

By: Carlton

To: Judiciary

## SENATE BILL NO. 2975

1 AN ACT TO ENACT REVISED ARTICLE 9 - SECURED TRANSACTIONS OF  
 2 THE UNIFORM COMMERCIAL CODE; TO CREATE A NATIONWIDE FILING SYSTEM  
 3 BASED ON THE DEBTOR'S LOCATION OR RESIDENCE RATHER THAN THE  
 4 LOCATION OF COLLATERAL; TO CODIFY A BROADER DEFINITION OF  
 5 "PURCHASE MONEY SECURITY INTEREST"; TO REVISE RULES FOR PERFECTION  
 6 OF A SECURITY INTEREST; TO REVISE CHOICE OF LAW PROVISIONS; TO  
 7 PROVIDE FOR CENTRALIZED FILING OF FINANCING STATEMENTS AND OTHER  
 8 SECURITY INTEREST DOCUMENTS; TO PROVIDE SPECIAL RULES FOR CERTAIN  
 9 TRANSACTIONS IN WHICH THE DEBTOR IS A CONSUMER; TO REVISE  
 10 PROVISIONS ON DEFAULT AND ENFORCEMENT OF SECURED INTERESTS; TO  
 11 ENACT A DEFINITION OF "FORMER ARTICLE 9"; TO MAKE TRANSITION  
 12 PROVISIONS; TO REPEAL SECTIONS 75-9-101 THROUGH 75-9-507,  
 13 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE UNIFORM COMMERCIAL CODE  
 14 ARTICLE 9 - SECURED TRANSACTIONS; TO CODIFY SECTION 75-5-118,  
 15 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR SECURITY INTEREST OF  
 16 ISSUER OR NOMINATED PERSON; TO AMEND SECTIONS 75-1-105, 75-1-201,  
 17 75-2-103, 75-2-210, 75-2-326, 75-2-502, 75-2-716, 75-2A-103,  
 18 75-2A-303, 75-2A-307, 75-2A-309, 75-4-210, 75-7-503, 75-8-103,  
 19 75-8-106, 75-8-110, 75-8-301, 75-8-302, 75-8-510, 71-3-43,  
 20 41-29-177, 49-7-251, 67-1-93, 97-17-4, 97-43-11, 53-3-41,  
 21 75-11-106, 85-8-9 AND 99-41-23, MISSISSIPPI CODE OF 1972, IN  
 22 CONFORMITY; TO REPEAL SECTION 85-7-1, MISSISSIPPI CODE OF 1972,  
 23 WHICH PROVIDES FOR LIENS ON CROPS; TO AMEND SECTION 25-7-9,  
 24 MISSISSIPPI CODE OF 1972, TO REVISE CHANCERY CLERKS' FEES; TO  
 25 BRING FORWARD SECTION 25-7-21, MISSISSIPPI CODE OF 1972; TO  
 26 PROVIDE FOR A DELAYED EFFECTIVE DATE; AND FOR RELATED PURPOSES.

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

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 31 Article 9 repealed in Section 2 of this act:

32 **ARTICLE 9 - SECURED TRANSACTIONS**

33 **PART 1**

34 **GENERAL PROVISIONS**

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

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

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

39 (a) In this article:

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

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

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

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

70 (A) authenticated by a secured party;

71 (B) indicating the aggregate unpaid secured

72 obligations as of a date not more than 35 days earlier or 35 days  
73 later than the date of the record; and

74 (C) identifying the components of the obligations  
75 in reasonable detail.

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

78 (A) which secures payment or performance of an  
79 obligation for:

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

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

84 (B) which is created by statute in favor of a  
85 person that:

86 (i) in the ordinary course of its business  
87 furnished goods or services to a debtor in connection with a  
88 debtor's farming operation; or

89 (ii) leased real property to a debtor in  
90 connection with the debtor's farming operation; and

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

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

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

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

98 (ii) attaches to the minerals as extracted;  
99 or

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

103 (7) "Authenticate" means:

104 (A) to sign; or

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

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

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

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

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

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

137                   (A) proceeds to which a security interest

138 attaches;

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

141 (C) goods that are the subject of a consignment.

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

144 (A) the claimant is an organization; or

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

146 (i) arose in the course of the claimant's  
147 business or profession; and

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

150 (14) "Commodity account" means an account maintained by  
151 a commodity intermediary in which a commodity contract is carried  
152 for a commodity customer.

153 (15) "Commodity contract" means a commodity futures  
154 contract, an option on a commodity futures contract, a commodity  
155 option, or another contract if the contract or option is:

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

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

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

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

165 (A) is registered as a futures commission merchant  
166 under federal commodities law; or

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

171                   (18) "Communicate" means:  
172                   (A) to send a written or other tangible record;  
173                   (B) to transmit a record by any means agreed upon  
174 by the persons sending and receiving the record; or  
175                   (C) in the case of transmission of a record to or  
176 by a filing office, to transmit a record by any means prescribed  
177 by filing-office rule.

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

180                   (20) "Consignment" means a transaction, regardless of  
181 its form, in which a person delivers goods to a merchant for the  
182 purpose of sale and:  
183                   (A) the merchant:  
184                   (i) deals in goods of that kind under a name  
185 other than the name of the person making delivery;  
186                   (ii) is not an auctioneer; and  
187                   (iii) is not generally known by its creditors  
188 to be substantially engaged in selling the goods of others;  
189                   (B) with respect to each delivery, the aggregate  
190 value of the goods is \$1,000 or more at the time of delivery;  
191                   (C) the goods are not consumer goods immediately  
192 before delivery; and  
193                   (D) the transaction does not create a security  
194 interest that secures an obligation.

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

197                   (22) "Consumer debtor" means a debtor in a consumer  
198 transaction.

199                   (23) "Consumer goods" means goods that are used or  
200 bought for use primarily for personal, family, or household  
201 purposes.

202                   (24) "Consumer-goods transaction" means a consumer  
203 transaction in which:

204 (A) an individual incurs an obligation primarily  
205 for personal, family, or household purposes; and

206 (B) a security interest in consumer goods secures  
207 the obligation.

208 (25) "Consumer obligor" means an obligor who is an  
209 individual and who incurred the obligation as part of a  
210 transaction entered into primarily for personal, family, or  
211 household purposes.

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

218 (27) "Continuation statement" means an amendment of a  
219 financing statement which:

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

222 (B) indicates that it is a continuation statement  
223 for, or that it is filed to continue the effectiveness of, the  
224 identified financing statement.

225 (28) "Debtor" means:

226 (A) a person having an interest, other than a  
227 security interest or other lien, in the collateral, whether or not  
228 the person is an obligor;

229 (B) a seller of accounts, chattel paper, payment  
230 intangibles, or promissory notes; or

231 (C) a consignee.

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

236 (30) "Document" means a document of title or a receipt

237 of the type described in Section 75-7-201(2).

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

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

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

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

249                   (A) crops grown, growing, or to be grown,  
250 including:

251                           (i) crops produced on trees, vines, and  
252 bushes; and

253                           (ii) aquatic goods produced in aquacultural  
254 operations;

255                   (B) livestock, born or unborn, including aquatic  
256 goods produced in aquacultural operations;

257                   (C) supplies used or produced in a farming  
258 operation; or

259                   (D) products of crops or livestock in their  
260 unmanufactured states.

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

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

266           (37) "Filing office" means an office designated in Section  
267 75-9-501 as the place to file a financing statement.

