 75-4A-204, 75-5-103, 75-7-102,  
56 75-8-102 AND 75-9-102, MISSISSIPPI CODE OF 1972, TO CONFORM; TO  
57 CREATE NEW SECTION 79-13-505, MISSISSIPPI CODE OF 1972, TO PROVIDE  
58 FOR THE ENFORCEABILITY OF LIMITATIONS ON ASSIGNMENTS OF  
59 PARTNERSHIP INTERESTS; TO CREATE NEW SECTION 79-14-706,  
60 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ENFORCEABILITY OF  
61 LIMITATIONS ON ASSIGNMENTS OF LIMITED PARTNERSHIP INTERESTS; TO  
62 CREATE NEW SECTION 1-3-81, MISSISSIPPI CODE OF 1972, TO PROVIDE  
63 FOR THE EDITORIAL NATURE OF SECTION CAPTIONS UNLESS SPECIFICALLY  
64 PROVIDED OTHERWISE BY LAW; 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.





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 hereafter in this section, when a transaction bears a reasonable

536 relation to this state and also to another state or nation the

537 parties may agree that the law either of this state or of such

538 other state or nation shall govern their rights and duties.

539 Failing such agreement, the Uniform Commercial Code applies to

540 transactions bearing an appropriate relation to this state.

541 However, the law of the State of Mississippi shall always govern

542 the rights and duties of the parties in regard to disclaimers of

543 implied warranties of merchantability or fitness, limitations of

544 remedies for breaches of implied warranties of merchantability or

545 fitness, or the necessity for privity of contract to maintain a

546 civil action for breach of implied warranties of merchantability

547 or fitness notwithstanding any agreement by the parties that the





548 laws of some other state or nation shall govern the rights and  
549 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  
750 third-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 75-2A-103, Mississippi Code of 1972, is  
771 amended as follows:

772 75-2A-103. (1) In this chapter unless the context otherwise  
773 requires:

774 (a) "Buyer in ordinary course of business" means a  
775 person who in good faith and without knowledge that the sale to  
776 him is in violation of the ownership rights or security interest



777 or leasehold interest of a third party in the goods, buys in  
778 ordinary course from a person in the business of selling goods of  
779 that kind but does not include a pawnbroker. "Buying" may be for  
780 cash or by exchange of other property or on secured or unsecured  
781 credit and includes acquiring goods or documents of title under a  
782 preexisting contract for sale but does not include a transfer in  
783 bulk or as security for or in total or partial satisfaction of a  
784 money debt.

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

787 (c) "Commercial unit" means such a unit of goods as by  
788 commercial usage is a single whole for purposes of lease and  
789 division of which materially impairs its character or value on the  
790 market or in use. A commercial unit may be a single article, as a  
791 machine, or a set of articles, as a suite of furniture or a line  
792 of machinery, or a quantity, as a gross or carload, or any other  
793 unit treated in use or in the relevant market as a single whole.

794 (d) "Conforming" goods or performance under a lease  
795 contract means goods or performance that are in accordance with  
796 the obligations under the lease contract.

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

804 (f) "Fault" means wrongful act, omission, breach or  
805 default.

806 (g) "Finance lease" means a lease with respect to  
807 which:

808 (i) The lessor does not select, manufacture, or  
809 supply the goods;





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

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

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

816 (B) The lessee's approval of the contract by  
817 which the lessor acquired the goods or the right to possession and  
818 use of the goods is a condition to effectiveness of the lease  
819 contract;

820 (C) The lessee, before signing the lease  
821 contract, receives an accurate and complete statement designating  
822 the promises and warranties, and any disclaimers of warranties,  
823 limitations or modifications of remedies, or liquidated damages,  
824 including those of a third party, such as the manufacturer of the  
825 goods, provided to the lessor by the person supplying the goods in  
826 connection with or as part of the contract by which the lessor  
827 acquired the goods or the right to possession and use of the  
828 goods; or

829 (D) If the lease is not a consumer lease, the  
830 lessor, before the lessee signs the lease contract, informs the  
831 lessee in writing (a) of the identity of the person supplying the  
832 goods to the lessor, unless the lessee has selected that person  
833 and directed the lessor to acquire the goods or the right to  
834 possession and use of the goods from that person, (b) that the  
835 lessee is entitled under this chapter to the promises and  
836 warranties, including those of any third party, provided to the  
837 lessor by the person supplying the goods in connection with or as  
838 part of the contract by which the lessor acquired the goods or the  
839 right to possession and use of the goods, and (c) that the lessee  
840 may communicate with the person supplying the goods to the lessor  
841 and receive an accurate and complete statement of those promises



842 and warranties, including any disclaimers and limitations of them  
843 or of remedies.

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

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

854 (j) "Lease" means a transfer of the right to possession  
855 and use of goods for a term in return for consideration, but a  
856 sale, including a sale on approval or a sale or return, or  
857 retention or creation of a security interest is not a lease.  
858 Unless the context clearly indicates otherwise, the term includes  
859 a sublease.

860 (k) "Lease agreement" means the bargain, with respect  
861 to the lease, of the lessor and the lessee in fact as found in  
862 their language or by implication from other circumstances  
863 including course of dealing or usage of trade or course of  
864 performance as provided in this chapter. Unless the context  
865 clearly indicates otherwise, the term includes a sublease  
866 agreement.

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

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



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

876           (o) "Lessee in ordinary course of business" means a  
877 person who in good faith and without knowledge that the lease to  
878 him is in violation of the ownership rights or security interest  
879 or leasehold interest of a third party in the goods leases in  
880 ordinary course from a person in the business of selling or  
881 leasing goods of that kind but does not include a pawnbroker.  
882 "Leasing" may be for cash or by exchange of other property or on  
883 secured or unsecured credit and includes acquiring goods or  
884 documents of title under a preexisting lease contract but does not  
885 include a transfer in bulk or as security for or in total or  
886 partial satisfaction of a money debt.

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

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

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

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

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

901           (u) "Present value" means the amount as of a date  
902 certain of one or more sums payable in the future, discounted to  
903 the date certain. The discount is determined by the interest rate  
904 specified by the parties if the rate was not manifestly  
905 unreasonable at the time the transaction was entered into;



906 otherwise, the discount is determined by a commercially reasonable  
907 rate that takes into account the facts and circumstances of each  
908 case at the time the transaction was entered into.

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

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

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

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

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

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

924	"Accessions"	Section 75-2A-310(1)
925	"Construction mortgage"	Section 75-2A-309(1)(d)
926	"Encumbrance"	Section 75-2A-309(1)(e)
927	"Fixtures"	Section 75-2A-309(1)(a)
928	"Fixture filing"	Section 75-2A-309(1)(b)
929	"Purchase money lease"	Section 75-2A-309(1)(c)

930 (3) The following definitions in other chapters apply to  
931 this chapter:

932	"Account"	Section 75-9-102(a)(2)
933	"Between merchants"	Section 75-2-104(3)
934	"Buyer"	Section 75-2-103(1)(a)
935	"Chattel paper"	Section 75-9-102(a)(11)
936	"Consumer goods"	Section 75-9-102(a)(23)
937	"Document"	Section 75-9-102(a)(30)
938	"Entrusting"	Section 75-2-403(3)



939	"General intangible"	Section 75-9-102 (a) (42)
940	* * *	
941	"Instrument"	Section 75-9-102 (a) (47)
942	"Merchant"	Section 75-2-104 (1)
943	"Mortgage"	Section 75-9-102 (a) (55)
944	"Pursuant to commitment"	Section 75-9-102 (a) (68)
945	"Receipt"	Section 75-2-103 (1) (c)
946	"Sale"	Section 75-2-106 (1)
947	"Sale on approval"	Section 75-2-326
948	"Sale or return"	Section 75-2-326
949	"Seller"	Section 75-2-103 (1) (d)

950 (4) In addition, Chapter 1 contains general definitions and  
951 principles of construction and interpretation applicable  
952 throughout this chapter.

953 **SECTION 8.** Section 75-2A-501, Mississippi Code of 1972, is  
954 amended as follows:

955 75-2A-501. (1) Whether the lessor or the lessee is in  
956 default under a lease contract is determined by the lease  
957 agreement and this chapter.

958 (2) If the lessor or the lessee is in default under the  
959 lease contract, the party seeking enforcement has rights and  
960 remedies as provided in this chapter and, except as limited by  
961 this chapter, as provided in the lease agreement.

962 (3) If the lessor or the lessee is in default under the  
963 lease contract, the party seeking enforcement may reduce the  
964 party's claim to judgment, or otherwise enforce the lease contract  
965 by self-help or any available judicial procedure or nonjudicial  
966 procedure, including administrative proceeding, arbitration, or  
967 the like, in accordance with this chapter.

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



971 (5) If the lease agreement covers both real property and  
972 goods, the party seeking enforcement may proceed under this part  
973 as to the goods, or under other applicable law as to both the real  
974 property and the goods in accordance with that party's rights and  
975 remedies in respect of the real property, in which case this part  
976 does not apply.

977 **SECTION 9.** Section 75-2A-518, Mississippi Code of 1972, is  
978 amended as follows:

979 75-2A-518. (1) After a default by a lessor under the lease  
980 contract of the type described in Section 75-2A-508(1), or, if  
981 agreed, after other default by the lessor, the lessee may cover by  
982 making any purchase or lease of or contract to purchase or lease  
983 goods in substitution for those due from the lessor.

984 (2) Except as otherwise provided with respect to damages  
985 liquidated in the lease agreement (Section 75-2A-504) or otherwise  
986 determined pursuant to agreement of the parties (Sections 75-1-302  
987 and 75-2A-503), if a lessee's cover is by a lease agreement  
988 substantially similar to the original lease agreement and the new  
989 lease agreement is made in good faith and in a commercially  
990 reasonable manner, the lessee may recover from the lessor as  
991 damages (i) the present value, as of the date of the commencement  
992 of the term of the new lease agreement, of the rent under the new  
993 lease agreement applicable to that period of the new lease term  
994 which is comparable to the then remaining term of the original  
995 lease agreement minus the present value as of the same date of the  
996 total rent for the then remaining lease term of the original lease  
997 agreement, and (ii) any incidental or consequential damages, less  
998 expenses saved in consequence of the lessor's default.

999 (3) If a lessee's cover is by lease agreement that for any  
1000 reason does not qualify for treatment under subsection (2), or is  
1001 by purchase or otherwise, the lessee may recover from the lessor  
1002 as if the lessee had elected not to cover and Section 75-2A-519  
1003 governs.



1004           **SECTION 10.** Section 75-2A-519, Mississippi Code of 1972, is  
1005 amended as follows:

1006           75-2A-519. (1) Except as otherwise provided with respect to  
1007 damages liquidated in the lease agreement (Section 75-2A-504) or  
1008 otherwise determined pursuant to agreement of the parties  
1009 (Sections 75-1-302 and 75-2A-503), if a lessee elects not to cover  
1010 or a lessee elects to cover and the cover is by lease agreement  
1011 that for any reason does not qualify for treatment under Section  
1012 75-2A-518(2), or is by purchase or otherwise, the measure of  
1013 damages for nondelivery or repudiation by the lessor or for  
1014 rejection or revocation of acceptance by the lessee is the present  
1015 value, as of the date of the default, of the then market rent  
1016 minus the present value as of the same date of the original rent,  
1017 computed for the remaining lease term of the original lease  
1018 agreement, together with incidental and consequential damages,  
1019 less expenses saved in consequence of the lessor's default.

1020           (2) Market rent is to be determined as of the place for  
1021 tender or, in cases of rejection after arrival or revocation of  
1022 acceptance, as of the place of arrival.

1023           (3) Except as otherwise agreed, if the lessee has accepted  
1024 goods and given notification (Section 75-2A-516(3)), the measure  
1025 of damages for nonconforming tender or delivery or other default  
1026 by a lessor is the loss resulting in the ordinary course of events  
1027 from the lessor's default as determined in any manner that is  
1028 reasonable together with incidental and consequential damages,  
1029 less expenses saved in consequence of the lessor's default.

1030           (4) Except as otherwise agreed, the measure of damages for  
1031 breach of warranty is the present value at the time and place of  
1032 acceptance of the difference between the value of the use of the  
1033 goods accepted and the value if they had been as warranted for the  
1034 lease term, unless special circumstances show proximate damages of  
1035 a different amount, together with incidental and consequential



1036 damages, less expenses saved in consequence of the lessor's  
1037 default or breach of warranty.

1038         **SECTION 11.** Section 75-2A-527, Mississippi Code of 1972, is  
1039 amended as follows:

1040         75-2A-527. (1) After a default by a lessee under the lease  
1041 contract of the type described in Section 75-2A-523(1) or  
1042 75-2A-523(3) (a) or after the lessor refuses to deliver or takes  
1043 possession of goods (Section 75-2A-525 or 75-2A-526), or, if  
1044 agreed, after other default by a lessee, the lessor may dispose of  
1045 the goods concerned or the undelivered balance thereof by lease,  
1046 sale or otherwise.

1047         (2) Except as otherwise provided with respect to damages  
1048 liquidated in the lease agreement (Section 75-2A-504) or otherwise  
1049 determined pursuant to agreement of the parties (Sections 75-1-302  
1050 and 75-2A-503), if the disposition is by lease agreement  
1051 substantially similar to the original lease agreement and the new  
1052 lease agreement is made in good faith and in a commercially  
1053 reasonable manner, the lessor may recover from the lessee as  
1054 damages (i) accrued and unpaid rent as of the date of the  
1055 commencement of the term of the new lease agreement, (ii) the  
1056 present value, as of the same date, of the total rent for the then  
1057 remaining lease term of the original lease agreement minus the  
1058 present value, as of the same date, of the rent under the new  
1059 lease agreement applicable to that period of the new lease term  
1060 which is comparable to the then remaining term of the original  
1061 lease agreement, and (iii) any incidental damages allowed under  
1062 Section 75-2A-530, less expenses saved in consequence of the  
1063 lessee's default.

1064         (3) If the lessor's disposition is by lease agreement that  
1065 for any reason does not qualify for treatment under subsection  
1066 (2), or is by sale or otherwise, the lessor may recover from the  
1067 lessee as if the lessor had elected not to dispose of the goods  
1068 and Section 75-2A-528 governs.





1069 (4) A subsequent buyer or lessee who buys or leases from the  
1070 lessor in good faith for value as a result of a disposition under  
1071 this section takes the goods free of the original lease contract  
1072 and any rights of the original lessee even though the lessor fails  
1073 to comply with one or more of the requirements of this chapter.

