

By: Senator(s) Wiggins, Michel

To: Judiciary, Division A

SENATE BILL NO. 2772

1 AN ACT TO AMEND SECTION 75-8-110, MISSISSIPPI CODE OF 1972,
 2 TO REVISE THE CHOICE OF LAW GOVERNING INVESTMENT SECURITIES TO
 3 PROVIDE THAT THE LOCAL LAW OF THE ENTITLEMENT HOLDER'S
 4 JURISDICTION GOVERNS; TO AMEND SECTION 75-8-511, MISSISSIPPI CODE
 5 OF 1972, TO REVISE THE PRIORITY AMONG SECURITY INTERESTS AND
 6 ENTITLEMENT HOLDERS TO PROVIDE THAT IF A SECURITIES INTERMEDIARY
 7 DOES NOT HAVE SUFFICIENT INTERESTS IN A PARTICULAR FINANCIAL ASSET
 8 TO SATISFY BOTH ITS OBLIGATIONS TO ENTITLEMENT HOLDERS WHO HAVE
 9 SECURITY ENTITLEMENTS TO THAT FINANCIAL ASSET AND ITS OBLIGATION
 10 TO A CREDITOR OF THE SECURITIES INTERMEDIARY WHO HAS A SECURITY
 11 INTEREST IN THAT FINANCIAL ASSET, THE CLAIMS OF ENTITLEMENT
 12 HOLDERS, OTHER THAN THE CREDITOR, HAVE PRIORITY OVER THE CLAIM OF
 13 THE CREDITOR; TO AMEND SECTIONS 75-9-305 AND 75-8-503, MISSISSIPPI
 14 CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 75-8-110, Mississippi Code of 1972, is
 17 amended as follows:

18 75-8-110. (a) The local law of the issuer's jurisdiction,
 19 as specified in subsection (d), governs:

- 20 (1) The validity of a security;
- 21 (2) The rights and duties of the issuer with respect to
 22 registration of transfer;
- 23 (3) The effectiveness of registration of transfer by
 24 the issuer;



25 (4) Whether the issuer owes any duties to an adverse
26 claimant to a security; and

27 (5) Whether an adverse claim can be asserted against a
28 person to whom transfer of a certificated or uncertificated
29 security is registered or a person who obtains control of an
30 uncertificated security.

31 (b) Except as otherwise provided in this section, the local
32 law of the * * * entitlement holder's jurisdiction * * *
33 governs * * *

34 (c) The local law of the jurisdiction in which a security
35 certificate is located at the time of delivery governs whether an
36 adverse claim can be asserted against a person to whom the
37 security certificate is delivered.

38 (d) "Issuer's jurisdiction" means the jurisdiction under
39 which the issuer of the security is organized or, if permitted by
40 the law of that jurisdiction, the law of another jurisdiction
41 specified by the issuer. An issuer organized under the law of
42 this state may specify the law of another jurisdiction as the law
43 governing the matters specified in subsection (a)(2) through (5).

44 * * *

45 **SECTION 2.** Section 75-8-511, Mississippi Code of 1972, is
46 amended as follows:

47 75-8-511. * * * If a securities intermediary does not have
48 sufficient interests in a particular financial asset to satisfy
49 both its obligations to entitlement holders who have security



50 entitlements to that financial asset and its obligation to a
51 creditor of the securities intermediary who has a security
52 interest in that financial asset, the claims of entitlement
53 holders, other than the creditor, have priority over the claim of
54 the creditor.

55 * * *

56 **SECTION 3.** Section 75-9-305, Mississippi Code of 1972, is
57 amended as follows:

58 75-9-305. (a) Except as otherwise provided in subsection
59 (c), the following rules apply:

60 (1) While a security certificate is located in a
61 jurisdiction, the local law of that jurisdiction governs
62 perfection, the effect of perfection or nonperfection, and the
63 priority of a security interest in the certificated security
64 represented thereby.

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

69 (3) * * * The local law of the commodity intermediary's
70 jurisdiction governs perfection, the effect of perfection or
71 nonperfection, and the priority of a security interest in a
72 commodity contract or commodity account.