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



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

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

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

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

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

289           (44) "Goods" means all things that are movable when a  
290 security interest attaches. The term includes (i) fixtures, (ii)  
291 standing timber that is to be cut and removed under a conveyance  
292 or contract for sale, (iii) the unborn young of animals, (iv)  
293 crops grown, growing, or to be grown, even if the crops are  
294 produced on trees, vines, or bushes, (v) farm-raised fish produced  
295 in fresh water according to the usual and customary techniques of  
296 commercial agriculture, (vi) manufactured homes and (vii) marine  
297 vessels (herein defined as every type of watercraft used, or  
298 capable of being used, as a means of transportation on water)  
299 including both marine vessels under construction, including  
300 engines and all items of equipment installed or to be installed  
301 therein, whether such vessels are being constructed by the  
302 shipbuilder for his own use or for sale (said vessels under

303 construction being classified as inventory within the meaning of  
304 Section 75-9-102(48)), and marine vessels after completion of  
305 construction so long as such vessels have not become "vessels of  
306 the United States" within the meaning of the Ship Mortgage Act of  
307 1920, 46 U.S.C., Section 911(4), as same is now written or may  
308 hereafter be amended (said completed vessels being classified as  
309 equipment within the meaning of Section 75-9-102(33)). The term  
310 also includes a computer program embedded in goods and any  
311 supporting information provided in connection with a transaction  
312 relating to the program if (i) the program is associated with the  
313 goods in such a manner that it customarily is considered part of  
314 the goods, or (ii) by becoming the owner of the goods, a person  
315 acquires a right to use the program in connection with the goods.

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

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

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

334 (47) "Instrument" means a negotiable instrument or any  
335 other writing that evidences a right to the payment of a monetary

336 obligation, is not itself a security agreement or lease, and is of  
337 a type that in ordinary course of business is transferred by  
338 delivery with any necessary endorsement or assignment. The term  
339 does not include (i) investment property, (ii) letters of credit,  
340 or (iii) writings that evidence a right to payment arising out of  
341 the use of a credit or charge card or information contained on or  
342 for use with the card.

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

345 (A) are leased by a person as lessor;

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

348 (C) are furnished by a person under a contract of  
349 service; or

350 (D) consist of raw materials, work in process, or  
351 materials used or consumed in a business.

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

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

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

364 (52) "Lien creditor" means:

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

367 (B) an assignee for benefit of creditors from the  
368 time of assignment;

369 (C) a trustee in bankruptcy from the date of the  
370 filing of the petition; or

371 (D) a receiver in equity from the time of  
372 appointment.

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

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

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

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

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

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

401 (57) "New value" means (i) money, (ii) money's worth in

402 property, services, or new credit, or (iii) release by a  
403 transferee of an interest in property previously transferred to  
404 the transferee. The term does not include an obligation  
405 substituted for another obligation.

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

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

416 (60) "Original debtor," except as used in Section  
417 75-9-310(c), means a person that, as debtor, entered into a  
418 security agreement to which a new debtor has become bound under  
419 Section 75-9-203(d).

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

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

425 (A) the spouse of the individual;

426 (B) a brother, brother-in-law, sister, or  
427 sister-in-law of the individual;

428 (C) an ancestor or lineal descendant of the  
429 individual or the individual's spouse; or

430 (D) any other relative, by blood or marriage, of  
431 the individual or the individual's spouse who shares the same home  
432 with the individual.

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

435 (A) a person directly or indirectly controlling,  
436 controlled by, or under common control with the organization;

437 (B) an officer or director of, or a person  
438 performing similar functions with respect to, the organization;

439 (C) an officer or director of, or a person  
440 performing similar functions with respect to, a person described  
441 in subparagraph (A);

442 (D) the spouse of an individual described in  
443 subparagraph (A), (B), or (C); or

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

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

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

451 (B) whatever is collected on, or distributed on  
452 account of, collateral;

453 (C) rights arising out of collateral;

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

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

463 (64A) "Production-money crops" means crops that secure  
464 a production-money obligation incurred with respect to the  
465 production of those crops.

466 (64B) "Production-money obligation" means an obligation  
467 of an obligor incurred for new value given to enable the debtor to

468 produce crops if the value is in fact used for the production of  
469 the crops.

470 (64C) "Production of crops" includes tilling and  
471 otherwise preparing land for growing, planting, cultivating,  
472 fertilizing, irrigating, harvesting, and gathering crops, and  
473 protecting them from damage or disease.

474 (65) "Promissory note" means an instrument that  
475 evidences a promise to pay a monetary obligation, does not  
476 evidence an order to pay, and does not contain an acknowledgment  
477 by a bank that the bank has received for deposit a sum of money or  
478 funds.

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

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

486 (A) debt securities are issued;

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

489 (C) the debtor, obligor, secured party, account  
490 debtor or other person obligated on collateral, assignor or  
491 assignee of a secured obligation, or assignor or assignee of a  
492 security interest is a State or a governmental unit of a State.

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

499 (69) "Record," except as used in "for record," "of  
500 record," "record or legal title," and "record owner," means

501 information that is inscribed on a tangible medium or which is  
502 stored in an electronic or other medium and is retrievable in  
503 perceivable form.

504 (70) "Registered organization" means an organization  
505 organized solely under the law of a single State or the United  
506 States and as to which the State or the United States must  
507 maintain a public record showing the organization to have been  
508 organized.

509 (71) "Secondary obligor" means an obligor to the extent  
510 that:

511 (A) the obligor's obligation is secondary; or

512 (B) the obligor has a right of recourse with  
513 respect to an obligation secured by collateral against the debtor,  
514 another obligor, or property of either.

515 (72) "Secured party" means:

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

519 (B) a person that holds an agricultural lien;

520 (C) a consignor;

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

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

526 or

527 (F) a person that holds a security interest  
528 arising under Section 75-2-401, 75-2-505, 75-2-711(3),  
529 75-2A-508(5), 75-4-210, or 75-5-118.

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

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



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

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

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

545 (76) "State" means a State of the United States, the  
546 District of Columbia, Puerto Rico, the United States Virgin  
547 Islands, or any territory or insular possession subject to the  
548 jurisdiction of the United States.

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

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

556 (79) "Termination statement" means an amendment of a  
557 financing statement which:

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

560 (B) indicates either that it is a termination  
561 statement or that the identified financing statement is no longer  
562 effective.

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

565 (A) operating a railroad, subway, street railway,  
566 or trolley bus;

567 (B) transmitting communications electrically,  
568 electromagnetically, or by light;

569 (C) transmitting goods by pipeline or sewer; or

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

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

574	"Applicant"	Section 75-5-102.
575	"Beneficiary"	Section 75-5-102.
576	"Broker"	Section 75-8-102.
577	"Certificated security"	Section 75-8-102.
578	"Check"	Section 75-3-104.
579	"Clearing corporation"	Section 75-8-102.
580	"Contract for sale"	Section 75-2-106.
581	"Customer"	Section 75-4-104.
582	"Entitlement holder"	Section 75-8-102.
583	"Financial asset"	Section 75-8-102.
584	"Holder in due course"	Section 75-3-302.
585	"Issuer" (with respect to	
586	a letter of credit or	
587	letter-of-credit right)	Section 75-5-102.
588	"Issuer" (with respect to a	
589	security)	Section 75-8-201.
590	"Lease"	Section 75-2A-103.
591	"Lease agreement"	Section 75-2A-103.
592	"Lease contract"	Section 75-2A-103.
593	"Leasehold interest"	Section 75-2A-103.
594	"Lessee"	Section 75-2A-103.
595	"Lessee in ordinary course	
596	of business"	Section 75-2A-103.
597	"Lessor"	Section 75-2A-103.
598	"Lessor's residual interest"	Section 75-2A-103.
599	"Letter of credit"	Section 75-5-102.