1074 (5) The lessor is not accountable to the lessee for any  
1075 profit made on any disposition. A lessee who has rightfully  
1076 rejected or justifiably revoked acceptance shall account to the  
1077 lessor for any excess over the amount of the lessee's security  
1078 interest (Section 75-2A-508(5)).

1079 **SECTION 12.** Section 75-2A-528, Mississippi Code of 1972, is  
1080 amended as follows:

1081 75-2A-528. (1) Except as otherwise provided with respect to  
1082 damages liquidated in the lease agreement (Section 75-2A-504) or  
1083 otherwise determined pursuant to agreement of the parties  
1084 (Sections 75-1-302 and 75-2A-503), if a lessor elects to retain  
1085 the goods or a lessor elects to dispose of the goods and the  
1086 disposition is by lease agreement that for any reason does not  
1087 qualify for treatment under Section 75-2A-527(2), or is by sale or  
1088 otherwise, the lessor may recover from the lessee as damages for a  
1089 default of the type described in Section 75-2A-523(1) or  
1090 75-2A-523(3) (a), or, if agreed, for other default of the lessee,  
1091 (i) accrued and unpaid rent as of the date of default if the  
1092 lessee has never taken possession of the goods, or, if the lessee  
1093 has taken possession of the goods, as of the date the lessor  
1094 repossesses the goods or an earlier date on which the lessee makes  
1095 a tender of the goods to the lessor, (ii) the present value as of  
1096 the date determined under clause (i) of the total rent for the  
1097 then remaining lease term of the original lease agreement minus  
1098 the present value as of the same date of the market rent at the  
1099 place where the goods are located computed for the same lease  
1100 term, and (iii) any incidental damages allowed under Section



1101 75-2A-530, less expenses saved in consequence of the lessee's  
1102 default.

1103 (2) If the measure of damages provided in subsection (1) is  
1104 inadequate to put a lessor in as good a position as performance  
1105 would have, the measure of damages is the present value of the  
1106 profit, including reasonable overhead, the lessor would have made  
1107 from full performance by the lessee, together with any incidental  
1108 damages allowed under Section 75-2A-530, due allowance for costs  
1109 reasonably incurred and due credit for payments or proceeds of  
1110 disposition.

1111 **SECTION 13.** Section 75-3-103, Mississippi Code of 1972, is  
1112 amended as follows:

1113 75-3-103. (a) In this chapter:

1114 (1) "Acceptor" means a drawee who has accepted a draft.

1115 (2) [Reserved]

1116 (3) [Reserved]

1117 (4) "Drawee" means a person ordered in a draft to make  
1118 payment.

1119 (5) "Drawer" means a person who signs or is identified  
1120 in a draft as a person ordering payment.

1121 (6) [Reserved]

1122 (7) "Maker" means a person who signs or is identified  
1123 in a note as a person undertaking to pay.

1124 (8) "Order" means a written instruction to pay money  
1125 signed by the person giving the instruction. The instruction may  
1126 be addressed to any person, including the person giving the  
1127 instruction, or to one or more persons jointly or in the  
1128 alternative but not in succession. An authorization to pay is not  
1129 an order unless the person authorized to pay is also instructed to  
1130 pay.

1131 (9) "Ordinary care" in the case of a person engaged in  
1132 business means observance of reasonable commercial standards,  
1133 prevailing in the area in which the person is located, with



1134 respect to the business in which the person is engaged. In the  
1135 case of a bank that takes an instrument for processing for  
1136 collection or payment by automated means, reasonable commercial  
1137 standards do not require the bank to examine the instrument if the  
1138 failure to examine does not violate the bank's prescribed  
1139 procedures and the bank's procedures do not vary unreasonably from  
1140 general banking usage not disapproved by this chapter or Chapter  
1141 4.

1142 (10) "Party" means a party to an instrument.

1143 (11) "Principal obligor," with respect to an  
1144 instrument, means the accommodated party or any other party to the  
1145 instrument against whom a secondary obligor has recourse under  
1146 this article.

1147 (12) "Promise" means a written undertaking to pay money  
1148 signed by the person undertaking to pay. An acknowledgment of an  
1149 obligation by the obligor is not a promise unless the obligor also  
1150 undertakes to pay the obligation.

1151 (13) "Prove" with respect to a fact means to meet the  
1152 burden of establishing the fact (Section 75-1-201(8), Mississippi  
1153 Code of 1972).

1154 (14) [Reserved]

1155 (15) "Remitter" means a person who purchases an  
1156 instrument from its issuer if the instrument is payable to an  
1157 identified person other than the purchaser.

1158 (16) "Remotely created check" means a check that is not  
1159 created by the paying bank and that does not bear a signature  
1160 applied, or purported to be applied, by the person on whose  
1161 account the check is drawn.

1162 (17) Secondary obligor," with respect to an instrument,  
1163 means (i) an indorser or an accommodation party, (ii) a drawer  
1164 having the obligation described in Section 75-3-414(d), or (iii)  
1165 any other party to the instrument that has recourse against  
1166 another party to the instrument pursuant to Section 75-3-116(b).



1167	(b) Other definitions applying to this chapter and the	
1168	sections in which they appear are:	
1169	"Acceptance"	Section 75-3-409
1170	"Accommodated party"	Section 75-3-419
1171	"Accommodation party"	Section 75-3-419
1172	<u>"Account"</u>	<u>Section 75-4-104</u>
1173	"Alteration"	Section 75-3-407
1174	"Anomalous indorsement"	Section 75-3-205
1175	"Blank indorsement"	Section 75-3-205
1176	"Cashier's check"	Section 75-3-104
1177	"Certificate of deposit"	Section 75-3-104
1178	"Certified check"	Section 75-3-409
1179	"Check"	Section 75-3-104
1180	"Consideration"	Section 75-3-303
1181	"Draft"	Section 75-3-104
1182	"Holder in due course"	Section 75-3-302
1183	"Incomplete instrument"	Section 75-3-115
1184	"Indorsement"	Section 75-3-204
1185	"Indorser"	Section 75-3-204
1186	"Instrument"	Section 75-3-104
1187	"Issue"	Section 75-3-105
1188	"Issuer"	Section 75-3-105
1189	"Negotiable instrument"	Section 75-3-104
1190	"Negotiation"	Section 75-3-201
1191	"Note"	Section 75-3-104
1192	"Payable at a definite time"	Section 75-3-108
1193	"Payable on demand"	Section 75-3-108
1194	"Payable to bearer"	Section 75-3-109
1195	"Payable to order"	Section 75-3-109
1196	"Payment"	Section 75-3-602
1197	"Person entitled to enforce"	Section 75-3-301
1198	"Presentment"	Section 75-3-501
1199	"Reacquisition"	Section 75-3-207



1200	"Special indorsement"	Section 75-3-205
1201	"Teller's check"	Section 75-3-104
1202	"Transfer of instrument"	Section 75-3-203
1203	"Traveler's check"	Section 75-3-104
1204	"Value"	Section 75-3-303

1205 (c) The following definitions in other chapters apply to  
1206 this chapter:

1207 \* \* \*

1208	"Banking day"	Section 75-4-104
1209	"Clearinghouse"	Section 75-4-104
1210	"Collecting bank"	Section 75-4-105
1211	"Depositary bank"	Section 75-4-105
1212	"Documentary draft"	Section 75-4-104
1213	"Intermediary bank"	Section 75-4-105
1214	"Item"	Section 75-4-104
1215	"Payor bank"	Section 75-4-105
1216	"Suspends payments"	Section 75-4-104

1217 (d) In addition, Chapter 1 contains general definitions and  
1218 principles of construction and interpretation applicable  
1219 throughout this chapter.

1220 **SECTION 14.** Section 75-3-106, Mississippi Code of 1972, is  
1221 amended as follows:

1222 75-3-106. (a) Except as provided in this section, for the  
1223 purposes of Section 75-3-104(a), a promise or order is  
1224 unconditional unless it states (i) an express condition to  
1225 payment, (ii) that the promise or order is subject to or governed  
1226 by another record, or (iii) that rights or obligations with  
1227 respect to the promise or order are stated in another record. A  
1228 reference to another record does not of itself make the promise or  
1229 order conditional.

1230 (b) A promise or order is not made conditional (i) by a  
1231 reference to another record for a statement of rights with respect



1232 to collateral, prepayment, or acceleration, or (ii) because  
1233 payment is limited to resort to a particular fund or source.

1234 (c) If a promise or order requires, as a condition to  
1235 payment, a countersignature by a person whose specimen signature  
1236 appears on the promise or order, the condition does not make the  
1237 promise or order conditional for the purposes of Section  
1238 75-3-104(a). If the person whose specimen signature appears on an  
1239 instrument fails to countersign the instrument, the failure to  
1240 countersign is a defense to the obligation of the issuer, but the  
1241 failure does not prevent a transferee of the instrument from  
1242 becoming a holder of the instrument.

1243 (d) If a promise or order at the time it is issued or first  
1244 comes into possession of a holder contains a statement, required  
1245 by applicable statutory or administrative law, to the effect that  
1246 the rights of a holder or transferee are subject to claims or  
1247 defenses that the issuer could assert against the original payee,  
1248 the promise or order is not thereby made conditional for the  
1249 purposes of Section 75-3-104(a); but if the promise or order is an  
1250 instrument, there cannot be a holder in due course of the  
1251 instrument.

1252 **SECTION 15.** Section 75-3-116, Mississippi Code of 1972, is  
1253 amended as follows:

1254 75-3-116. (a) Except as otherwise provided in the  
1255 instrument, two (2) or more persons who have the same liability on  
1256 an instrument as makers, drawers, acceptors, indorsers who indorse  
1257 as joint payees, or anomalous indorsers are jointly and severally  
1258 liable in the capacity in which they sign.

1259 (b) Except as provided in Section 75-3-419(f) or by  
1260 agreement of the affected parties, a party having joint and  
1261 several liability who pays the instrument is entitled to receive  
1262 from any party having the same joint and several liability  
1263 contribution in accordance with applicable law.

1264 \* \* \*



1265           **SECTION 16.** Section 75-3-119, Mississippi Code of 1972, is  
1266 amended as follows:

1267           75-3-119. In an action for breach of an obligation for which  
1268 a third person is answerable over pursuant to this chapter or  
1269 Chapter 4, the defendant may give the third person \* \* \* notice of  
1270 the litigation in a record, and the person notified may then give  
1271 similar notice to any other person who is answerable over. If the  
1272 notice states (i) that the person notified may come in and defend  
1273 and (ii) that failure to do so will bind the person notified in an  
1274 action later brought by the person giving the notice as to any  
1275 determination of fact common to the two (2) litigations, the  
1276 person notified is so bound unless after reasonable receipt of the  
1277 notice the person notified does come in and defend.

1278           **SECTION 17.** Section 75-3-305, Mississippi Code of 1972, is  
1279 amended as follows:

1280           75-3-305. (a) Except as otherwise provided in this section,  
1281 the right to enforce the obligation of a party to pay an  
1282 instrument is subject to the following:

1283                   (1) A defense of the obligor based on (i) infancy of  
1284 the obligor to the extent it is a defense to a simple contract,  
1285 (ii) duress, lack of legal capacity, or illegality of the  
1286 transaction which, under other law, nullifies the obligation of  
1287 the obligor, (iii) fraud that induced the obligor to sign the  
1288 instrument with neither knowledge nor reasonable opportunity to  
1289 learn of its character or its essential terms, or (iv) discharge  
1290 of the obligor in insolvency proceedings;

1291                   (2) A defense of the obligor stated in another section  
1292 of this chapter or a defense of the obligor that would be  
1293 available if the person entitled to enforce the instrument were  
1294 enforcing a right to payment under a simple contract; and

1295                   (3) A claim in recoupment of the obligor against the  
1296 original payee of the instrument if the claim arose from the  
1297 transaction that gave rise to the instrument; but the claim of the



1298 obligor may be asserted against a transferee of the instrument  
1299 only to reduce the amount owing on the instrument at the time the  
1300 action is brought.

1301 (b) The right of a holder in due course to enforce the  
1302 obligation of a party to pay the instrument is subject to defenses  
1303 of the obligor stated in subsection (a)(1), but is not subject to  
1304 defenses of the obligor stated in subsection (a)(2) or claims in  
1305 recoupment stated in subsection (a)(3) against a person other than  
1306 the holder.

1307 (c) Except as stated in subsection (d), in an action to  
1308 enforce the obligation of a party to pay the instrument, the  
1309 obligor may not assert against the person entitled to enforce the  
1310 instrument a defense, claim in recoupment, or claim to the  
1311 instrument (Section 75-3-306) of another person, but the other  
1312 person's claim to the instrument may be asserted by the obligor if  
1313 the other person is joined in the action and personally asserts  
1314 the claim against the person entitled to enforce the instrument.  
1315 An obligor is not obliged to pay the instrument if the person  
1316 seeking enforcement of the instrument does not have rights of a  
1317 holder in due course and the obligor proves that the instrument is  
1318 a lost or stolen instrument.

1319 (d) In an action to enforce the obligation of an  
1320 accommodation party to pay an instrument, the accommodation party  
1321 may assert against the person entitled to enforce the instrument  
1322 any defense or claim in recoupment under subsection (a) that the  
1323 accommodated party could assert against the person entitled to  
1324 enforce the instrument, except the defenses of discharge in  
1325 insolvency proceedings, infancy, and lack of legal capacity.

1326 **SECTION 18.** Section 75-3-309, Mississippi Code of 1972, is  
1327 amended as follows:

1328 75-3-309. (a) A person not in possession of an instrument  
1329 is entitled to enforce the instrument if:

1330 (1) The person seeking to enforce the instrument:





1331 (i) \* \* \* Was entitled to enforce the instrument  
1332 when loss of possession occurred; or

1333 (ii) Has directly or indirectly acquired ownership  
1334 of the instrument from a person who was entitled to enforce the  
1335 instrument when loss of possession occurred;

1336 (2) The loss of possession was not the result of a  
1337 transfer by the person or a lawful seizure; and

1338 (3) The person cannot reasonably obtain possession of  
1339 the instrument because the instrument was destroyed, its  
1340 whereabouts cannot be determined, or it is in the wrongful  
1341 possession of an unknown person or a person that cannot be found  
1342 or is not amenable to service of process.