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



75 (1) If an agreement between the commodity intermediary
76 and commodity customer governing the commodity account expressly
77 provides that a particular jurisdiction is the commodity
78 intermediary's jurisdiction for purposes of this part, this
79 article, or the Uniform Commercial Code, that jurisdiction is the
80 commodity intermediary's jurisdiction.

81 (2) If paragraph (1) does not apply and an agreement
82 between the commodity intermediary and commodity customer
83 governing the commodity account expressly provides that the
84 agreement is governed by the law of a particular jurisdiction,
85 that jurisdiction is the commodity intermediary's jurisdiction.

86 (3) If neither paragraph (1) nor paragraph (2) applies
87 and an agreement between the commodity intermediary and commodity
88 customer governing the commodity account expressly provides that
89 the commodity account is maintained at an office in a particular
90 jurisdiction, that jurisdiction is the commodity intermediary's
91 jurisdiction.

92 (4) If none of the preceding paragraphs applies, the
93 commodity intermediary's jurisdiction is the jurisdiction in which
94 the office identified in an account statement as the office
95 serving the commodity customer's account is located.

96 (5) If none of the preceding paragraphs applies, the
97 commodity intermediary's jurisdiction is the jurisdiction in which
98 the chief executive office of the commodity intermediary is
99 located.



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

102 (1) Perfection of a security interest in investment
103 property by filing;

104 (2) Automatic perfection of a security interest in
105 investment property created by a broker or securities
106 intermediary; and

107 (3) Automatic perfection of a security interest in a
108 commodity contract or commodity account created by a commodity
109 intermediary.

110 **SECTION 4.** Section 75-8-503, Mississippi Code of 1972, is
111 amended as follows:

112 75-8-503. (a) To the extent necessary for a securities
113 intermediary to satisfy all security entitlements with respect to
114 a particular financial asset, all interests in that financial
115 asset held by the securities intermediary are held by the
116 securities intermediary for the entitlement holders, are not
117 property of the securities intermediary, and are not subject to
118 claims of creditors of the securities intermediary * * *.

119 (b) An entitlement holder's property interest with respect
120 to a particular financial asset under subsection (a) is a pro rata
121 property interest in all interests in that financial asset held by
122 the securities intermediary, without regard to the time the
123 entitlement holder acquired the security entitlement or the time



124 the securities intermediary acquired the interest in that
125 financial asset.

126 (c) An entitlement holder's property interest with respect
127 to a particular financial asset under subsection (a) may be
128 enforced against the securities intermediary only by exercise of
129 the entitlement holder's rights under Sections 75-8-505 through
130 75-8-508.

131 (d) An entitlement holder's property interest with respect
132 to a particular financial asset under subsection (a) may be
133 enforced against a purchaser of the financial asset or interest
134 therein only if:

135 (1) Insolvency proceedings have been initiated by or
136 against the securities intermediary;

137 (2) The securities intermediary does not have
138 sufficient interests in the financial asset to satisfy the
139 security entitlements of all of its entitlement holders to that
140 financial asset;

141 (3) The securities intermediary violated its
142 obligations under Section 75-8-504 by transferring the financial
143 asset or interest therein to the purchaser; and

144 (4) The purchaser is not protected under subsection
145 (e). The trustee or other liquidator, acting on behalf of all
146 entitlement holders having security entitlements with respect to a
147 particular financial asset, may recover the financial asset, or
148 interest therein, from the purchaser. If the trustee or other



149 liquidator elects not to pursue that right, an entitlement holder
150 whose security entitlement remains unsatisfied has the right to
151 recover its interest in the financial asset from the purchaser.

152 (e) An action based on the entitlement holder's property
153 interest with respect to a particular financial asset under
154 subsection (a), whether framed in conversion, replevin,
155 constructive trust, equitable lien, or other theory, may not be
156 asserted against any purchaser of a financial asset or interest
157 therein who gives value, obtains control, and does not act in
158 collusion with the securities intermediary in violating the
159 securities intermediary's obligations under Section 75-8-504.

160 **SECTION 5.** This act shall take effect and be in force from
161 and after July 1, 2024.