600	"Merchant"	Section 75-2-104.
601	"Negotiable instrument"	Section 75-3-104.
602	"Nominated person"	Section 75-5-102.
603	"Note"	Section 75-3-104.
604	"Proceeds of a letter of	
605	credit"	Section 75-5-114.
606	"Prove"	Section 75-3-103.
607	"Sale"	Section 75-2-106.
608	"Securities account"	Section 75-8-501.
609	"Securities intermediary"	Section 75-8-102.
610	"Security"	Section 75-8-102.
611	"Security certificate"	Section 75-8-102.
612	"Security entitlement"	Section 75-8-102.
613	"Uncertificated security"	Section 75-8-102.

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

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

619       (a) In this section:

620           (1) "purchase-money collateral" means goods or software  
621 that secures a purchase-money obligation incurred with respect to  
622 that collateral; and

623           (2) "purchase-money obligation" means an obligation of  
624 an obligor incurred as all or part of the price of the collateral  
625 or for value given to enable the debtor to acquire rights in or  
626 the use of the collateral if the value is in fact so used.

627       (b) A security interest in goods is a purchase-money  
628 security interest:

629           (1) to the extent that the goods are purchase-money  
630 collateral with respect to that security interest;

631           (2) if the security interest is in inventory that is or  
632 was purchase-money collateral, also to the extent that the

633 security interest secures a purchase-money obligation incurred  
634 with respect to other inventory in which the secured party holds  
635 or held a purchase-money security interest; and

636 (3) also to the extent that the security interest  
637 secures a purchase-money obligation incurred with respect to  
638 software in which the secured party holds or held a purchase-money  
639 security interest.

640 (c) A security interest in software is a purchase-money  
641 security interest to the extent that the security interest also  
642 secures a purchase-money obligation incurred with respect to goods  
643 in which the secured party holds or held a purchase-money security  
644 interest if:

645 (1) the debtor acquired its interest in the software in  
646 an integrated transaction in which it acquired an interest in the  
647 goods; and

648 (2) the debtor acquired its interest in the software  
649 for the principal purpose of using the software in the goods.

650 (d) The security interest of a consignor in goods that are  
651 the subject of a consignment is a purchase-money security interest  
652 in inventory.

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

657 (1) in accordance with any reasonable method of  
658 application to which the parties agree;

659 (2) in the absence of the parties' agreement to a  
660 reasonable method, in accordance with any intention of the obligor  
661 manifested at or before the time of payment; or

662 (3) in the absence of an agreement to a reasonable  
663 method and a timely manifestation of the obligor's intention, in  
664 the following order:

665 (A) to obligations that are not secured; and

666 (B) if more than one obligation is secured, to  
667 obligations secured by purchase-money security interests in the  
668 order in which those obligations were incurred.

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

672 (1) the purchase-money collateral also secures an  
673 obligation that is not a purchase-money obligation;

674 (2) collateral that is not purchase-money collateral  
675 also secures the purchase-money obligation; or

676 (3) the purchase-money obligation has been renewed,  
677 refinanced, consolidated, or restructured.

678 (g) In a transaction other than a consumer-goods  
679 transaction, a secured party claiming a purchase-money security  
680 interest has the burden of establishing the extent to which the  
681 security interest is a purchase-money security interest.

682 (h) The limitation of the rules in subsections (e), (f), and  
683 (g) to transactions other than consumer-goods transactions is  
684 intended to leave to the court the determination of the proper  
685 rules in consumer-goods transactions. The court may not infer  
686 from that limitation the nature of the proper rule in  
687 consumer-goods transactions and may continue to apply established  
688 approaches.

689 **SECTION 75-9-103A. "Production-money crops";**  
690 **"production-money obligation"; production-money security interest;**  
691 **burden of establishing.**

692 (a) A security interest in crops is a production-money  
693 security interest to the extent that the crops are  
694 production-money crops.

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

698 (1) in accordance with any reasonable method of

699 application to which the parties agree;

700 (2) in the absence of the parties' agreement to a  
701 reasonable method, in accordance with any intention of the obligor  
702 manifested at or before the time of payment; or

703 (3) in the absence of an agreement to a reasonable  
704 method and a timely manifestation of the obligor's intention, in  
705 the following order:

706 (A) to obligations that are not secured; and

707 (B) if more than one obligation is secured, to  
708 obligations secured by production-money security interests in the  
709 order in which those obligations were incurred.

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

712 (1) the production-money crops also secure an  
713 obligation that is not a production-money obligation;

714 (2) collateral that is not production-money crops also  
715 secures the production-money obligation; or

716 (3) the production-money obligation has been renewed,  
717 refinanced, or restructured.

718 (d) A secured party claiming a production-money security  
719 interest has the burden of establishing the extent to which the  
720 security interest is a production-money security interest.

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

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

723 (1) the secured party is the bank with which the  
724 deposit account is maintained;

725 (2) the debtor, secured party, and bank have agreed in  
726 an authenticated record that the bank will comply with  
727 instructions originated by the secured party directing disposition  
728 of the funds in the deposit account without further consent by the  
729 debtor; or

730 (3) the secured party becomes the bank's customer with  
731 respect to the deposit account.

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

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

739 (1) a single authoritative copy of the record or  
740 records exists which is unique, identifiable and, except as  
741 otherwise provided in paragraphs (4), (5), and (6), unalterable;

742 (2) the authoritative copy identifies the secured party  
743 as the assignee of the record or records;

744 (3) the authoritative copy is communicated to and  
745 maintained by the secured party or its designated custodian;

746 (4) copies or revisions that add or change an  
747 identified assignee of the authoritative copy can be made only  
748 with the participation of the secured party;

749 (5) each copy of the authoritative copy and any copy of  
750 a copy is readily identifiable as a copy that is not the  
751 authoritative copy; and

752 (6) any revision of the authoritative copy is readily  
753 identifiable as an authorized or unauthorized revision.

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

755 (a) A person has control of a certificated security,  
756 uncertificated security, or security entitlement as provided in  
757 Section 75-8-106.

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

759 (1) the secured party is the commodity intermediary  
760 with which the commodity contract is carried; or

761 (2) the commodity customer, secured party, and  
762 commodity intermediary have agreed that the commodity intermediary  
763 will apply any value distributed on account of the commodity  
764 contract as directed by the secured party without further consent

765 by the commodity customer.

766 (c) A secured party having control of all security  
767 entitlements or commodity contracts carried in a securities  
768 account or commodity account has control over the securities  
769 account or commodity account.

770 **SECTION 75-9-107. Control of letter-of-credit right.** A  
771 secured party has control of a letter-of-credit right to the  
772 extent of any right to payment or performance by the issuer or any  
773 nominated person if the issuer or nominated person has consented  
774 to an assignment of proceeds of the letter of credit under Section  
775 75-5-114(c) or otherwise applicable law or practice.