1343 (b) A person seeking enforcement of an instrument under  
1344 subsection (a) must prove the terms of the instrument and the  
1345 person's right to enforce the instrument. If that proof is made,  
1346 Section 75-3-308 applies to the case as if the person seeking  
1347 enforcement had produced the instrument. The court may not enter  
1348 judgment in favor of the person seeking enforcement unless it  
1349 finds that the person required to pay the instrument is adequately  
1350 protected against loss that might occur by reason of a claim by  
1351 another person to enforce the instrument. Adequate protection may  
1352 be provided by any reasonable means.

1353 **SECTION 19.** Section 75-3-312, Mississippi Code of 1972, is  
1354 amended as follows:

1355 75-3-312. (a) In this section:

1356 (1) "Check" means a cashier's check, teller's check, or  
1357 certified check.

1358 (2) "Claimant" means a person who claims the right to  
1359 receive the amount of a cashier's check, teller's check, or  
1360 certified check that was lost, destroyed, or stolen.

1361 (3) "Declaration of loss" means a \* \* \* statement, made  
1362 in a record under penalty of perjury, to the effect that (i) the  
1363 declarer lost possession of a check, (ii) the declarer is the



1364 drawer or payee of the check, in the case of a certified check, or  
1365 the remitter or payee of the check, in the case of a cashier's  
1366 check or teller's check, (iii) the loss of possession was not the  
1367 result of a transfer by the declarer or a lawful seizure, and (iv)  
1368 the declarer cannot reasonably obtain possession of the check  
1369 because the check was destroyed, its whereabouts cannot be  
1370 determined, or it is in the wrongful possession of an unknown  
1371 person or a person that cannot be found or is not amenable to  
1372 service of process.

1373 (4) "Obligated bank" means the issuer of a cashier's  
1374 check or teller's check or the acceptor of a certified check.

1375 (b) A claimant may assert a claim to the amount of a check  
1376 by a communication to the obligated bank describing the check with  
1377 reasonable certainty and requesting payment of the amount of the  
1378 check, if (i) the claimant is the drawer or payee of a certified  
1379 check or the remitter or payee of a cashier's check or teller's  
1380 check, (ii) the communication contains or is accompanied by a  
1381 declaration of loss of the claimant with respect to the check,  
1382 (iii) the communication is received at a time and in a manner  
1383 affording the bank a reasonable time to act on it before the check  
1384 is paid, and (iv) the claimant provides reasonable identification  
1385 if requested by the obligated bank. Delivery of a declaration of  
1386 loss is a warranty of the truth of the statements made in the  
1387 declaration. If a claim is asserted in compliance with this  
1388 subsection, the following rules apply:

1389 (1) The claim becomes enforceable at the later of (i)  
1390 the time the claim is asserted, or (ii) the ninetieth day  
1391 following the date of the check, in the case of a cashier's check  
1392 or teller's check, or the ninetieth day following the date of  
1393 acceptance, in the case of a certified check.

1394 (2) Until the claim becomes enforceable, it has no  
1395 legal effect and the obligated bank may pay the check or, in the  
1396 case of a teller's check, may permit the drawee to pay the check.



1397 Payment to a person entitled to enforce the check discharges all  
1398 liability of the obligated bank with respect to the check.

1399 (3) If the claim becomes enforceable before the check  
1400 is presented for payment, the obligated bank is not obliged to pay  
1401 the check.

1402 (4) When the claim becomes enforceable, the obligated  
1403 bank becomes obliged to pay the amount of the check to the  
1404 claimant if payment of the check has not been made to a person  
1405 entitled to enforce the check. Subject to Section 75-4-302(a)(1),  
1406 payment to the claimant discharges all liability of the obligated  
1407 bank with respect to the check.

1408 (c) If the obligated bank pays the amount of a check to a  
1409 claimant under subsection (b)(4) and the check is presented for  
1410 payment by a person having rights of a holder in due course, the  
1411 claimant is obliged to (i) refund the payment to the obligated  
1412 bank if the check is paid, or (ii) pay the amount of the check to  
1413 the person having rights of a holder in due course if the check is  
1414 dishonored.

1415 (d) If a claimant has the right to assert a claim under  
1416 subsection (b) and is also a person entitled to enforce a  
1417 cashier's check, teller's check, or certified check which is lost,  
1418 destroyed, or stolen, the claimant may assert rights with respect  
1419 to the check either under this section or Section 75-3-309.

1420 **SECTION 20.** Section 75-3-415, Mississippi Code of 1972, is  
1421 amended as follows:

1422 75-3-415. (a) Subject to subsections (b), (c), and (d) and  
1423 to Section 75-3-419(d), if an instrument is dishonored, an  
1424 indorser is obliged to pay the amount due on the instrument (i)  
1425 according to the terms of the instrument at the time it was  
1426 indorsed, or (ii) if the indorser indorsed an incomplete  
1427 instrument, according to its terms when completed, to the extent  
1428 stated in Sections 75-3-115 and 75-3-407. The obligation of the  
1429 indorser is owed to a person entitled to enforce the instrument or



1430 to a subsequent indorser who paid the instrument under this  
1431 section.

1432 (b) If an indorsement states that it is made "without  
1433 recourse" or otherwise disclaims liability of the indorser, the  
1434 indorser is not liable under subsection (a) to pay the instrument.

1435 (c) If notice of dishonor of an instrument is required by  
1436 Section 75-3-503 and notice of dishonor complying with that  
1437 section is not given to an indorser, the liability of the indorser  
1438 under subsection (a) is discharged.

1439 (d) If a draft is accepted by a bank after an indorsement is  
1440 made, the liability of the indorser under subsection (a) is  
1441 discharged.

1442 \* \* \*

1443 **SECTION 21.** Section 75-3-416, Mississippi Code of 1972, is  
1444 amended as follows:

1445 75-3-416. (a) A person who transfers an instrument for  
1446 consideration warrants to the transferee and, if the transfer is  
1447 by indorsement, to any subsequent transferee that:

1448 (1) The warrantor is a person entitled to enforce the  
1449 instrument;

1450 (2) All signatures on the instrument are authentic and  
1451 authorized;

1452 (3) The instrument has not been altered;

1453 (4) The instrument is not subject to a defense or claim  
1454 in recoupment of any party which can be asserted against the  
1455 warrantor; \* \* \*

1456 (5) The warrantor has no knowledge of any insolvency  
1457 proceeding commenced with respect to the maker or acceptor or, in  
1458 the case of an unaccepted draft, the drawer; and

1459 (6) With respect to a remotely created check, that the  
1460 person on whose account the remotely created check is drawn  
1461 authorized the issuance of the check in the amount stated on the  
1462 check and to the payee stated on the check.



1463 (b) A person to whom the warranties under subsection (a) are  
1464 made and who took the instrument in good faith may recover from  
1465 the warrantor as damages for breach of warranty an amount equal to  
1466 the loss suffered as a result of the breach, but not more than the  
1467 amount of the instrument plus expenses and loss of interest  
1468 incurred as a result of the breach.

1469 (c) The warranties stated in subsection (a) cannot be  
1470 disclaimed with respect to checks. Unless notice of a claim for  
1471 breach of warranty is given to the warrantor within thirty (30)  
1472 days after the claimant has reason to know of the breach and the  
1473 identity of the warrantor, the liability of the warrantor under  
1474 subsection (b) is discharged to the extent of any loss caused by  
1475 the delay in giving notice of the claim.

1476 (d) A cause of action for breach of warranty under this  
1477 section accrues when the claimant has reason to know of the  
1478 breach.

1479 **SECTION 22.** Section 75-3-417, Mississippi Code of 1972, is  
1480 amended as follows:

1481 75-3-417. (a) If an unaccepted draft is presented to the  
1482 drawee for payment or acceptance and the drawee pays or accepts  
1483 the draft, (i) the person obtaining payment or acceptance, at the  
1484 time of presentment, and (ii) a previous transferor of the draft,  
1485 at the time of transfer, warrant to the drawee making payment or  
1486 accepting the draft in good faith that:

1487 (1) The warrantor is, or was, at the time the warrantor  
1488 transferred the draft, a person entitled to enforce the draft or  
1489 authorized to obtain payment or acceptance of the draft on behalf  
1490 of a person entitled to enforce the draft;

1491 (2) The draft has not been altered; \* \* \*

1492 (3) The warrantor has no knowledge that the signature  
1493 of the drawer of the draft is unauthorized; and

1494 (4) With respect to a remotely created check, that the  
1495 person on whose account the remotely created check is drawn



1496 authorized the issuance of the check in the amount stated on the  
1497 check and to the payee stated on the check.

1498 (b) A drawee making payment may recover from any warrantor  
1499 damages for breach of warranty equal to the amount paid by the  
1500 drawee less the amount the drawee received or is entitled to  
1501 receive from the drawer because of the payment. In addition, the  
1502 drawee is entitled to compensation for expenses and loss of  
1503 interest resulting from the breach. The right of the drawee to  
1504 recover damages under this subsection is not affected by any  
1505 failure of the drawee to exercise ordinary care in making payment.  
1506 If the drawee accepts the draft, breach of warranty is a defense  
1507 to the obligation of the acceptor. If the acceptor makes payment  
1508 with respect to the draft, the acceptor is entitled to recover  
1509 from any warrantor for breach of warranty the amounts stated in  
1510 this subsection.

1511 (c) If a drawee asserts a claim for breach of warranty under  
1512 subsection (a) based on an unauthorized indorsement of the draft  
1513 or an alteration of the draft, the warrantor may defend by proving  
1514 that the indorsement is effective under Section 75-3-404 or  
1515 75-3-405 or the drawer is precluded under Section 75-3-406 or  
1516 75-4-406 from asserting against the drawee the unauthorized  
1517 indorsement or alteration. If a drawee asserts a claim for breach  
1518 of warranty under subsection (a) (4), the warrantor may defend by  
1519 proving that the person on whose account the remotely created  
1520 check is drawn is precluded under Section 75-4-406, as applicable,  
1521 from asserting against the drawee the unauthorized issuance of the  
1522 check.

1523 (d) If (i) a dishonored draft is presented for payment to  
1524 the drawer or an indorser or (ii) any other instrument is  
1525 presented for payment to a party obliged to pay the instrument,  
1526 and (iii) payment is received, the following rules apply:

1527 (1) The person obtaining payment and a prior transferor  
1528 of the instrument warrant to the person making payment in good



1529 faith that the warrantor is, or was, at the time the warrantor  
1530 transferred the instrument, a person entitled to enforce the  
1531 instrument or authorized to obtain payment on behalf of a person  
1532 entitled to enforce the instrument.

1533 (2) The person making payment may recover from any  
1534 warrantor for breach of warranty an amount equal to the amount  
1535 paid plus expenses and loss of interest resulting from the breach.

1536 (e) The warranties stated in subsections (a) and (d) cannot  
1537 be disclaimed with respect to checks. Unless notice of a claim  
1538 for breach of warranty is given to the warrantor within thirty  
1539 (30) days after the claimant has reason to know of the breach and  
1540 the identity of the warrantor, the liability of the warrantor  
1541 under subsection (b) or (d) is discharged to the extent of any  
1542 loss caused by the delay in giving notice of the claim.

1543 (f) A cause of action for breach of warranty under this  
1544 section accrues when the claimant has reason to know of the  
1545 breach.

1546 **SECTION 23.** Section 75-3-419, Mississippi Code of 1972, is  
1547 amended as follows:

1548 75-3-419. (a) If an instrument is issued for value given  
1549 for the benefit of a party to the instrument ("accommodated  
1550 party") and another party to the instrument ("accommodation  
1551 party") signs the instrument for the purpose of incurring  
1552 liability on the instrument without being a direct beneficiary of  
1553 the value given for the instrument, the instrument is signed by  
1554 the accommodation party "for accommodation."

1555 (b) An accommodation party may sign the instrument as maker,  
1556 drawer, acceptor, or indorser and, subject to subsection (d), is  
1557 obliged to pay the instrument in the capacity in which the  
1558 accommodation party signs. The obligation of an accommodation  
1559 party may be enforced notwithstanding any statute of frauds and  
1560 whether or not the accommodation party receives consideration for  
1561 the accommodation.



1562 (c) A person signing an instrument is presumed to be an  
1563 accommodation party and there is notice that the instrument is  
1564 signed for accommodation if the signature is an anomalous  
1565 indorsement or is accompanied by words indicating that the signer  
1566 is acting as surety or guarantor with respect to the obligation of  
1567 another party to the instrument. Except as provided in Section  
1568 75-3-605, the obligation of an accommodation party to pay the  
1569 instrument is not affected by the fact that the person enforcing  
1570 the obligation had notice when the instrument was taken by that  
1571 person that the accommodation party signed the instrument for  
1572 accommodation.

1573 (d) If the signature of a party to an instrument is  
1574 accompanied by words indicating unambiguously that the party is  
1575 guaranteeing collection rather than payment of the obligation of  
1576 another party to the instrument, the signer is obliged to pay the  
1577 amount due on the instrument to a person entitled to enforce the  
1578 instrument only if (i) execution of judgment against the other  
1579 party has been returned unsatisfied, (ii) the other party is  
1580 insolvent or in an insolvency proceeding, (iii) the other party  
1581 cannot be served with process, or (iv) it is otherwise apparent  
1582 that payment cannot be obtained from the other party.

1583 (e) If the signature of a party to an instrument is  
1584 accompanied by words indicating that the party guarantees payment  
1585 or the signer signs the instrument as an accommodation party in  
1586 some other manner that does not unambiguously indicate an  
1587 intention to guarantee collection rather than payment, the signer  
1588 is obliged to pay the amount due on the instrument to a person  
1589 entitled to enforce the instrument in the same circumstances as  
1590 the accommodated party would be obliged, without prior resort to  
1591 the accommodated party by the person entitled to enforce the  
1592 instrument.

1593 (f) An accommodation party who pays the instrument is  
1594 entitled to reimbursement from the accommodated party and is





1595 entitled to enforce the instrument against the accommodated party.  
1596 In proper circumstances, an accommodation party may obtain relief  
1597 that requires the accommodated party to perform its obligations on  
1598 the instrument. An accommodated party who pays the instrument has  
1599 no right of recourse against, and is not entitled to contribution  
1600 from, an accommodation party.