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

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

781 (b) Except as otherwise provided in subsection (d), a  
782 description of collateral reasonably identifies the collateral if  
783 it identifies the collateral by:

784 (1) specific listing;

785 (2) category;

786 (3) except as otherwise provided in subsection (e), a  
787 type of collateral defined in the Uniform Commercial Code;

788 (4) quantity;

789 (5) computational or allocational formula or procedure;

790 or

791 (6) except as otherwise provided in subsection (c), any  
792 other method, if the identity of the collateral is objectively  
793 determinable.

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

797 (d) Except as otherwise provided in subsection (e), a



798 description of a security entitlement, securities account, or  
799 commodity account is sufficient if it describes:

800 (1) the collateral by those terms or as investment  
801 property; or

802 (2) the underlying financial asset or commodity  
803 contract.

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

806 (1) a commercial tort claim; or

807 (2) in a consumer transaction, consumer goods, a  
808 security entitlement, a securities account, or a commodity  
809 account.

810 SUBPART 2. APPLICABILITY OF ARTICLE

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

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

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

816 (2) an agricultural lien;

817 (3) a sale of accounts, chattel paper, payment  
818 intangibles, or promissory notes;

819 (4) a consignment;

820 (5) a security interest arising under Section 75-2-401,  
821 75-2-505, 75-2-711(3), or 75-2A-508(5), as provided in Section  
822 75-9-110; and

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

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

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

830 (1) a statute, regulation, or treaty of the United

831 States preempts this article;

832           (2) another statute of this State expressly governs the  
833 creation, perfection, priority, or enforcement of a security  
834 interest created by this State or a governmental unit of this  
835 State;

836           (3) a statute of another State, a foreign country, or a  
837 governmental unit of another State or a foreign country, other  
838 than a statute generally applicable to security interests,  
839 expressly governs creation, perfection, priority, or enforcement  
840 of a security interest created by the State, country, or  
841 governmental unit; or

842           (4) the rights of a transferee beneficiary or nominated  
843 person under a letter of credit are independent and superior under  
844 Section 75-5-114.

845           (d) This article does not apply to:

846               (1) a landlord's lien, other than an agricultural lien;

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

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

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

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

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

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

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

870 (9) an assignment of a right represented by a judgment,  
871 other than a judgment taken on a right to payment that was  
872 collateral;

873 (10) a right of recoupment or set-off, but:

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

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

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

882 (A) liens on real property in Sections 75-9-203  
883 and 75-9-308;

884 (B) fixtures in Section 75-9-334;

885 (C) fixture filings in Sections 75-9-501,  
886 75-9-502, 75-9-512, 75-9-516, and 75-9-519; and

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

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

892 (13) an assignment of a deposit account in a consumer  
893 transaction, but Sections 75-9-315 and 75-9-322 apply with respect  
894 to proceeds and priorities in proceeds.

895 **SECTION 75-9-110. Security interests arising under Article 2**  
896 **or 2A.** A security interest arising under Section 75-2-401,

897 75-2-505, 75-2-711(3), or 75-2A-508(5) is subject to this article.

898 However, until the debtor obtains possession of the goods:

899 (1) the security interest is enforceable, even if

900 Section 75-9-203(b)(3) has not been satisfied;

901 (2) filing is not required to perfect the security  
902 interest;

903 (3) the rights of the secured party after default by  
904 the debtor are governed by Article 2 or 2A; and

905 (4) the security interest has priority over a  
906 conflicting security interest created by the debtor.

907 **PART 2**

908 **EFFECTIVENESS OF SECURITY AGREEMENT;**

909 **ATTACHMENT OF SECURITY INTEREST;**

910 **RIGHTS OF PARTIES TO SECURITY AGREEMENT**

911 **SUBPART 1. EFFECTIVENESS AND ATTACHMENT**

912 **SECTION 75-9-201. General effectiveness of security**  
913 **agreement.**

914 (a) Except as otherwise provided in the Uniform Commercial  
915 Code, a security agreement is effective according to its terms  
916 between the parties, against purchasers of the collateral, and  
917 against creditors.

918 (b) A transaction subject to this article is subject to any  
919 applicable rule of law which establishes a different rule for  
920 consumers and to Sections 75-67-101 through 75-67-135, Sections  
921 75-67-201 through 75-67-243, Sections 75-67-1 through 75-67-39,  
922 Sections 63-19-1 through 63-19-55 and to any other statute or  
923 regulation of this state that regulates the rates, charges,  
924 agreements, and practices for loans, credit sales, or other  
925 extensions of credit, and to any consumer-protection statute or  
926 regulation of this state.

927 (c) In case of conflict between this article and a rule of  
928 law, statute, or regulation described in subsection (b), the rule  
929 of law, statute, or regulation controls. Failure to comply with a

930 statute or regulation described in subsection (b) has only the  
931 effect the statute or regulation specifies.

932 (d) This article does not:

933 (1) validate any rate, charge, agreement, or practice  
934 that violates a rule of law, statute, or regulation described in  
935 subsection (b); or

936 (2) extend the application of the rule of law, statute,  
937 or regulation to a transaction not otherwise subject to it.

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

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

946 (a) A security interest attaches to collateral when it  
947 becomes enforceable against the debtor with respect to the  
948 collateral, unless an agreement expressly postpones the time of  
949 attachment.

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

953 (1) value has been given;

954 (2) the debtor has rights in the collateral or the  
955 power to transfer rights in the collateral to a secured party; and

956 (3) one of the following conditions is met:

957 (A) the debtor has authenticated a security  
958 agreement that provides a description of the collateral and, if  
959 the security interest covers timber to be cut, a description of  
960 the land concerned;

961 (B) the collateral is not a certificated security  
962 and is in the possession of the secured party under Section

963 75-9-313 pursuant to the debtor's security agreement;

964 (C) the collateral is a certificated security in  
965 registered form and the security certificate has been delivered to  
966 the secured party under Section 75-8-301 pursuant to the debtor's  
967 security agreement; or

968 (D) the collateral is deposit accounts, electronic  
969 chattel paper, investment property, or letter-of-credit rights,  
970 and the secured party has control under Section 75-9-104,  
971 75-9-105, 75-9-106, or 75-9-107 pursuant to the debtor's security  
972 agreement.

973 (c) Subsection (b) is subject to Section 75-4-210 on the  
974 security interest of a collecting bank, Section 75-5-118 on the  
975 security interest of a letter-of-credit issuer or nominated  
976 person, Section 75-9-110 on a security interest arising under  
977 Article 2 or 2A of Title 75, and Section 75-9-206 on security  
978 interests in investment property.

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

982 (1) the security agreement becomes effective to create  
983 a security interest in the person's property; or

984 (2) the person becomes generally obligated for the  
985 obligations of the other person, including the obligation secured  
986 under the security agreement, and acquires or succeeds to all or  
987 substantially all of the assets of the other person.

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

990 (1) the agreement satisfies subsection (b)(3) with  
991 respect to existing or after-acquired property of the new debtor  
992 to the extent the property is described in the agreement; and

993 (2) another agreement is not necessary to make a  
994 security interest in the property enforceable.

995 (f) The attachment of a security interest in collateral

996 gives the secured party the rights to proceeds provided by Section  
997 75-9-315 and is also attachment of a security interest in a  
998 supporting obligation for the collateral.

999 (g) The attachment of a security interest in a right to  
1000 payment or performance secured by a security interest or other  
1001 lien on personal or real property is also attachment of a security  
1002 interest in the security interest, mortgage, or other lien.