1601 **SECTION 24.** Section 75-3-602, Mississippi Code of 1972, is  
1602 amended as follows:

1603 75-3-602. (a) Subject to subsection (e), an instrument is  
1604 paid to the extent payment is made \* \* \* by or on behalf of a  
1605 party obliged to pay the instrument, and \* \* \* to a person  
1606 entitled to enforce the instrument. \* \* \*

1607 (b) Subject to subsection (e), a note is paid to the extent  
1608 payment is made by or on behalf of a party obliged to pay the note  
1609 to a person that formerly was entitled to enforce the note only if  
1610 at the time of the payment the party obliged to pay has not  
1611 received adequate notification that the note has been transferred  
1612 and that payment is to be made to the transferee. A notification  
1613 is adequate only if it is signed by the transferor or the  
1614 transferee; reasonably identifies the transferred note; and  
1615 provides an address at which payments subsequently are to be made.  
1616 Upon request made in a record, a transferee shall seasonably  
1617 furnish reasonable proof that the note has been transferred.

1618 (c) Subject to subsection (e), to the extent of a payment  
1619 under subsections (a) and (b), the obligation of the party obliged  
1620 to pay the instrument is discharged even though payment is made  
1621 with knowledge of a claim to the instrument under Section 75-3-306  
1622 by another person.

1623 (d) Subject to subsection (e), a transferee, or any party  
1624 that has acquired rights in the instrument directly or indirectly  
1625 from a transferee, including any such party that has rights as a  
1626 holder in due course, is deemed to have notice of any payment that  
1627 is made under subsection (b) after the date that the note is



1628 transferred to the transferee but before the party obliged to pay  
1629 the note receives adequate notification of the transfer.

1630 (e) The obligation of a party to pay the instrument is not  
1631 discharged under subsections (a) through (d) if:

1632 (1) A claim to the instrument under Section 75-3-306 is  
1633 enforceable against the party receiving payment and (i) payment is  
1634 made with knowledge by the payor that payment is prohibited by  
1635 injunction or similar process of a court of competent  
1636 jurisdiction, or (ii) in the case of an instrument other than a  
1637 cashier's check, teller's check, or certified check, the party  
1638 making payment accepted, from the person having a claim to the  
1639 instrument, indemnity against loss resulting from refusal to pay  
1640 the person entitled to enforce the instrument; or

1641 (2) The person making payment knows that the instrument  
1642 is a stolen instrument and pays a person it knows is in wrongful  
1643 possession of the instrument.

1644 (f) As used in this section, "signed," with respect to a  
1645 record that is not a writing, includes the attachment to or  
1646 logical association with the record of an electronic symbol,  
1647 sound, or process with the present intent to adopt or accept the  
1648 record.

1649 **SECTION 25.** Section 75-3-604, Mississippi Code of 1972, is  
1650 amended as follows:

1651 75-3-604. (a) A person entitled to enforce an instrument,  
1652 with or without consideration, may discharge the obligation of a  
1653 party to pay the instrument (i) by an intentional voluntary act,  
1654 such as surrender of the instrument to the party, destruction,  
1655 mutilation, or cancellation of the instrument, cancellation or  
1656 striking out of the party's signature, or the addition of words to  
1657 the instrument indicating discharge, or (ii) by agreeing not to  
1658 sue or otherwise renouncing rights against the party by a signed  
1659 record.



1660 (b) Cancellation or striking out of an indorsement pursuant  
1661 to subsection (a) does not affect the status and rights of a party  
1662 derived from the indorsement.

1663 (c) In this section, "signed," with respect to a record that  
1664 is not a writing, includes the attachment to or logical  
1665 association with the record of an electronic symbol, sound, or  
1666 process with the present intent to adopt or accept the record.

1667 **SECTION 26.** Section 75-3-605, Mississippi Code of 1972, is  
1668 amended as follows:

1669 75-3-605. **Discharge of secondary obligors.** (a) If a person  
1670 entitled to enforce an instrument releases the obligation of a  
1671 principal obligor in whole or in part, and another party to the  
1672 instrument is a secondary obligor with respect to the obligation  
1673 of that principal obligor, the following rules apply:

1674 (1) Any obligations of the principal obligor to the  
1675 secondary obligor with respect to any previous payment by the  
1676 secondary obligor are not affected. Unless the terms of the  
1677 release preserve the secondary obligor's recourse, the principal  
1678 obligor is discharged, to the extent of the release, from any  
1679 other duties to the secondary obligor under this article.

1680 (2) Unless the terms of the release provide that the  
1681 person entitled to enforce the instrument retains the right to  
1682 enforce the instrument against the secondary obligor, the  
1683 secondary obligor is discharged to the same extent as the  
1684 principal obligor from any unperformed portion of its obligation  
1685 on the instrument. If the instrument is a check and the  
1686 obligation of the secondary obligor is based on an indorsement of  
1687 the check, the secondary obligor is discharged without regard to  
1688 the language or circumstances of the discharge or other release.

1689 (3) If the secondary obligor is not discharged under  
1690 paragraph (2), the secondary obligor is discharged to the extent  
1691 of the value of the consideration for the release, and to the



1692 extent that the release would otherwise cause the secondary  
1693 obligor a loss.

1694 (b) If a person entitled to enforce an instrument grants a  
1695 principal obligor an extension of the time at which one or more  
1696 payments are due on the instrument and another party to the  
1697 instrument is a secondary obligor with respect to the obligation  
1698 of that principal obligor, the following rules apply:

1699 (1) Any obligations of the principal obligor to the  
1700 secondary obligor with respect to any previous payment by the  
1701 secondary obligor are not affected. Unless the terms of the  
1702 extension preserve the secondary obligor's recourse, the extension  
1703 correspondingly extends the time for performance of any other  
1704 duties owed to the secondary obligor by the principal obligor  
1705 under this article.

1706 (2) The secondary obligor is discharged to the extent  
1707 that the extension would otherwise cause the secondary obligor a  
1708 loss.

1709 (3) To the extent that the secondary obligor is not  
1710 discharged under paragraph (2), the secondary obligor may perform  
1711 its obligations to a person entitled to enforce the instrument as  
1712 if the time for payment had not been extended or, unless the terms  
1713 of the extension provide that the person entitled to enforce the  
1714 instrument retains the right to enforce the instrument against the  
1715 secondary obligor as if the time for payment had not been  
1716 extended, treat the time for performance of its obligations as  
1717 having been extended correspondingly.

1718 (c) If a person entitled to enforce an instrument agrees,  
1719 with or without consideration, to a modification of the obligation  
1720 of a principal obligor other than a complete or partial release or  
1721 an extension of the due date and another party to the instrument  
1722 is a secondary obligor with respect to the obligation of that  
1723 principal obligor, the following rules apply:



1724           (1) Any obligations of the principal obligor to the  
1725 secondary obligor with respect to any previous payment by the  
1726 secondary obligor are not affected. The modification  
1727 correspondingly modifies any other duties owed to the secondary  
1728 obligor by the principal obligor under this article.

1729           (2) The secondary obligor is discharged from any  
1730 unperformed portion of its obligation to the extent that the  
1731 modification would otherwise cause the secondary obligor a loss.

1732           (3) To the extent that the secondary obligor is not  
1733 discharged under paragraph (2), the secondary obligor may satisfy  
1734 its obligation on the instrument as if the modification had not  
1735 occurred, or treat its obligation on the instrument as having been  
1736 modified correspondingly.

1737           (d) If the obligation of a principal obligor is secured by  
1738 an interest in collateral, another party to the instrument is a  
1739 secondary obligor with respect to that obligation, and a person  
1740 entitled to enforce the instrument impairs the value of the  
1741 interest in collateral, the obligation of the secondary obligor is  
1742 discharged to the extent of the impairment. The value of an  
1743 interest in collateral is impaired to the extent the value of the  
1744 interest is reduced to an amount less than the amount of the  
1745 recourse of the secondary obligor, or the reduction in value of  
1746 the interest causes an increase in the amount by which the amount  
1747 of the recourse exceeds the value of the interest. For purposes  
1748 of this subsection, impairing the value of an interest in  
1749 collateral includes failure to obtain or maintain perfection or  
1750 recordation of the interest in collateral, release of collateral  
1751 without substitution of collateral of equal value or equivalent  
1752 reduction of the underlying obligation, failure to perform a duty  
1753 to preserve the value of collateral owed, under Article 9 or other  
1754 law, to a debtor or other person secondarily liable, and failure  
1755 to comply with applicable law in disposing of or otherwise  
1756 enforcing the interest in collateral.



1757           (e) A secondary obligor is not discharged under subsection  
1758 (a) (3), (b), (c), or (d) unless the person entitled to enforce the  
1759 instrument knows that the person is a secondary obligor or has  
1760 notice under Section 75-3-419(c) that the instrument was signed  
1761 for accommodation.

1762           (f) A secondary obligor is not discharged under this section  
1763 if the secondary obligor consents to the event or conduct that is  
1764 the basis of the discharge, or the instrument or a separate  
1765 agreement of the party provides for waiver of discharge under this  
1766 section specifically or by general language indicating that  
1767 parties waive defenses based on suretyship or impairment of  
1768 collateral. Unless the circumstances indicate otherwise, consent  
1769 by the principal obligor to an act that would lead to a discharge  
1770 under this section constitutes consent to that act by the  
1771 secondary obligor if the secondary obligor controls the principal  
1772 obligor or deals with the person entitled to enforce the  
1773 instrument on behalf of the principal obligor.

1774           (g) A release or extension preserves a secondary obligor's  
1775 recourse if the terms of the release or extension provide that:

1776                 (1) The person entitled to enforce the instrument  
1777 retains the right to enforce the instrument against the secondary  
1778 obligor; and

1779                 (2) The recourse of the secondary obligor continues as  
1780 if the release or extension had not been granted.

1781           (h) Except as otherwise provided in subsection (i), a  
1782 secondary obligor asserting discharge under this section has the  
1783 burden of persuasion both with respect to the occurrence of the  
1784 acts alleged to harm the secondary obligor and loss or prejudice  
1785 caused by those acts.

1786           (i) If the secondary obligor demonstrates prejudice caused  
1787 by an impairment of its recourse, and the circumstances of the  
1788 case indicate that the amount of loss is not reasonably  
1789 susceptible of calculation or requires proof of facts that are not



1790 ascertainable, it is presumed that the act impairing recourse  
1791 caused a loss or impairment equal to the liability of the  
1792 secondary obligor on the instrument. In that event, the burden of  
1793 persuasion as to any lesser amount of the loss is on the person  
1794 entitled to enforce the instrument.

1795 **SECTION 27.** Section 75-4-104, Mississippi Code of 1972, is  
1796 amended as follows:

1797 75-4-104. (a) In this chapter, unless the context otherwise  
1798 requires:

1799 (1) "Account" means any deposit or credit account with  
1800 a bank, including a demand, time, savings, passbook, share draft,  
1801 or like account, other than an account evidenced by a certificate  
1802 of deposit.

1803 (2) "Afternoon" means the period of a day between noon  
1804 and midnight.

1805 (3) "Banking day" means the part of a day on which a  
1806 bank is open to the public for carrying on substantially all of  
1807 its banking functions.

1808 (4) "Clearinghouse" means an association of banks or  
1809 other payors regularly clearing items.

1810 (5) "Customer" means a person having an account with a  
1811 bank or for whom a bank has agreed to collect items, including a  
1812 bank that maintains an account at another bank.

1813 (6) "Documentary draft" means a draft to be presented  
1814 for acceptance or payment if specified documents, certificated  
1815 securities (Section 75-8-102) or instructions for uncertificated  
1816 securities (Section 75-8-102), or other certificates, statements,  
1817 or the like are to be received by the drawee or other payor before  
1818 acceptance or payment of the draft.

1819 (7) "Draft" means a draft as defined in Section  
1820 75-3-104 or an item, other than an instrument, that is an order.

1821 (8) "Drawee" means a person ordered in a draft to make  
1822 payment.



1823 (9) "Item" means an instrument or a promise or order to  
1824 pay money handled by a bank for collection or payment. The term  
1825 does not include a payment order governed by Chapter 4A or a  
1826 credit or debit card slip.

1827 (10) "Midnight deadline" with respect to a bank is  
1828 midnight on its next banking day following the banking day on  
1829 which it receives the relevant item or notice or from which the  
1830 time for taking action commences to run, whichever is later.

1831 (11) "Settle" means to pay in cash, by clearinghouse  
1832 settlement, in a charge or credit or by remittance, or otherwise  
1833 as agreed. A settlement may be either provisional or final.

1834 (12) "Suspends payments" with respect to a bank means  
1835 that it has been closed by order of the supervisory authorities,  
1836 that a public officer has been appointed to take it over, or that  
1837 it ceases or refuses to make payments in the ordinary course of  
1838 business.

1839 (b) Other definitions applying to this chapter and the  
1840 sections in which they appear are:

1841 "Agreement for electronic  
1842 presentment" Section 75-4-110

1843 \* \* \*

1844 "Collecting bank" Section 75-4-105

1845 "Depositary bank" Section 75-4-105

1846 "Intermediary bank" Section 75-4-105

1847 "Payor bank" Section 75-4-105

1848 "Presenting bank" Section 75-4-105

1849 "Presentment notice" Section 75-4-110

1850 (c) The following definitions in other chapters apply to  
1851 this chapter:

1852 "Acceptance" Section 75-3-409

1853 "Alteration" Section 75-3-407

1854 "Cashier's check" Section 75-3-104

1855 "Certificate of deposit" Section 75-3-104





1856	"Certified check"	Section 75-3-409
1857	"Check"	Section 75-3-104
1858	"Control"	Section 75-7-106
1859	* * *	
1860	"Holder in due course"	Section 75-3-302
1861	"Instrument"	Section 75-3-104
1862	"Notice of dishonor"	Section 75-3-503
1863	"Order"	Section 75-3-103
1864	"Ordinary care"	Section 75-3-103
1865	"Person entitled to enforce"	Section 75-3-301
1866	"Presentment"	Section 75-3-501
1867	"Promise"	Section 75-3-103
1868	"Prove"	Section 75-3-103
1869	<u>"Remotely created check"</u>	<u>Section 75-3-103</u>
1870	"Teller's check"	Section 75-3-104
1871	"Unauthorized signature"	Section 75-3-403

1872 (d) In addition, Chapter 1 contains general definitions and  
1873 principles of construction and interpretation applicable  
1874 throughout this chapter.

1875 **SECTION 28.** Section 75-4-105, Mississippi Code of 1972, is  
1876 amended as follows:

1877 75-4-105. **Definitions of types of banks.** In this chapter:

1878 (1) [Reserved]

1879 (2) "Depository bank" means the first bank to take an  
1880 item even though it is also the payor bank, unless the item is  
1881 presented for immediate payment over the counter.

1882 (3) "Payor bank" means a bank that is the drawee of a  
1883 draft.