1003 (h) The attachment of a security interest in a securities  
1004 account is also attachment of a security interest in the security  
1005 entitlements carried in the securities account.

1006 (i) The attachment of a security interest in a commodity  
1007 account is also attachment of a security interest in the commodity  
1008 contracts carried in the commodity account.

1009 **SECTION 75-9-204. After-acquired property; future advances.**

1010 (a) Except as otherwise provided in subsection (b), a  
1011 security agreement may create or provide for a security interest  
1012 in after-acquired collateral.

1013 (b) A security interest does not attach under a term  
1014 constituting an after-acquired property clause to:

1015 (1) consumer goods, other than an accession when given  
1016 as additional security, unless the debtor acquires rights in them  
1017 within 10 days after the secured party gives value; or

1018 (2) a commercial tort claim.

1019 (c) A security agreement may provide that collateral  
1020 secures, or that accounts, chattel paper, payment intangibles, or  
1021 promissory notes are sold in connection with, future advances or  
1022 other value, whether or not the advances or value are given  
1023 pursuant to commitment.

1024 **SECTION 75-9-205. Use or disposition of collateral**  
1025 **permissible.**

1026 (a) A security interest is not invalid or fraudulent against  
1027 creditors solely because:

1028 (1) the debtor has the right or ability to:

1029 (A) use, commingle, or dispose of all or part of  
1030 the collateral, including returned or repossessed goods;

1031 (B) collect, compromise, enforce, or otherwise  
1032 deal with collateral;

1033 (C) accept the return of collateral or make  
1034 repossessions; or

1035 (D) use, commingle, or dispose of proceeds; or

1036 (2) the secured party fails to require the debtor to  
1037 account for proceeds or replace collateral.

1038 (b) This section does not relax the requirements of  
1039 possession if attachment, perfection, or enforcement of a security  
1040 interest depends upon possession of the collateral by the secured  
1041 party.

1042 **SECTION 75-9-206. Security interest arising in purchase or**  
1043 **delivery of financial asset.**

1044 (a) A security interest in favor of a securities  
1045 intermediary attaches to a person's security entitlement if:

1046 (1) the person buys a financial asset through the  
1047 securities intermediary in a transaction in which the person is  
1048 obligated to pay the purchase price to the securities intermediary  
1049 at the time of the purchase; and

1050 (2) the securities intermediary credits the financial  
1051 asset to the buyer's securities account before the buyer pays the  
1052 securities intermediary.

1053 (b) The security interest described in subsection (a)  
1054 secures the person's obligation to pay for the financial asset.

1055 (c) A security interest in favor of a person that delivers a  
1056 certificated security or other financial asset represented by a  
1057 writing attaches to the security or other financial asset if:

1058 (1) the security or other financial asset:

1059 (A) in the ordinary course of business is  
1060 transferred by delivery with any necessary endorsement or  
1061 assignment; and



1062 (B) is delivered under an agreement between  
1063 persons in the business of dealing with such securities or  
1064 financial assets; and

1065 (2) the agreement calls for delivery against payment.

1066 (d) The security interest described in subsection (c)  
1067 secures the obligation to make payment for the delivery.

1068 SUBPART 2. RIGHTS AND DUTIES

1069 **SECTION 75-9-207. Rights and duties of secured party having**  
1070 **possession or control of collateral.**

1071 (a) Except as otherwise provided in subsection (d), a  
1072 secured party shall use reasonable care in the custody and  
1073 preservation of collateral in the secured party's possession. In  
1074 the case of chattel paper or an instrument, reasonable care  
1075 includes taking necessary steps to preserve rights against prior  
1076 parties unless otherwise agreed.

1077 (b) Except as otherwise provided in subsection (d), if a  
1078 secured party has possession of collateral:

1079 (1) reasonable expenses, including the cost of  
1080 insurance and payment of taxes or other charges, incurred in the  
1081 custody, preservation, use, or operation of the collateral are  
1082 chargeable to the debtor and are secured by the collateral;

1083 (2) the risk of accidental loss or damage is on the  
1084 debtor to the extent of a deficiency in any effective insurance  
1085 coverage;

1086 (3) the secured party shall keep the collateral  
1087 identifiable, but fungible collateral may be commingled; and

1088 (4) the secured party may use or operate the  
1089 collateral:

1090 (A) for the purpose of preserving the collateral  
1091 or its value;

1092 (B) as permitted by an order of a court having  
1093 competent jurisdiction; or

1094 (C) except in the case of consumer goods, in the

1095 manner and to the extent agreed by the debtor.

1096 (c) Except as otherwise provided in subsection (d), a  
1097 secured party having possession of collateral or control of  
1098 collateral under Section 75-9-104, 75-9-105, 75-9-106, or  
1099 75-9-107:

1100 (1) may hold as additional security any proceeds,  
1101 except money or funds, received from the collateral;

1102 (2) shall apply money or funds received from the  
1103 collateral to reduce the secured obligation, unless remitted to  
1104 the debtor; and

1105 (3) may create a security interest in the collateral.

1106 (d) If the secured party is a buyer of accounts, chattel  
1107 paper, payment intangibles, or promissory notes or a consignor:

1108 (1) subsection (a) does not apply unless the secured  
1109 party is entitled under an agreement:

1110 (A) to charge back uncollected collateral; or

1111 (B) otherwise to full or limited recourse against  
1112 the debtor or a secondary obligor based on the nonpayment or other  
1113 default of an account debtor or other obligor on the collateral;  
1114 and

1115 (2) subsections (b) and (c) do not apply.

1116 **SECTION 75-9-208. Additional duties of secured party having**  
1117 **control of collateral.**

1118 (a) This section applies to cases in which there is no  
1119 outstanding secured obligation and the secured party is not  
1120 committed to make advances, incur obligations, or otherwise give  
1121 value.

1122 (b) Within 10 days after receiving an authenticated demand  
1123 by the debtor:

1124 (1) a secured party having control of a deposit account  
1125 under Section 75-9-104(a)(2) shall send to the bank with which the  
1126 deposit account is maintained an authenticated statement that  
1127 releases the bank from any further obligation to comply with

1128 instructions originated by the secured party;

1129           (2) a secured party having control of a deposit account  
1130 under Section 75-9-104(a)(3) shall:

1131           (A) pay the debtor the balance on deposit in the  
1132 deposit account; or

1133           (B) transfer the balance on deposit into a deposit  
1134 account in the debtor's name;

1135           (3) a secured party, other than a buyer, having control  
1136 of electronic chattel paper under Section 75-9-105 shall:

1137           (A) communicate the authoritative copy of the  
1138 electronic chattel paper to the debtor or its designated  
1139 custodian;

1140           (B) if the debtor designates a custodian that is  
1141 the designated custodian with which the authoritative copy of the  
1142 electronic chattel paper is maintained for the secured party,  
1143 communicate to the custodian an authenticated record releasing the  
1144 designated custodian from any further obligation to comply with  
1145 instructions originated by the secured party and instructing the  
1146 custodian to comply with instructions originated by the debtor;  
1147 and

1148           (C) take appropriate action to enable the debtor  
1149 or its designated custodian to make copies of or revisions to the  
1150 authoritative copy which add or change an identified assignee of  
1151 the authoritative copy without the consent of the secured party;

1152           (4) a secured party having control of investment  
1153 property under Section 75-8-106(d)(2) or 75-9-106(b) shall send to  
1154 the securities intermediary or commodity intermediary with which  
1155 the security entitlement or commodity contract is maintained an  
1156 authenticated record that releases the securities intermediary or  
1157 commodity intermediary from any further obligation to comply with  
1158 entitlement orders or directions originated by the secured party;  
1159 and

1160           (5) a secured party having control of a

1161 letter-of-credit right under Section 75-9-107 shall send to each  
1162 person having an unfulfilled obligation to pay or deliver proceeds  
1163 of the letter of credit to the secured party an authenticated  
1164 release from any further obligation to pay or deliver proceeds of  
1165 the letter of credit to the secured party.