1884 (4) "Intermediary bank" means a bank to which an item  
1885 is transferred in course of collection except the depository or  
1886 payor bank.

1887 (5) "Collecting bank" means a bank handling an item for  
1888 collection except the payor bank.



1889           (6) "Presenting bank" means a bank presenting an item  
1890 except a payor bank.

1891           **SECTION 29.** Section 75-4-207, Mississippi Code of 1972, is  
1892 amended as follows:

1893           75-4-207. (a) A customer or collecting bank that transfers  
1894 an item and receives a settlement or other consideration warrants  
1895 to the transferee and to any subsequent collecting bank that:

1896           (1) The warrantor is a person entitled to enforce the  
1897 item;

1898           (2) All signatures on the item are authentic and  
1899 authorized;

1900           (3) The item has not been altered;

1901           (4) The item is not subject to a defense or claim in  
1902 recoupment (Section 75-3-305(a)) of any party that can be asserted  
1903 against the warrantor; \* \* \*

1904           (5) The warrantor has no knowledge of any insolvency  
1905 proceeding commenced with respect to the maker or acceptor or, in  
1906 the case of an unaccepted draft, the drawer; and

1907           (6) With respect to a remotely created check, that the  
1908 person on whose account the remotely created check is drawn  
1909 authorized the issuance of the check in the amount stated on the  
1910 check and to the payee stated on the check.

1911           (b) If an item is dishonored, a customer or collecting bank  
1912 transferring the item and receiving settlement or other  
1913 consideration is obliged to pay the amount due on the item (i)  
1914 according to the terms of the item at the time it was transferred,  
1915 or (ii) if the transfer was of an incomplete item, according to  
1916 its terms when completed as stated in Sections 75-3-115 and  
1917 75-3-407. The obligation of a transferor is owed to the  
1918 transferee and to any subsequent collecting bank that takes the  
1919 item in good faith. A transferor cannot disclaim its obligation  
1920 under this subsection by an indorsement stating that it is made  
1921 "without recourse" or otherwise disclaiming liability.



1922 (c) A person to whom the warranties under subsection (a) are  
1923 made and who took the item in good faith may recover from the  
1924 warrantor as damages for breach of warranty an amount equal to the  
1925 loss suffered as a result of the breach, but not more than the  
1926 amount of the item plus expenses and loss of interest incurred as  
1927 a result of the breach.

1928 (d) The warranties stated in subsection (a) cannot be  
1929 disclaimed with respect to checks. Unless notice of a claim for  
1930 breach of warranty is given to the warrantor within thirty (30)  
1931 days after the claimant has reason to know of the breach and the  
1932 identity of the warrantor, the warrantor is discharged to the  
1933 extent of any loss caused by the delay in giving notice of the  
1934 claim.

1935 (e) A cause of action for breach of warranty under this  
1936 section accrues when the claimant has reason to know of the  
1937 breach.

1938 **SECTION 30.** Section 75-4-208, Mississippi Code of 1972, is  
1939 amended as follows:

1940 75-4-208. (a) If an unaccepted draft is presented to the  
1941 drawee for payment or acceptance and the drawee pays or accepts  
1942 the draft, (i) the person obtaining payment or acceptance, at the  
1943 time of presentment, and (ii) a previous transferor of the draft,  
1944 at the time of transfer, warrant to the drawee that pays or  
1945 accepts the draft in good faith that:

1946 (1) The warrantor is, or was, at the time the warrantor  
1947 transferred the draft, a person entitled to enforce the draft or  
1948 authorized to obtain payment or acceptance of the draft on behalf  
1949 of a person entitled to enforce the draft;

1950 (2) The draft has not been altered; \* \* \*

1951 (3) The warrantor has no knowledge that the signature  
1952 of the purported drawer of the draft is unauthorized; and

1953 (4) With respect to a remotely created check, that the  
1954 person on whose account the remotely created check is drawn



1955 authorized the issuance of the check in the amount stated on the  
1956 check and to the payee stated on the check.

1957 (b) A drawee making payment may recover from a warrantor  
1958 damages for breach of warranty equal to the amount paid by the  
1959 drawee less the amount the drawee received or is entitled to  
1960 receive from the drawer because of the payment. In addition, the  
1961 drawee is entitled to compensation for expenses and loss of  
1962 interest resulting from the breach. The right of the drawee to  
1963 recover damages under this subsection is not affected by any  
1964 failure of the drawee to exercise ordinary care in making payment.  
1965 If the drawee accepts the draft (i) breach of warranty is a  
1966 defense to the obligation of the acceptor, and (ii) if the  
1967 acceptor makes payment with respect to the draft, the acceptor is  
1968 entitled to recover from a warrantor for breach of warranty the  
1969 amounts stated in this subsection.

1970 (c) If a drawee asserts a claim for breach of warranty under  
1971 subsection (a) based on an unauthorized indorsement of the draft  
1972 or an alteration of the draft, the warrantor may defend by proving  
1973 that the indorsement is effective under Section 75-3-404 or  
1974 75-3-405 or the drawer is precluded under Section 75-3-406 or  
1975 75-4-406 from asserting against the drawee the unauthorized  
1976 indorsement or alteration. If a drawee asserts a claim for breach  
1977 of warranty under subsection (a) (4), the warrantor may defend by  
1978 proving that the person on whose account the remotely created  
1979 check is drawn is precluded under Section 75-4-406, as applicable,  
1980 from asserting against the drawee the unauthorized issuance of the  
1981 check.

1982 (d) If (i) a dishonored draft is presented for payment to  
1983 the drawer or an indorser or (ii) any other item is presented for  
1984 payment to a party obliged to pay the item, and the item is paid,  
1985 the person obtaining payment and a prior transferor of the item  
1986 warrant to the person making payment in good faith that the  
1987 warrantor is, or was, at the time the warrantor transferred the



1988 item, a person entitled to enforce the item or authorized to  
1989 obtain payment on behalf of a person entitled to enforce the item.  
1990 The person making payment may recover from any warrantor for  
1991 breach of warranty an amount equal to the amount paid plus  
1992 expenses and loss of interest resulting from the breach.

1993 (e) The warranties stated in subsections (a) and (d) cannot  
1994 be disclaimed with respect to checks. Unless notice of a claim  
1995 for breach of warranty is given to the warrantor within thirty  
1996 (30) days after the claimant has reason to know of the breach and  
1997 the identity of the warrantor, the warrantor is discharged to the  
1998 extent of any loss caused by the delay in giving notice of the  
1999 claim.

2000 (f) A cause of action for breach of warranty under this  
2001 section accrues when the claimant has reason to know of the  
2002 breach.

2003 **SECTION 31.** Section 75-4-212, Mississippi Code of 1972, is  
2004 amended as follows:

2005 75-4-212. (a) Unless otherwise instructed, a collecting  
2006 bank may present an item not payable by, through, or at a bank by  
2007 sending to the party to accept or pay a record providing notice  
2008 that the bank holds the item for acceptance or payment. The  
2009 notice must be sent in time to be received on or before the day  
2010 when presentment is due and the bank must meet any requirement of  
2011 the party to accept or pay under Section 75-3-501 by the close of  
2012 the bank's next banking day after it knows of the requirement.

2013 (b) If presentment is made by notice and payment,  
2014 acceptance, or request for compliance with a requirement under  
2015 Section 75-3-501 is not received by the close of business on the  
2016 day after maturity or, in the case of demand items, by the close  
2017 of business on the third banking day after notice was sent, the  
2018 presenting bank may treat the item as dishonored and charge any  
2019 drawer or indorser by sending it notice of the facts.



2020           **SECTION 32.** Section 75-4-301, Mississippi Code of 1972, is  
2021 amended as follows:

2022           75-4-301. (a) If a payor bank settles for a demand item  
2023 other than a documentary draft presented otherwise than for  
2024 immediate payment over the counter before midnight of the banking  
2025 day of receipt, the payor bank may revoke the settlement and  
2026 recover the settlement if, before it has made final payment and  
2027 before its midnight deadline, it:

2028                   (1) Returns the item; \* \* \*

2029                   (2) Returns an image of the item, if the party to which  
2030 the return is made has entered into an agreement to accept an  
2031 image as a return of the item and the image is returned in  
2032 accordance with that agreement; or

2033                   (3) Sends a record providing notice of dishonor or  
2034 nonpayment if the item is unavailable for return.

2035           (b) If a demand item is received by a payor bank for credit  
2036 on its books, it may return the item or send notice of dishonor  
2037 and may revoke any credit given or recover the amount thereof  
2038 withdrawn by its customer, if it acts within the time limit and in  
2039 the manner specified in subsection (a).

2040           (c) Unless previous notice of dishonor has been sent, an  
2041 item is dishonored at the time when for purposes of dishonor it is  
2042 returned or notice sent in accordance with this section.

2043           (d) An item is returned:

2044                   (1) As to an item presented through a clearinghouse,  
2045 when it is delivered to the presenting or last collecting bank or  
2046 to the clearinghouse or is sent or delivered in accordance with  
2047 clearinghouse rules; or

2048                   (2) In all other cases, when it is sent or delivered to  
2049 the bank's customer or transferor or pursuant to instructions.

2050           **SECTION 33.** Section 75-4-403, Mississippi Code of 1972, is  
2051 amended as follows:



2052           75-4-403. (a) A customer or any person authorized to draw  
2053 on the account if there is more than one (1) person may stop  
2054 payment of any item drawn on the customer's account or close the  
2055 account by an order to the bank describing the item or account  
2056 with reasonable certainty received at a time and in a manner that  
2057 affords the bank a reasonable opportunity to act on it before any  
2058 action by the bank with respect to the item described in Section  
2059 75-4-303. If the signature of more than one (1) person is  
2060 required to draw on an account, any of these persons may stop  
2061 payment or close the account.

2062           (b) A stop-payment order is effective for six (6) months,  
2063 but it lapses after fourteen (14) calendar days if the original  
2064 order was oral and was not confirmed in writing within that  
2065 period. A stop-payment order may be renewed for additional  
2066 six-month periods by a record given to the bank within a period  
2067 during which the stop-payment order is effective.

2068           (c) The burden of establishing the fact and amount of loss  
2069 resulting from the payment of an item contrary to a stop-payment  
2070 order or order to close an account is on the customer. The loss  
2071 from payment of an item contrary to a stop-payment order may  
2072 include damages for dishonor of subsequent items under Section  
2073 75-4-402.

2074           **SECTION 34.** Section 75-4A-105, Mississippi Code of 1972, is  
2075 amended as follows:

2076           75-4A-105. (a) In this chapter:

2077           (1) "Authorized account" means a deposit account of a  
2078 customer in a bank designated by the customer as a source of  
2079 payment of payment orders issued by the customer to the bank. If  
2080 a customer does not so designate an account, any account of the  
2081 customer is an authorized account if payment of a payment order  
2082 from that account is not inconsistent with a restriction on the  
2083 use of that account.



2084 (2) "Bank" means a person engaged in the business of  
2085 banking and includes a savings bank, savings and loan association,  
2086 credit union, and trust company. A branch or separate office of a  
2087 bank is a separate bank for purposes of this chapter.

2088 (3) "Customer" means a person, including a bank, having  
2089 an account with a bank or from whom a bank has agreed to receive  
2090 payment orders.

2091 (4) "Funds-transfer business day" of a receiving bank  
2092 means the part of a day during which the receiving bank is open  
2093 for the receipt, processing, and transmittal of payment orders and  
2094 cancellations and amendments of payment orders.

2095 (5) "Funds-transfer system" means a wire transfer  
2096 network, automated clearinghouse, or other communication system of  
2097 a clearinghouse or other association of banks through which a  
2098 payment order by a bank may be transmitted to the bank to which  
2099 the order is addressed.

2100 (6) [Reserved]

2101 (7) "Prove" with respect to a fact means to meet the  
2102 burden of establishing the fact (Section 75-1-201**(b)**(8)).

2103 (b) Other definitions applying to this chapter and the  
2104 sections in which they appear are:

2105	"Acceptance"	Section 75-4A-209
2106	"Beneficiary"	Section 75-4A-103
2107	"Beneficiary's bank"	Section 75-4A-103
2108	"Executed"	Section 75-4A-301
2109	"Execution date"	Section 75-4A-301
2110	"Funds transfer"	Section 75-4A-104
2111	"Funds-transfer system rule"	Section 75-4A-501
2112	"Intermediary bank"	Section 75-4A-104
2113	"Originator"	Section 75-4A-104
2114	"Originator's bank"	Section 75-4A-104
2115	"Payment by beneficiary's 2116 bank to beneficiary"	Section 75-4A-405





2117	"Payment by originator to	
2118	beneficiary"	Section 75-4A-406
2119	"Payment by sender to	
2120	receiving bank"	Section 75-4A-403
2121	"Payment date"	Section 75-4A-401
2122	"Payment order"	Section 75-4A-103
2123	"Receiving bank"	Section 75-4A-103
2124	"Security procedure"	Section 75-4A-201
2125	"Sender"	Section 75-4A-103

2126 (c) The following definitions in Title 75, Chapter 4, apply  
2127 to this chapter:

2128	"Clearinghouse"	Section 75-4-104
2129	"Item"	Section 75-4-104
2130	"Suspends payments"	Section 75-4-104

2131 (d) In addition Title 75, Chapter 1, contains general  
2132 definitions and principles of construction and interpretation  
2133 applicable throughout this chapter.

2134 **SECTION 35.** Section 75-4A-106, Mississippi Code of 1972, is  
2135 amended as follows:

2136 75-4A-106. (a) The time of receipt of a payment order or  
2137 communication cancelling or amending a payment order is determined  
2138 by the rules applicable to receipt of a notice stated in Section  
2139 75-1-202. A receiving bank may fix a cut-off time or times on a  
2140 funds-transfer business day for the receipt and processing of  
2141 payment orders and communications cancelling or amending payment  
2142 orders. Different cut-off times may apply to payment orders,  
2143 cancellations, or amendments, or to different categories of  
2144 payment orders, cancellations, or amendments. A cut-off time may  
2145 apply to senders generally or different cut-off times may apply to  
2146 different senders or categories of payment orders. If a payment  
2147 order or communication cancelling or amending a payment order is  
2148 received after the close of a funds-transfer business day or after  
2149 the appropriate cut-off time on a funds-transfer business day, the



2150 receiving bank may treat the payment order or communication as  
2151 received at the opening of the next funds-transfer business day.

2152 (b) If this chapter refers to an execution date or payment  
2153 date or states a day on which a receiving bank is required to take  
2154 action, and the date or day does not fall on a funds-transfer  
2155 business day, the next day that is a funds-transfer business day  
2156 is treated as the date or day stated, unless the contrary is  
2157 stated in this chapter.

2158 **SECTION 36.** Section 75-4A-204, Mississippi Code of 1972, is  
2159 amended as follows:

2160 75-4A-204. (a) If a receiving bank accepts a payment order  
2161 issued in the name of its customer as sender which is (i) not  
2162 authorized and not effective as the order of the customer under  
2163 Section 75-4A-202, or (ii) not enforceable, in whole or in part,  
2164 against the customer under Section 75-4A-203, the bank shall  
2165 refund any payment of the payment order received from the customer  
2166 to the extent the bank is not entitled to enforce payment and  
2167 shall pay interest on the refundable amount calculated from the  
2168 date the bank received payment to the date of the refund.  
2169 However, the customer is not entitled to interest from the bank on  
2170 the amount to be refunded if the customer fails to exercise  
2171 ordinary care to determine that the order was not authorized by  
2172 the customer and to notify the bank of the relevant facts within a  
2173 reasonable time not exceeding ninety (90) days after the date the  
2174 customer received notification from the bank that the order was  
2175 accepted or that the customer's account was debited with respect  
2176 to the order. The bank is not entitled to any recovery from the  
2177 customer on account of a failure by the customer to give  
2178 notification as stated in this section.

2179 (b) Reasonable time under subsection (a) may be fixed by  
2180 agreement as stated in Section 75-1-302(b), but the obligation of  
2181 a receiving bank to refund payment as stated in subsection (a) may  
2182 not otherwise be varied by agreement.



2183           **SECTION 37.** Section 75-5-103, Mississippi Code of 1972, is  
2184 amended as follows:

2185           75-5-103. (a) This chapter applies to letters of credit and  
2186 to certain rights and obligations arising out of transactions  
2187 involving letters of credit.

2188           (b) The statement of a rule in this chapter does not by  
2189 itself require, imply, or negate application of the same or a  
2190 different rule to a situation not provided for, or to a person not  
2191 specified, in this chapter.

2192           (c) With the exception of this subsection, subsections (a)  
2193 and (d), Sections 75-5-102(a) (9) and (10), 75-5-106(d), and  
2194 75-5-114(d), and except to the extent prohibited in Sections  
2195 75-1-302 and 75-5-117(d), the effect of this chapter may be varied  
2196 by agreement or by a provision stated or incorporated by reference  
2197 in an undertaking. A term in an agreement or undertaking  
2198 generally excusing liability or generally limiting remedies for  
2199 failure to perform obligations is not sufficient to vary  
2200 obligations prescribed by this chapter.

2201           (d) Rights and obligations of an issuer to a beneficiary or  
2202 a nominated person under a letter of credit are independent of the  
2203 existence, performance or nonperformance of a contract or  
2204 arrangement out of which the letter of credit arises or which  
2205 underlies it, including contracts or arrangements between the  
2206 issuer and the applicant and between the applicant and the  
2207 beneficiary.

2208           **SECTION 38.** Section 75-7-102, Mississippi Code of 1972, is  
2209 amended as follows:

2210           75-7-102. (a) In this chapter, unless the context otherwise  
2211 requires:

2212           (1) "Bailee" means a person that by a warehouse  
2213 receipt, bill of lading, or other document of title acknowledges  
2214 possession of goods and contracts to deliver them.



2215 (2) "Carrier" means a person that issues a bill of  
2216 lading.

2217 (3) "Consignee" means a person named in a bill of  
2218 lading to which or to whose order the bill promises delivery.

2219 (4) "Consignor" means a person named in a bill of  
2220 lading as the person from which the goods have been received for  
2221 shipment.

2222 (5) "Delivery order" means a record that contains an  
2223 order to deliver goods directed to a warehouse, carrier, or other  
2224 person that in the ordinary course of business issues warehouse  
2225 receipts or bills of lading.

2226 (6) [Reserved]

2227 (7) "Goods" means all things that are treated as  
2228 movable for the purposes of a contract for storage or  
2229 transportation.

2230 (8) "Issuer" means a bailee that issues a document of  
2231 title or, in the case of an unaccepted delivery order, the person  
2232 that orders the possessor of goods to deliver. The term includes  
2233 a person for which an agent or employee purports to act in issuing  
2234 a document if the agent or employee has real or apparent authority  
2235 to issue documents, even if the issuer did not receive any goods,  
2236 the goods were misdescribed, or in any other respect the agent or  
2237 employee violated the issuer's instructions.

2238 (9) "Person entitled under the document" means the  
2239 holder, in the case of a negotiable document of title, or the  
2240 person to which delivery of the goods is to be made by the terms  
2241 of, or pursuant to instructions in a record under, a nonnegotiable  
2242 document of title.

2243 (10) [Reserved]

2244 (11) "Sign" means, with present intent to authenticate  
2245 or adopt a record:

2246 (A) To execute or adopt a tangible symbol; or



2247 (B) To attach to or logically associate with the  
2248 record an electronic sound, symbol, or process.

2249 (12) "Shipper" means a person that enters into a  
2250 contract of transportation with a carrier.

2251 (13) "Warehouse" means a person engaged in the business  
2252 of storing goods for hire.

2253 (b) Definitions in other chapters applying to this chapter  
2254 and the sections in which they appear are:

2255 (1) "Contract for sale," Section 75-2-106.

2256 (2) "Lessee in the ordinary course of business,"  
2257 Section 75-2A-103.

2258 (3) "'Receipt' of goods," Section 75-2-103.

2259 (c) In addition, Chapter 1 of this title contains general  
2260 definitions and principles of construction and interpretation  
2261 applicable throughout this chapter.

2262 **SECTION 39.** Section 75-8-102, Mississippi Code of 1972, is  
2263 amended as follows:

2264 75-8-102. (a) In this chapter:

2265 (1) "Adverse claim" means a claim that a claimant has a  
2266 property interest in a financial asset and that it is a violation  
2267 of the rights of the claimant for another person to hold,  
2268 transfer, or deal with the financial asset.

2269 (2) "Bearer form," as applied to a certificated  
2270 security, means a form in which the security is payable to the  
2271 bearer of the security certificate according to its terms but not  
2272 by reason of an indorsement.

2273 (3) "Broker" means a person defined as a broker or  
2274 dealer under the federal securities laws, but without excluding a  
2275 bank acting in that capacity.

2276 (4) "Certificated security" means a security that is  
2277 represented by a certificate.

2278 (5) "Clearing corporation" means:



2279 (i) A person that is registered as a "clearing  
2280 agency" under the federal securities laws;

2281 (ii) A federal reserve bank; or

2282 (iii) Any other person that provides clearance or  
2283 settlement services with respect to financial assets that would  
2284 require it to register as a clearing agency under the federal  
2285 securities laws but for an exclusion or exemption from the  
2286 registration requirement, if its activities as a clearing  
2287 corporation, including promulgation of rules, are subject to  
2288 regulation by a federal or state governmental authority.

2289 (6) "Communicate" means to:

2290 (i) Send a signed writing; or

2291 (ii) Transmit information by any mechanism agreed  
2292 upon by the persons transmitting and receiving the information.

2293 (7) "Entitlement holder" means a person identified in  
2294 the records of a securities intermediary as the person having a  
2295 security entitlement against the securities intermediary. If a  
2296 person acquires a security entitlement by virtue of Section  
2297 75-8-501(b) (2) or (3), that person is the entitlement holder.

2298 (8) "Entitlement order" means a notification  
2299 communicated to a securities intermediary directing transfer or  
2300 redemption of a financial asset to which the entitlement holder  
2301 has a security entitlement.

2302 (9) "Financial asset," except as otherwise provided in  
2303 Section 75-8-103, means:

2304 (i) A security;

2305 (ii) An obligation of a person or a share,  
2306 participation, or other interest in a person or in property or an  
2307 enterprise of a person, which is, or is of a type, dealt in or  
2308 traded on financial markets, or which is recognized in any area in  
2309 which it is issued or dealt in as a medium for investment; or

2310 (iii) Any property that is held by a securities  
2311 intermediary for another person in a securities account if the



2312 securities intermediary has expressly agreed with the other person  
2313 that the property is to be treated as a financial asset under this  
2314 chapter. As context requires, the term means either the interest  
2315 itself or the means by which a person's claim to it is evidenced,  
2316 including a certificated or uncertificated security, a security  
2317 certificate, or a security entitlement.

2318 (10) [Reserved]

2319 (11) "Indorsement" means a signature that alone or  
2320 accompanied by other words is made on a security certificate in  
2321 registered form or on a separate document for the purpose of  
2322 assigning, transferring, or redeeming the security or granting a  
2323 power to assign, transfer, or redeem it.

2324 (12) "Instruction" means a notification communicated to  
2325 the issuer of an uncertificated security which directs that the  
2326 transfer of the security be registered or that the security be  
2327 redeemed.

2328 (13) "Registered form," as applied to a certificated  
2329 security, means a form in which:

2330 (i) The security certificate specifies a person  
2331 entitled to the security; and

2332 (ii) A transfer of the security may be registered  
2333 upon books maintained for that purpose by or on behalf of the  
2334 issuer, or the security certificate so states.

2335 (14) "Securities intermediary" means:

2336 (i) A clearing corporation; or

2337 (ii) A person, including a bank or broker, that in  
2338 the ordinary course of its business maintains securities accounts  
2339 for others and is acting in that capacity.

2340 (15) "Security," except as otherwise provided in  
2341 Section 75-8-103, means an obligation of an issuer or a share,  
2342 participation, or other interest in an issuer or in property or an  
2343 enterprise of an issuer:



2344 (i) Which is represented by a security certificate  
2345 in bearer or registered form, or the transfer of which may be  
2346 registered upon books maintained for that purpose by or on behalf  
2347 of the issuer;

2348 (ii) Which is one of a class or series or by its  
2349 terms is divisible into a class or series of shares,  
2350 participations, interests, or obligations; and

2351 (iii) Which:

2352 (A) Is, or is of a type, dealt in or traded  
2353 on securities exchanges or securities markets; or

2354 (B) Is a medium for investment and by its  
2355 terms expressly provides that it is a security governed by this  
2356 chapter.

2357 (16) "Security certificate" means a certificate  
2358 representing a security.

2359 (17) "Security entitlement" means the rights and  
2360 property interest of an entitlement holder with respect to a  
2361 financial asset specified in Part 5 of this chapter.

2362 (18) "Uncertificated security" means a security that is  
2363 not represented by a certificate.

2364 (b) Other definitions applying to this chapter and the  
2365 sections in which they appear are:

2366	Appropriate person	Section 75-8-107
2367	Control	Section 75-8-106
2368	Delivery	Section 75-8-301
2369	Investment company security	Section 75-8-103
2370	Issuer	Section 75-8-201
2371	Overissue	Section 75-8-210
2372	Protected purchaser	Section 75-8-303
2373	Securities account	Section 75-8-501

2374 (c) In addition, Chapter 1 contains general definitions and  
2375 principles of construction and interpretation applicable  
2376 throughout this chapter.





2377 (d) The characterization of a person, business, or  
2378 transaction for purposes of this chapter does not determine the  
2379 characterization of the person, business, or transaction for  
2380 purposes of any other law, regulation, or rule.

2381 **SECTION 40.** Section 75-9-102, Mississippi Code of 1972, is  
2382 amended as follows:

2383 75-9-102. (a) In this article:

2384 (1) "Accession" means goods that are physically united  
2385 with other goods in such a manner that the identity of the  
2386 original goods is not lost.

2387 (2) "Account," except as used in "account for," means a  
2388 right to payment of a monetary obligation, whether or not earned  
2389 by performance, (i) for property that has been or is to be sold,  
2390 leased, licensed, assigned, or otherwise disposed of, (ii) for  
2391 services rendered or to be rendered, (iii) for a policy of  
2392 insurance issued or to be issued, (iv) for a secondary obligation  
2393 incurred or to be incurred, (v) for energy provided or to be  
2394 provided, (vi) for the use or hire of a vessel under a charter or  
2395 other contract, (vii) arising out of the use of a credit or charge  
2396 card or information contained on or for use with the card, or  
2397 (viii) as winnings in a lottery or other game of chance operated  
2398 or sponsored by a state, governmental unit of a state, or person  
2399 licensed or authorized to operate the game by a state or  
2400 governmental unit of a state. The term includes  
2401 health-care-insurance receivables. The term does not include (i)  
2402 rights to payment evidenced by chattel paper or an instrument,  
2403 (ii) commercial tort claims, (iii) deposit accounts, (iv)  
2404 investment property, (v) letter-of-credit rights or letters of  
2405 credit, or (vi) rights to payment for money or funds advanced or  
2406 sold, other than rights arising out of the use of a credit or  
2407 charge card or information contained on or for use with the card.

2408 (3) "Account debtor" means a person obligated on an  
2409 account, chattel paper, or general intangible. The term does not



2410 include persons obligated to pay a negotiable instrument, even if  
2411 the instrument constitutes part of chattel paper.

2412 (4) "Accounting," except as used in "accounting for,"  
2413 means a record:

2414 (A) Authenticated by a secured party;

2415 (B) Indicating the aggregate unpaid secured  
2416 obligations as of a date not more than thirty-five (35) days  
2417 earlier or thirty-five (35) days later than the date of the  
2418 record; and

2419 (C) Identifying the components of the obligations  
2420 in reasonable detail.

2421 (5) "Agricultural lien" means an interest in farm  
2422 products:

2423 (A) Which secures payment or performance of an  
2424 obligation for:

2425 (i) Goods or services furnished in connection  
2426 with a debtor's farming operation; or

2427 (ii) Rent on real property leased by a debtor  
2428 in connection with its farming operation;

2429 (B) Which is created by statute in favor of a  
2430 person that:

2431 (i) In the ordinary course of its business  
2432 furnished goods or services to a debtor in connection with a  
2433 debtor's farming operation; or

2434 (ii) Leased real property to a debtor in  
2435 connection with the debtor's farming operation; and

2436 (C) Whose effectiveness does not depend on the  
2437 person's possession of the personal property.

2438 (6) "As-extracted collateral" means:

2439 (A) Oil, gas, or other minerals that are subject  
2440 to a security interest that:

2441 (i) Is created by a debtor having an interest  
2442 in the minerals before extraction; and



2443 (ii) Attaches to the minerals as extracted;  
2444 or

2445 (B) Accounts arising out of the sale at the  
2446 wellhead or minehead of oil, gas, or other minerals in which the  
2447 debtor had an interest before extraction.