1166 **SECTION 75-9-209. Duties of secured party if account debtor**  
1167 **has been notified of assignment.**

1168 (a) Except as otherwise provided in subsection (c), this  
1169 section applies if:

- 1170 (1) there is no outstanding secured obligation; and  
1171 (2) the secured party is not committed to make  
1172 advances, incur obligations, or otherwise give value.

1173 (b) Within 10 days after receiving an authenticated demand  
1174 by the debtor, a secured party shall send to an account debtor  
1175 that has received notification of an assignment to the secured  
1176 party as assignee under Section 75-9-406(a) an authenticated  
1177 record that releases the account debtor from any further  
1178 obligation to the secured party.

1179 (c) This section does not apply to an assignment  
1180 constituting the sale of an account, chattel paper, or payment  
1181 intangible.

1182 **SECTION 75-9-210. Request for accounting; request regarding**  
1183 **list of collateral or statement of account.**

1184 (a) In this section:

1185 (1) "Request" means a record of a type described in  
1186 paragraph (2), (3), or (4).

1187 (2) "Request for an accounting" means a record  
1188 authenticated by a debtor requesting that the recipient provide an  
1189 accounting of the unpaid obligations secured by collateral and  
1190 reasonably identifying the transaction or relationship that is the  
1191 subject of the request.

1192 (3) "Request regarding a list of collateral" means a  
1193 record authenticated by a debtor requesting that the recipient

1194 approve or correct a list of what the debtor believes to be the  
1195 collateral securing an obligation and reasonably identifying the  
1196 transaction or relationship that is the subject of the request.

1197           (4) "Request regarding a statement of account" means a  
1198 record authenticated by a debtor requesting that the recipient  
1199 approve or correct a statement indicating what the debtor believes  
1200 to be the aggregate amount of unpaid obligations secured by  
1201 collateral as of a specified date and reasonably identifying the  
1202 transaction or relationship that is the subject of the request.

1203           (b) Subject to subsections (c), (d), (e), and (f), a secured  
1204 party, other than a buyer of accounts, chattel paper, payment  
1205 intangibles, or promissory notes or a consignor, shall comply with  
1206 a request within 14 days after receipt:

1207           (1) in the case of a request for an accounting, by  
1208 authenticating and sending to the debtor an accounting; and

1209           (2) in the case of a request regarding a list of  
1210 collateral or a request regarding a statement of account, by  
1211 authenticating and sending to the debtor an approval or  
1212 correction.

1213           (c) A secured party that claims a security interest in all  
1214 of a particular type of collateral owned by the debtor may comply  
1215 with a request regarding a list of collateral by sending to the  
1216 debtor an authenticated record including a statement to that  
1217 effect within 14 days after receipt.

1218           (d) A person that receives a request regarding a list of  
1219 collateral, claims no interest in the collateral when it receives  
1220 the request, and claimed an interest in the collateral at an  
1221 earlier time shall comply with the request within 14 days after  
1222 receipt by sending to the debtor an authenticated record:

1223           (1) disclaiming any interest in the collateral; and

1224           (2) if known to the recipient, providing the name and  
1225 mailing address of any assignee of or successor to the recipient's  
1226 interest in the collateral.

1227 (e) A person that receives a request for an accounting or a  
1228 request regarding a statement of account, claims no interest in  
1229 the obligations when it receives the request, and claimed an  
1230 interest in the obligations at an earlier time shall comply with  
1231 the request within 14 days after receipt by sending to the debtor  
1232 an authenticated record:

1233 (1) disclaiming any interest in the obligations; and

1234 (2) if known to the recipient, providing the name and  
1235 mailing address of any assignee of or successor to the recipient's  
1236 interest in the obligations.

1237 (f) A debtor is entitled without charge to one response to a  
1238 request under this section during any six-month period. The  
1239 secured party may require payment of a charge not exceeding \$25  
1240 for each additional response.

1241 **PART 3**

1242 **PERFECTION AND PRIORITY**

1243 **SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY**

1244 **SECTION 75-9-301. Law governing perfection and priority of**  
1245 **security interests.** Except as otherwise provided in Sections  
1246 75-9-303 through 75-9-306, the following rules determine the law  
1247 governing perfection, the effect of perfection or nonperfection,  
1248 and the priority of a security interest in collateral:

1249 (1) Except as otherwise provided in this section, while  
1250 a debtor is located in a jurisdiction, the local law of that  
1251 jurisdiction governs perfection, the effect of perfection or  
1252 nonperfection, and the priority of a security interest in  
1253 collateral.

1254 (2) While collateral is located in a jurisdiction, the  
1255 local law of that jurisdiction governs perfection, the effect of  
1256 perfection or nonperfection, and the priority of a possessory  
1257 security interest in that collateral.

1258 (3) Except as otherwise provided in paragraph (4),  
1259 while negotiable documents, goods, instruments, money, or tangible

1260 chattel paper is located in a jurisdiction, the local law of that  
1261 jurisdiction governs:

1262                   (A) perfection of a security interest in the goods  
1263 by filing a fixture filing;

1264                   (B) perfection of a security interest in timber to  
1265 be cut; and

1266                   (C) the effect of perfection or nonperfection and  
1267 the priority of a nonpossessory security interest in the  
1268 collateral.

1269           (4) The local law of the jurisdiction in which the  
1270 wellhead or minehead is located governs perfection, the effect of  
1271 perfection or nonperfection, and the priority of a security  
1272 interest in as-extracted collateral.

1273           **SECTION 75-9-302. Law governing perfection and priority of**  
1274 **agricultural liens.** While farm products are located in a  
1275 jurisdiction, the local law of that jurisdiction governs  
1276 perfection, the effect of perfection or nonperfection, and the  
1277 priority of an agricultural lien on the farm products.

1278           **SECTION 75-9-303. Law governing perfection and priority of**  
1279 **security interests in goods covered by a certificate of title.**

1280           (a) This section applies to goods covered by a certificate  
1281 of title, even if there is no other relationship between the  
1282 jurisdiction under whose certificate of title the goods are  
1283 covered and the goods or the debtor.

1284           (b) Goods become covered by a certificate of title when a  
1285 valid application for the certificate of title and the applicable  
1286 fee are delivered to the appropriate authority. Goods cease to be  
1287 covered by a certificate of title at the earlier of the time the  
1288 certificate of title ceases to be effective under the law of the  
1289 issuing jurisdiction or the time the goods become covered  
1290 subsequently by a certificate of title issued by another  
1291 jurisdiction.

1292           (c) The local law of the jurisdiction under whose

1293 certificate of title the goods are covered governs perfection, the  
1294 effect of perfection or nonperfection, and the priority of a  
1295 security interest in goods covered by a certificate of title from  
1296 the time the goods become covered by the certificate of title  
1297 until the goods cease to be covered by the certificate of title.