2448 (7) "Authenticate" means:

2449 (A) To sign; or

2450 (B) To execute or otherwise adopt a symbol, or  
2451 encrypt or similarly process a record in whole or in part, with  
2452 the present intent of the authenticating person to identify the  
2453 person and adopt or accept a record.

2454 (8) "Bank" means an organization that is engaged in the  
2455 business of banking. The term includes savings banks, savings and  
2456 loan associations, credit unions, and trust companies.

2457 (9) "Cash proceeds" means proceeds that are money,  
2458 checks, deposit accounts, or the like.

2459 (10) "Certificate of title" means a certificate of  
2460 title with respect to which a statute provides for the security  
2461 interest in question to be indicated on the certificate as a  
2462 condition or result of the security interest's obtaining priority  
2463 over the rights of a lien creditor with respect to the collateral.

2464 (11) "Chattel paper" means a record or records that  
2465 evidence both a monetary obligation and a security interest in  
2466 specific goods, a security interest in specific goods and software  
2467 used in the goods, a security interest in specific goods and  
2468 license of software used in the goods, a lease of specific goods,  
2469 or a lease of specific goods and license of software used in the  
2470 goods. In this paragraph, "monetary obligation" means a monetary  
2471 obligation secured by the goods or owed under a lease of the goods  
2472 and includes a monetary obligation with respect to software used  
2473 in the goods. The term does not include (i) charters or other  
2474 contracts involving the use or hire of a vessel or (ii) records  
2475 that evidence a right to payment arising out of the use of a



2476 credit or charge card or information contained on or for use with  
2477 the card. If a transaction is evidenced by records that include  
2478 an instrument or series of instruments, the group of records taken  
2479 together constitutes chattel paper.

2480 (12) "Collateral" means the property subject to a  
2481 security interest or agricultural lien. The term includes:

2482 (A) Proceeds to which a security interest  
2483 attaches;

2484 (B) Accounts, chattel paper, payment intangibles,  
2485 and promissory notes that have been sold; and

2486 (C) Goods that are the subject of a consignment.

2487 (13) "Commercial tort claim" means a claim arising in  
2488 tort with respect to which:

2489 (A) The claimant is an organization; or

2490 (B) The claimant is an individual and the claim:

2491 (i) Arose in the course of the claimant's  
2492 business or profession; and

2493 (ii) Does not include damages arising out of  
2494 personal injury to or the death of an individual.

2495 (14) "Commodity account" means an account maintained by  
2496 a commodity intermediary in which a commodity contract is carried  
2497 for a commodity customer.

2498 (15) "Commodity contract" means a commodity futures  
2499 contract, an option on a commodity futures contract, a commodity  
2500 option, or another contract if the contract or option is:

2501 (A) Traded on or subject to the rules of a board  
2502 of trade that has been designated as a contract market for such a  
2503 contract pursuant to federal commodities laws; or

2504 (B) Traded on a foreign commodity board of trade,  
2505 exchange, or market, and is carried on the books of a commodity  
2506 intermediary for a commodity customer.

2507 (16) "Commodity customer" means a person for which a  
2508 commodity intermediary carries a commodity contract on its books.



2509 (17) "Commodity intermediary" means a person that:  
2510 (A) Is registered as a futures commission merchant  
2511 under federal commodities law; or  
2512 (B) In the ordinary course of its business  
2513 provides clearance or settlement services for a board of trade  
2514 that has been designated as a contract market pursuant to federal  
2515 commodities law.

2516 (18) "Communicate" means:  
2517 (A) To send a written or other tangible record;  
2518 (B) To transmit a record by any means agreed upon  
2519 by the persons sending and receiving the record; or  
2520 (C) In the case of transmission of a record to or  
2521 by a filing office, to transmit a record by any means prescribed  
2522 by filing-office rule.

2523 (19) "Consignee" means a merchant to which goods are  
2524 delivered in a consignment.

2525 (20) "Consignment" means a transaction, regardless of  
2526 its form, in which a person delivers goods to a merchant for the  
2527 purpose of sale and:  
2528 (A) The merchant:  
2529 (i) Deals in goods of that kind under a name  
2530 other than the name of the person making delivery;  
2531 (ii) Is not an auctioneer; and  
2532 (iii) Is not generally known by its creditors  
2533 to be substantially engaged in selling the goods of others;  
2534 (B) With respect to each delivery, the aggregate  
2535 value of the goods is One Thousand Dollars (\$1,000.00) or more at  
2536 the time of delivery;  
2537 (C) The goods are not consumer goods immediately  
2538 before delivery; and  
2539 (D) The transaction does not create a security  
2540 interest that secures an obligation.



2541 (21) "Consignor" means a person that delivers goods to  
2542 a consignee in a consignment.

2543 (22) "Consumer debtor" means a debtor in a consumer  
2544 transaction.

2545 (23) "Consumer goods" means goods that are used or  
2546 bought for use primarily for personal, family, or household  
2547 purposes.

2548 (24) "Consumer-goods transaction" means a consumer  
2549 transaction in which:

2550 (A) An individual incurs an obligation primarily  
2551 for personal, family, or household purposes; and

2552 (B) A security interest in consumer goods secures  
2553 the obligation.

2554 (25) "Consumer obligor" means an obligor who is an  
2555 individual and who incurred the obligation as part of a  
2556 transaction entered into primarily for personal, family, or  
2557 household purposes.

2558 (26) "Consumer transaction" means a transaction in  
2559 which (i) an individual incurs an obligation primarily for  
2560 personal, family, or household purposes, (ii) a security interest  
2561 secures the obligation, and (iii) the collateral is held or  
2562 acquired primarily for personal, family, or household purposes.  
2563 The term includes consumer-goods transactions.

2564 (27) "Continuation statement" means an amendment of a  
2565 financing statement which:

2566 (A) Identifies, by its file number, the initial  
2567 financing statement to which it relates; and

2568 (B) Indicates that it is a continuation statement  
2569 for, or that it is filed to continue the effectiveness of, the  
2570 identified financing statement.

2571 (28) "Debtor" means:



2572 (A) A person having an interest, other than a  
2573 security interest or other lien, in the collateral, whether or not  
2574 the person is an obligor;

2575 (B) A seller of accounts, chattel paper, payment  
2576 intangibles, or promissory notes; or

2577 (C) A consignee.

2578 (29) "Deposit account" means a demand, time, savings,  
2579 passbook, or similar account maintained with a bank. The term  
2580 does not include investment property or accounts evidenced by an  
2581 instrument.

2582 (30) "Document" means a document of title or a receipt  
2583 of the type described in Section 75-7-201(b).

2584 (31) "Electronic chattel paper" means chattel paper  
2585 evidenced by a record or records consisting of information stored  
2586 in an electronic medium.

2587 (32) "Encumbrance" means a right, other than an  
2588 ownership interest, in real property. The term includes mortgages  
2589 and other liens on real property.

2590 (33) "Equipment" means goods other than inventory, farm  
2591 products, or consumer goods.

2592 (34) "Farm products" means goods, other than standing  
2593 timber, with respect to which the debtor is engaged in a farming  
2594 operation and which are:

2595 (A) Crops grown, growing, or to be grown,  
2596 including:

2597 (i) Crops produced on trees, vines, and  
2598 bushes; and

2599 (ii) Aquatic goods produced in aquacultural  
2600 operations;

2601 (B) Livestock, born or unborn, including aquatic  
2602 goods produced in aquacultural operations;

2603 (C) Supplies used or produced in a farming  
2604 operation; or



2605 (D) Products of crops or livestock in their  
2606 unmanufactured states.

2607 (35) "Farming operation" means raising, cultivating,  
2608 propagating, fattening, grazing, or any other farming, livestock  
2609 or aquacultural operation.

2610 (36) "File number" means the number assigned to an  
2611 initial financing statement pursuant to Section 75-9-519(a).

2612 (37) "Filing office" means an office designated in  
2613 Section 75-9-501 as the place to file a financing statement.

2614 (38) "Filing-office rule" means a rule adopted pursuant  
2615 to Section 75-9-526.

2616 (39) "Financing statement" means a record or records  
2617 composed of an initial financing statement and any filed record  
2618 relating to the initial financing statement.

2619 (40) "Fixture filing" means the filing of a financing  
2620 statement covering goods that are or are to become fixtures and  
2621 satisfying Section 75-9-502(a) and (b). The term includes the  
2622 filing of a financing statement covering goods of a transmitting  
2623 utility which are or are to become fixtures.

2624 (41) "Fixtures" means goods that have become so related  
2625 to particular real property that an interest in them arises under  
2626 real property law.

2627 (42) "General intangible" means any personal property,  
2628 including things in action, other than accounts, chattel paper,  
2629 commercial tort claims, deposit accounts, documents, goods,  
2630 instruments, investment property, letter-of-credit rights, letters  
2631 of credit, money, and oil, gas, or other minerals before  
2632 extraction. The term includes payment intangibles and software.

2633 (43) [Reserved]

2634 (44) "Goods" means all things that are movable when a  
2635 security interest attaches. The term includes (i) fixtures, (ii)  
2636 standing timber that is to be cut and removed under a conveyance  
2637 or contract for sale, (iii) the unborn young of animals, (iv)





2638 crops grown, growing, or to be grown, even if the crops are  
2639 produced on trees, vines, or bushes, (v) farm-raised fish produced  
2640 in fresh water according to the usual and customary techniques of  
2641 commercial agriculture, (vi) manufactured homes and (vii) marine  
2642 vessels (herein defined as every type of watercraft used, or  
2643 capable of being used, as a means of transportation on water)  
2644 including both marine vessels under construction, including  
2645 engines and all items of equipment installed or to be installed  
2646 therein, whether such vessels are being constructed by the  
2647 shipbuilder for his own use or for sale (said vessels under  
2648 construction being classified as inventory within the meaning of  
2649 Section 75-9-102(48)), and marine vessels after completion of  
2650 construction so long as such vessels have not become "vessels of  
2651 the United States" within the meaning of the Ship Mortgage Act of  
2652 1920, 46 USCS, Section 911(4), as same is now written or may  
2653 hereafter be amended (said completed vessels being classified as  
2654 equipment within the meaning of Section 75-9-102(33)). The term  
2655 also includes a computer program embedded in goods and any  
2656 supporting information provided in connection with a transaction  
2657 relating to the program if (i) the program is associated with the  
2658 goods in such a manner that it customarily is considered part of  
2659 the goods, or (ii) by becoming the owner of the goods, a person  
2660 acquires a right to use the program in connection with the goods.  
2661 The term does not include a computer program embedded in goods  
2662 that consist solely of the medium in which the program is  
2663 embedded. The term also does not include accounts, chattel paper,  
2664 commercial tort claims, deposit accounts, documents, general  
2665 intangibles, instruments, investment property, letter-of-credit  
2666 rights, letters of credit, money, or oil, gas, or other minerals  
2667 before extraction.

2668           (45) "Governmental unit" means a subdivision, agency,  
2669 department, county, parish, municipality or other unit of the  
2670 government of the United States, a state, or a foreign country.



2671 The term includes an organization having a separate corporate  
2672 existence if the organization is eligible to issue debt on which  
2673 interest is exempt from income taxation under the laws of the  
2674 United States.

2675 (46) "Health-care-insurance receivable" means an  
2676 interest in or claim under a policy of insurance which is a right  
2677 to payment of a monetary obligation for health-care goods or  
2678 services provided or to be provided.

2679 (47) "Instrument" means a negotiable instrument or any  
2680 other writing that evidences a right to the payment of a monetary  
2681 obligation, is not itself a security agreement or lease, and is of  
2682 a type that in ordinary course of business is transferred by  
2683 delivery with any necessary endorsement or assignment. The term  
2684 does not include (i) investment property, (ii) letters of credit,  
2685 or (iii) writings that evidence a right to payment arising out of  
2686 the use of a credit or charge card or information contained on or  
2687 for use with the card.

2688 (48) "Inventory" means goods, other than farm products,  
2689 which:

2690 (A) Are leased by a person as lessor;

2691 (B) Are held by a person for sale or lease or to  
2692 be furnished under a contract of service;

2693 (C) Are furnished by a person under a contract of  
2694 service; or

2695 (D) Consist of raw materials, work in process or  
2696 materials used or consumed in a business.

2697 (49) "Investment property" means a security, whether  
2698 certificated or uncertificated, security entitlement, securities  
2699 account, commodity contract, or commodity account.

2700 (50) "Jurisdiction of organization," with respect to a  
2701 registered organization, means the jurisdiction under whose law  
2702 the organization is organized.



2703           (51) "Letter-of-credit right" means a right to payment  
2704 or performance under a letter of credit, whether or not the  
2705 beneficiary has demanded or is at the time entitled to demand  
2706 payment or performance. The term does not include the right of a  
2707 beneficiary to demand payment or performance under a letter of  
2708 credit.

2709           (52) "Lien creditor" means:

2710                   (A) A creditor that has acquired a lien on the  
2711 property involved by attachment, levy, or the like;

2712                   (B) An assignee for benefit of creditors from the  
2713 time of assignment;

2714                   (C) A trustee in bankruptcy from the date of the  
2715 filing of the petition; or

2716                   (D) A receiver in equity from the time of  
2717 appointment.

2718           (53) "Manufactured home" means a structure,  
2719 transportable in one or more sections, which, in the traveling  
2720 mode, is eight (8) body feet or more in width or forty (40) body  
2721 feet or more in length, or, when erected on site, is three hundred  
2722 twenty (320) or more square feet, and which is built on a  
2723 permanent chassis and designed to be used as a dwelling with or  
2724 without a permanent foundation when connected to the required  
2725 utilities, and includes the plumbing, heating, air-conditioning,  
2726 and electrical systems contained therein. The term includes any  
2727 structure that meets all of the requirements of this paragraph  
2728 except the size requirements and with respect to which the  
2729 manufacturer voluntarily files a certification required by the  
2730 United States Secretary of Housing and Urban Development and  
2731 complies with the standards established under Title 42 of the  
2732 United States Code.

2733           (54) "Manufactured-home transaction" means a secured  
2734 transaction:



2735 (A) That creates a purchase-money security  
2736 interest in a manufactured home, other than a manufactured home  
2737 held as inventory; or

2738 (B) In which a manufactured home, other than a  
2739 manufactured home held as inventory, is the primary collateral.

2740 (55) "Mortgage" means a consensual interest in real  
2741 property, including fixtures, which secures payment or performance  
2742 of an obligation. "Mortgage" shall mean and include a deed of  
2743 trust.

2744 (56) "New debtor" means a person that becomes bound as  
2745 debtor under Section 75-9-203(d) by a security agreement  
2746 previously entered into by another person.

2747 (57) "New value" means (i) money, (ii) money's worth in  
2748 property, services, or new credit, or (iii) release by a  
2749 transferee of an interest in property previously transferred to  
2750 the transferee. The term does not include an obligation  
2751 substituted for another obligation.

2752 (58) "Noncash proceeds" means proceeds other than cash  
2753 proceeds.

2754 (59) "Obligor" means a person that, with respect to an  
2755 obligation secured by a security interest in or an agricultural  
2756 lien on the collateral, (i) owes payment or other performance of  
2757 the obligation, (ii) has provided property other than the  
2758 collateral to secure payment or other performance of the  
2759 obligation, or (iii) is otherwise accountable in whole or in part  
2760 for payment or other performance of the obligation. The term does  
2761 not include issuers or nominated persons under a letter of credit.

2762 (60) "Original debtor," except as used in Section  
2763 75-9-310(c), means a person that, as debtor, entered into a  
2764 security agreement to which a new debtor has become bound under  
2765 Section 75-9-203(d).



2766 (61) "Payment intangible" means a general intangible  
2767 under which the account debtor's principal obligation is a  
2768 monetary obligation.

2769 (62) "Person related to," with respect to an  
2770 individual, means:

2771 (A) The spouse of the individual;

2772 (B) A brother, brother-in-law, sister, or  
2773 sister-in-law of the individual;

2774 (C) An ancestor or lineal descendant of the  
2775 individual or the individual's spouse; or

2776 (D) Any other relative, by blood or marriage, of  
2777 the individual or the individual's spouse who shares the same home  
2778 with the individual.

2779 (63) "Person related to," with respect to an  
2780 organization, means:

2781 (A) A person directly or indirectly controlling,  
2782 controlled by, or under common control with the organization;

2783 (B) An officer or director of, or a person  
2784 performing similar functions with respect to, the organization;

2785 (C) An officer or director of, or a person  
2786 performing similar functions with respect to, a person described  
2787 in subparagraph (A);

2788 (D) The spouse of an individual described in  
2789 subparagraph (A), (B), or (C); or

2790 (E) An individual who is related by blood or  
2791 marriage to an individual described in subparagraph (A), (B), (C),  
2792 or (D) and shares the same home with the individual.

2793 (64) "Proceeds," except as used in Section 75-9-609(b),  
2794 means the following property:

2795 (A) Whatever is acquired upon the sale, lease,  
2796 license, exchange or other disposition of collateral;

2797 (B) Whatever is collected on, or distributed on  
2798 account of, collateral;



2799 (C) Rights arising out of collateral;

2800 (D) To the extent of the value of collateral,  
2801 claims arising out of the loss, nonconformity, or interference  
2802 with the use of, defects or infringement of rights in, or damage  
2803 to, the collateral; or

2804 (E) To the extent of the value of collateral and  
2805 to the extent payable to the debtor or the secured party,  
2806 insurance payable by reason of the loss or nonconformity of,  
2807 defects or infringement of rights in, or damage to, the  
2808 collateral.

2809 (64A) "Production-money crops" means crops that secure  
2810 a production-money obligation incurred with respect to the  
2811 production of those crops.

2812 (64B) "Production-money obligation" means an obligation  
2813 of an obligor incurred for new value given to enable the debtor to  
2814 produce crops if the value is in fact used for the production of  
2815 the crops.

2816 (64C) "Production of crops" includes tilling and  
2817 otherwise preparing land for growing, planting, cultivating,  
2818 fertilizing, irrigating, harvesting and gathering crops, and  
2819 protecting them from damage or disease.

2820 (65) "Promissory note" means an instrument that  
2821 evidences a promise to pay a monetary obligation, does not  
2822 evidence an order to pay, and does not contain an acknowledgment  
2823 by a bank that the bank has received for deposit a sum of money or  
2824 funds.

2825 (66) "Proposal" means a record authenticated by a  
2826 secured party which includes the terms on which the secured party  
2827 is willing to accept collateral in full or partial satisfaction of  
2828 the obligation it secures pursuant to Sections 75-9-620, 75-9-621,  
2829 and 75-9-622.

2830 (67) "Public-finance transaction" means a secured  
2831 transaction in connection with which:



2832 (A) Debt securities are issued;

2833 (B) All or a portion of the securities issued have  
2834 an initial stated maturity of at least twenty (20) years; and

2835 (C) The debtor, obligor, secured party, account  
2836 debtor or other person obligated on collateral, assignor or  
2837 assignee of a secured obligation, or assignor or assignee of a  
2838 security interest is a state or a governmental unit of a state.

2839 (68) "Pursuant to commitment," with respect to an  
2840 advance made or other value given by a secured party, means  
2841 pursuant to the secured party's obligation, whether or not a  
2842 subsequent event of default or other event not within the secured  
2843 party's control has relieved or may relieve the secured party from  
2844 its obligation.

2845 (69) "Record," except as used in "for record," "of  
2846 record," "record or legal title," and "record owner," means  
2847 information that is inscribed on a tangible medium or which is  
2848 stored in an electronic or other medium and is retrievable in  
2849 perceivable form.

2850 (70) "Registered organization" means an organization  
2851 organized solely under the law of a single state or the United  
2852 States and as to which the state or the United States must  
2853 maintain a public record showing the organization to have been  
2854 organized.

2855 (71) "Secondary obligor" means an obligor to the extent  
2856 that:

2857 (A) The obligor's obligation is secondary; or  
2858 (B) The obligor has a right of recourse with  
2859 respect to an obligation secured by collateral against the debtor,  
2860 another obligor, or property of either.

2861 (72) "Secured party" means:

2862 (A) A person in whose favor a security interest is  
2863 created or provided for under a security agreement, whether or not  
2864 any obligation to be secured is outstanding;



2865 (B) A person that holds an agricultural lien;  
2866 (C) A consignor;  
2867 (D) A person to which accounts, chattel paper,  
2868 payment intangibles, or promissory notes have been sold;  
2869 (E) A trustee, indenture trustee, agent,  
2870 collateral agent, or other representative in whose favor a  
2871 security interest or agricultural lien is created or provided for;  
2872 or

2873 (F) A person that holds a security interest  
2874 arising under Section 75-2-401, 75-2-505, 75-2-711(3),  
2875 75-2A-508(5), 75-4-210, or 75-5-118.

2876 (73) "Security agreement" means an agreement that  
2877 creates or provides for a security interest.

2878 (74) "Send," in connection with a record or  
2879 notification, means:

2880 (A) To deposit in the mail, deliver for  
2881 transmission, or transmit by any other usual means of  
2882 communication, with postage or cost of transmission provided for,  
2883 addressed to any address reasonable under the circumstances; or

2884 (B) To cause the record or notification to be  
2885 received within the time that it would have been received if  
2886 properly sent under subparagraph (A).

2887 (75) "Software" means a computer program and any  
2888 supporting information provided in connection with a transaction  
2889 relating to the program. The term does not include a computer  
2890 program that is included in the definition of goods.

2891 (76) "State" means a state of the United States, the  
2892 District of Columbia, Puerto Rico, the United States Virgin  
2893 Islands, or any territory or insular possession subject to the  
2894 jurisdiction of the United States.

2895 (77) "Supporting obligation" means a letter-of-credit  
2896 right or secondary obligation that supports the payment or





2897 performance of an account, chattel paper, a document, a general  
2898 intangible, an instrument, or investment property.

2899 (78) "Tangible chattel paper" means chattel paper  
2900 evidenced by a record or records consisting of information that is  
2901 inscribed on a tangible medium.

2902 (79) "Termination statement" means an amendment of a  
2903 financing statement which:

2904 (A) Identifies, by its file number, the initial  
2905 financing statement to which it relates; and

2906 (B) Indicates either that it is a termination  
2907 statement or that the identified financing statement is no longer  
2908 effective.

2909 (80) "Transmitting utility" means a person primarily  
2910 engaged in the business of:

2911 (A) Operating a railroad, subway, street railway,  
2912 or trolley bus;

2913 (B) Transmitting communications electrically,  
2914 electromagnetically, or by light;

2915 (C) Transmitting goods by pipeline or sewer; or

2916 (D) Transmitting or producing and transmitting  
2917 electricity, steam, gas, or water.

2918 (b) The following definitions in other articles apply to  
2919 this article:

2920	"Applicant"	Section 75-5-102
2921	"Beneficiary"	Section 75-5-102
2922	"Broker"	Section 75-8-102
2923	"Certificated security"	Section 75-8-102
2924	"Check"	Section 75-3-104
2925	"Clearing corporation"	Section 75-8-102
2926	"Contract for sale"	Section 75-2-106
2927	"Control"	Section 75-7-106
2928	"Customer"	Section 75-4-104
2929	"Entitlement holder"	Section 75-8-102



2930	"Financial asset"	Section 75-8-102
2931	"Holder in due course"	Section 75-3-302
2932	"Issuer" (with respect to	
2933	a letter of credit or	
2934	letter-of-credit right)	Section 75-5-102
2935	"Issuer" (with respect to a	
2936	security)	Section 75-8-201
2937	"Issuer" (with respect to	
2938	documents of title)	Section 75-7-102
2939	"Lease"	Section 75-2A-103
2940	"Lease agreement"	Section 75-2A-103
2941	"Lease contract"	Section 75-2A-103
2942	"Leasehold interest"	Section 75-2A-103
2943	"Lessee"	Section 75-2A-103
2944	"Lessee in ordinary course	
2945	of business"	Section 75-2A-103
2946	"Lessor"	Section 75-2A-103
2947	"Lessor's residual interest"	Section 75-2A-103
2948	"Letter of credit"	Section 75-5-102
2949	"Merchant"	Section 75-2-104
2950	"Negotiable instrument"	Section 75-3-104
2951	"Nominated person"	Section 75-5-102
2952	"Note"	Section 75-3-104
2953	"Proceeds of a letter of	
2954	credit"	Section 75-5-114
2955	"Prove"	Section 75-3-103
2956	"Sale"	Section 75-2-106
2957	"Securities account"	Section 75-8-501
2958	"Securities intermediary"	Section 75-8-102
2959	"Security"	Section 75-8-102
2960	"Security certificate"	Section 75-8-102
2961	"Security entitlement"	Section 75-8-102
2962	"Uncertificated security"	Section 75-8-102



2963 (c) Article 1 contains general definitions and principles of  
2964 construction and interpretation applicable throughout this  
2965 article.

2966 **SECTION 41.** The following shall be codified as Section  
2967 79-13-505, Mississippi Code of 1972:

2968 79-13-505. **Enforceability of limitations on assignments of**  
2969 **partnership interests.** Sections 75-9-406 and 75-9-408 do not  
2970 apply to a partnership interest in a partnership formed under the  
2971 laws of Mississippi, including the rights, powers and interests  
2972 arising under a certificate of partnership or partnership  
2973 agreement or under this chapter. To the extent of any conflict or  
2974 inconsistency between this section and Sections 75-9-406 and  
2975 75-9-408, this section prevails. It is the express intent of this  
2976 section to permit the enforcement, as a contract among the  
2977 partners of a partnership, of any provision of a partnership  
2978 agreement that would otherwise be ineffective under Sections  
2979 75-9-406 and 75-9-408.

2980 **SECTION 42.** The following shall be codified as Section  
2981 79-14-706, Mississippi Code of 1972:

2982 79-14-706. **Enforceability of limitations on assignments of**  
2983 **limited partnership interests.** Sections 75-9-406 and 75-9-408 do  
2984 not apply to a limited partnership interest in a limited  
2985 partnership formed under the laws of Mississippi, including the  
2986 rights, powers and interests arising under the certificate of  
2987 limited partnership or limited partnership agreement or under this  
2988 chapter. To the extent of any conflict or inconsistency between  
2989 this section and Sections 75-9-406 and 75-9-408, this section  
2990 prevails. It is the express intent of this section to permit the  
2991 enforcement, as a contract among the partners of a limited  
2992 partnership, of any provision of a limited partnership agreement  
2993 that would otherwise be ineffective under Sections 75-9-406 and  
2994 75-9-408.



2995           **SECTION 43.** The following shall be codified as Section  
2996 1-3-81, Mississippi Code of 1972:

2997           1-3-81. (1) "Caption" means the words used to describe the  
2998 substance of a title, chapter, article, subarticle, part or  
2999 section of the Mississippi Code of 1972.

3000           (2) Captions shall not constitute a part of the Mississippi  
3001 Code of 1972 unless specifically so provided by law.

3002           (3) The wording of captions that are not specifically  
3003 provided to constitute law shall be editorial in nature and may be  
3004 revised by a publisher of the code as the publisher deems  
3005 appropriate. There shall be no exclusive right in any publisher  
3006 of the code to the use of a caption that has appeared in any bill  
3007 that is approved by the Governor, has become law without the  
3008 Governor's signature, or is approved by the Legislature subsequent  
3009 to a veto; captions that have appeared in such a bill shall be  
3010 subject to editorial revision without legislative action.

3011           **SECTION 44.** Sections 75-1-101, 75-1-102, 75-1-103, 75-1-104,  
3012 75-1-105, 75-1-106, 75-1-107, 75-1-108, 75-1-109, 75-1-110,  
3013 75-1-201, 75-1-202, 75-1-203, 75-1-204, 75-1-205, 75-1-206,  
3014 75-1-207 and 75-1-208, Mississippi Code of 1972, which comprise  
3015 the Uniform Commercial Code Article 1 - General Provisions, are  
3016 repealed.

3017           **SECTION 45.** Section 75-2-208, Mississippi Code of 1972,  
3018 which provides for the practical construction of "course of  
3019 performance" for purposes of the Uniform Commercial Code Article 2  
3020 - Sales, is repealed, the substance thereof being reenacted in  
3021 Article 1 - General Provisions.

3022           **SECTION 46.** Section 75-2A-207, Mississippi Code of 1972,  
3023 which provides for the practical construction of "course of  
3024 performance" for purposes of the Uniform Commercial Code Article  
3025 2A - Leases, is repealed, the substance thereof being reenacted in  
3026 Article 1 - General Provisions.



3027           **SECTION 47.** This act shall take effect and be in force from  
3028 and after July 1, 2010.