1298         **SECTION 75-9-304. Law governing perfection and priority of**  
1299 **security interests in deposit accounts.**

1300         (a) The local law of a bank's jurisdiction governs  
1301 perfection, the effect of perfection or nonperfection, and the  
1302 priority of a security interest in a deposit account maintained  
1303 with that bank.

1304         (b) The following rules determine a bank's jurisdiction for  
1305 purposes of this part:

1306             (1) If an agreement between the bank and the debtor  
1307 governing the deposit account expressly provides that a particular  
1308 jurisdiction is the bank's jurisdiction for purposes of this part,  
1309 this article, or the Uniform Commercial Code, that jurisdiction is  
1310 the bank's jurisdiction.

1311             (2) If paragraph (1) does not apply and an agreement  
1312 between the bank and its customer governing the deposit account  
1313 expressly provides that the agreement is governed by the law of a  
1314 particular jurisdiction, that jurisdiction is the bank's  
1315 jurisdiction.

1316             (3) If neither paragraph (1) nor paragraph (2) applies  
1317 and an agreement between the bank and its customer governing the  
1318 deposit account expressly provides that the deposit account is  
1319 maintained at an office in a particular jurisdiction, that  
1320 jurisdiction is the bank's jurisdiction.

1321             (4) If none of the preceding paragraphs applies, the  
1322 bank's jurisdiction is the jurisdiction in which the office  
1323 identified in an account statement as the office serving the  
1324 customer's account is located.

1325             (5) If none of the preceding paragraphs applies, the



1326 bank's jurisdiction is the jurisdiction in which the chief  
1327 executive office of the bank is located.

1328           **SECTION 75-9-305. Law governing perfection and priority of**  
1329 **security interests in investment property.**

1330           (a) Except as otherwise provided in subsection (c), the  
1331 following rules apply:

1332                 (1) While a security certificate is located in a  
1333 jurisdiction, the local law of that jurisdiction governs  
1334 perfection, the effect of perfection or nonperfection, and the  
1335 priority of a security interest in the certificated security  
1336 represented thereby.

1337                 (2) The local law of the issuer's jurisdiction as  
1338 specified in Section 75-8-110(d) governs perfection, the effect of  
1339 perfection or nonperfection, and the priority of a security  
1340 interest in an uncertificated security.

1341                 (3) The local law of the securities intermediary's  
1342 jurisdiction as specified in Section 75-8-110(e) governs  
1343 perfection, the effect of perfection or nonperfection, and the  
1344 priority of a security interest in a security entitlement or  
1345 securities account.

1346                 (4) The local law of the commodity intermediary's  
1347 jurisdiction governs perfection, the effect of perfection or  
1348 nonperfection, and the priority of a security interest in a  
1349 commodity contract or commodity account.

1350           (b) The following rules determine a commodity intermediary's  
1351 jurisdiction for purposes of this part:

1352                 (1) If an agreement between the commodity intermediary  
1353 and commodity customer governing the commodity account expressly  
1354 provides that a particular jurisdiction is the commodity  
1355 intermediary's jurisdiction for purposes of this part, this  
1356 article, or the Uniform Commercial Code, that jurisdiction is the  
1357 commodity intermediary's jurisdiction.

1358                 (2) If paragraph (1) does not apply and an agreement

1359 between the commodity intermediary and commodity customer  
1360 governing the commodity account expressly provides that the  
1361 agreement is governed by the law of a particular jurisdiction,  
1362 that jurisdiction is the commodity intermediary's jurisdiction.

1363 (3) If neither paragraph (1) nor paragraph (2) applies  
1364 and an agreement between the commodity intermediary and commodity  
1365 customer governing the commodity account expressly provides that  
1366 the commodity account is maintained at an office in a particular  
1367 jurisdiction, that jurisdiction is the commodity intermediary's  
1368 jurisdiction.

1369 (4) If none of the preceding paragraphs applies, the  
1370 commodity intermediary's jurisdiction is the jurisdiction in which  
1371 the office identified in an account statement as the office  
1372 serving the commodity customer's account is located.

1373 (5) If none of the preceding paragraphs applies, the  
1374 commodity intermediary's jurisdiction is the jurisdiction in which  
1375 the chief executive office of the commodity intermediary is  
1376 located.

1377 (c) The local law of the jurisdiction in which the debtor is  
1378 located governs:

1379 (1) perfection of a security interest in investment  
1380 property by filing;

1381 (2) automatic perfection of a security interest in  
1382 investment property created by a broker or securities  
1383 intermediary; and

1384 (3) automatic perfection of a security interest in a  
1385 commodity contract or commodity account created by a commodity  
1386 intermediary.

1387 **SECTION 75-9-306. Law governing perfection and priority of**  
1388 **security interests in letter-of-credit rights.**

1389 (a) Subject to subsection (c), the local law of the issuer's  
1390 jurisdiction or a nominated person's jurisdiction governs  
1391 perfection, the effect of perfection or nonperfection, and the

1392 priority of a security interest in a letter-of-credit right if the  
1393 issuer's jurisdiction or nominated person's jurisdiction is a  
1394 State.

1395 (b) For purposes of this part, an issuer's jurisdiction or  
1396 nominated person's jurisdiction is the jurisdiction whose law  
1397 governs the liability of the issuer or nominated person with  
1398 respect to the letter-of-credit right as provided in Section  
1399 75-5-116.

1400 (c) This section does not apply to a security interest that  
1401 is perfected only under Section 75-9-308(d).

1402 **SECTION 75-9-307. Location of debtor.**

1403 (a) In this section, "place of business" means a place where  
1404 a debtor conducts its affairs.

1405 (b) Except as otherwise provided in this section, the  
1406 following rules determine a debtor's location:

1407 (1) A debtor who is an individual is located at the  
1408 individual's principal residence.

1409 (2) A debtor that is an organization and has only one  
1410 place of business is located at its place of business.

1411 (3) A debtor that is an organization and has more than  
1412 one place of business is located at its chief executive office.

1413 (c) Subsection (b) applies only if a debtor's residence,  
1414 place of business, or chief executive office, as applicable, is  
1415 located in a jurisdiction whose law generally requires information  
1416 concerning the existence of a nonpossessory security interest to  
1417 be made generally available in a filing, recording, or  
1418 registration system as a condition or result of the security  
1419 interest's obtaining priority over the rights of a lien creditor  
1420 with respect to the collateral. If subsection (b) does not apply,  
1421 the debtor is located in the District of Columbia.

1422 (d) A person that ceases to exist, have a residence, or have  
1423 a place of business continues to be located in the jurisdiction  
1424 specified by subsections (b) and (c).

1425 (e) A registered organization that is organized under the  
1426 law of a State is located in that State.

1427 (f) Except as otherwise provided in subsection (i), a  
1428 registered organization that is organized under the law of the  
1429 United States and a branch or agency of a bank that is not  
1430 organized under the law of the United States or a State are  
1431 located:

1432 (1) in the State that the law of the United States  
1433 designates, if the law designates a State of location;

1434 (2) in the State that the registered organization,  
1435 branch, or agency designates, if the law of the United States  
1436 authorizes the registered organization, branch, or agency to  
1437 designate its State of location; or

1438 (3) in the District of Columbia, if neither paragraph  
1439 (1) nor paragraph (2) applies.

1440 (g) A registered organization continues to be located in the  
1441 jurisdiction specified by subsection (e) or (f) notwithstanding:

1442 (1) the suspension, revocation, forfeiture, or lapse of  
1443 the registered organization's status as such in its jurisdiction  
1444 of organization; or

1445 (2) the dissolution, winding up, or cancellation of the  
1446 existence of the registered organization.

1447 (h) The United States is located in the District of  
1448 Columbia.

1449 (i) A branch or agency of a bank that is not organized under  
1450 the law of the United States or a State is located in the State in  
1451 which the branch or agency is licensed, if all branches and  
1452 agencies of the bank are licensed in only one State.

1453 (j) A foreign air carrier under the Federal Aviation Act of  
1454 1958, as amended, is located at the designated office of the agent  
1455 upon which service of process may be made on behalf of the  
1456 carrier.

1457 (k) This section applies only for purposes of this part.

1458 SUBPART 2. PERFECTION

1459 SECTION 75-9-308. When security interest or agricultural  
1460 lien is perfected; continuity of perfection.

1461 (a) Except as otherwise provided in this section and Section  
1462 75-9-309, a security interest is perfected if it has attached and  
1463 all of the applicable requirements for perfection in Sections  
1464 75-9-310 through 75-9-316 have been satisfied. A security  
1465 interest is perfected when it attaches if the applicable  
1466 requirements are satisfied before the security interest attaches.

1467 (b) An agricultural lien is perfected if it has become  
1468 effective and all of the applicable requirements for perfection in  
1469 Section 75-9-310 have been satisfied. An agricultural lien is  
1470 perfected when it becomes effective if the applicable requirements  
1471 are satisfied before the agricultural lien becomes effective.

1472 (c) A security interest or agricultural lien is perfected  
1473 continuously if it is originally perfected by one method under  
1474 this article and is later perfected by another method under this  
1475 article, without an intermediate period when it was unperfected.

1476 (d) Perfection of a security interest in collateral also  
1477 perfects a security interest in a supporting obligation for the  
1478 collateral.

1479 (e) Perfection of a security interest in a right to payment  
1480 or performance also perfects a security interest in a security  
1481 interest, mortgage, or other lien on personal or real property  
1482 securing the right.

1483 (f) Perfection of a security interest in a securities  
1484 account also perfects a security interest in the security  
1485 entitlements carried in the securities account.

1486 (g) Perfection of a security interest in a commodity account  
1487 also perfects a security interest in the commodity contracts  
1488 carried in the commodity account.

1489 SECTION 75-9-309. Security interest perfected upon  
1490 attachment. The following security interests are perfected when

1491 they attach:

1492 (1) a purchase-money security interest in consumer  
1493 goods, except as otherwise provided in Section 75-9-311(b) with  
1494 respect to consumer goods that are subject to a statute or treaty  
1495 described in Section 75-9-311(a);

1496 (2) an assignment of accounts or payment intangibles  
1497 which does not by itself or in conjunction with other assignments  
1498 to the same assignee transfer a significant part of the assignor's  
1499 outstanding accounts or payment intangibles;

1500 (3) a sale of a payment intangible;

1501 (4) a sale of a promissory note;

1502 (5) a security interest created by the assignment of a  
1503 health-care-insurance receivable to the provider of the  
1504 health-care goods or services;

1505 (6) a security interest arising under Section 75-2-401,  
1506 75-2-505, 75-2-711(3), or 75-2A-508(5), until the debtor obtains  
1507 possession of the collateral;

1508 (7) a security interest of a collecting bank arising  
1509 under Section 75-4-210;

1510 (8) a security interest of an issuer or nominated  
1511 person arising under Section 75-5-118;

1512 (9) a security interest arising in the delivery of a  
1513 financial asset under Section 75-9-206(c);

1514 (10) a security interest in investment property created  
1515 by a broker or securities intermediary;

1516 (11) a security interest in a commodity contract or a  
1517 commodity account created by a commodity intermediary;

1518 (12) an assignment for the benefit of all creditors of  
1519 the transferor and subsequent transfers by the assignee  
1520 thereunder; and

1521 (13) a security interest created by an assignment of a  
1522 beneficial interest in a decedent's estate.

1523 **SECTION 75-9-310. When filing required to perfect security**

1524 **interest or agricultural lien; security interests and agricultural**  
1525 **liens to which filing provisions do not apply.**

1526 (a) Except as otherwise provided in subsection (b) and  
1527 Section 75-9-312(b), a financing statement must be filed to  
1528 perfect all security interests and agricultural liens.

1529 (b) The filing of a financing statement is not necessary to  
1530 perfect a security interest:

1531 (1) that is perfected under Section 75-9-308(d), (e),  
1532 (f), or (g);

1533 (2) that is perfected under Section 75-9-309 when it  
1534 attaches;

1535 (3) in property subject to a statute, regulation, or  
1536 treaty described in Section 75-9-311(a);

1537 (4) in goods in possession of a bailee which is  
1538 perfected under Section 75-9-312(d)(1) or (2);

1539 (5) in certificated securities, documents, goods, or  
1540 instruments which is perfected without filing or possession under  
1541 Section 75-9-312(e), (f), or (g);

1542 (6) in collateral in the secured party's possession  
1543 under Section 75-9-313;

1544 (7) in a certificated security which is perfected by  
1545 delivery of the security certificate to the secured party under  
1546 Section 75-9-313;

1547 (8) in deposit accounts, electronic chattel paper,  
1548 investment property, or letter-of-credit rights which is perfected  
1549 by control under Section 75-9-314;

1550 (9) in proceeds which is perfected under Section  
1551 75-9-315; or

1552 (10) that is perfected under Section 75-9-316.

1553 (c) If a secured party assigns a perfected security interest  
1554 or agricultural lien, a filing under this article is not required  
1555 to continue the perfected status of the security interest against  
1556 creditors of and transferees from the original debtor.

1557           **SECTION 75-9-311. Perfection of security interests in**  
1558 **property subject to certain statutes, regulations, and treaties.**

1559           (a) Except as otherwise provided in subsection (d), the  
1560 filing of a financing statement is not necessary or effective to  
1561 perfect a security interest in property subject to:

1562                 (1) a statute, regulation, or treaty of the United  
1563 States whose requirements for a security interest's obtaining  
1564 priority over the rights of a lien creditor with respect to the  
1565 property preempt Section 75-9-310(a);

1566                 (2) Sections 63-21-1 through 63-21-77 (the Mississippi  
1567 Motor Vehicle and Manufactured Housing Title Law); or

1568                 (3) a certificate-of-title statute of another  
1569 jurisdiction which provides for a security interest to be  
1570 indicated on the certificate as a condition or result of the  
1571 security interest's obtaining priority over the rights of a lien  
1572 creditor with respect to the property.

1573           (b) Compliance with the requirements of a statute,  
1574 regulation, or treaty described in subsection (a) for obtaining  
1575 priority over the rights of a lien creditor is equivalent to the  
1576 filing of a financing statement under this article. Except as  
1577 otherwise provided in subsection (d) and Sections 75-9-313 and  
1578 75-9-316(d) and (e) for goods covered by a certificate of title, a  
1579 security interest in property subject to a statute, regulation, or  
1580 treaty described in subsection (a) may be perfected only by  
1581 compliance with those requirements, and a security interest so  
1582 perfected remains perfected notwithstanding a change in the use or  
1583 transfer of possession of the collateral.

1584           (c) Except as otherwise provided in subsection (d) and  
1585 Section 75-9-316(d) and (e), duration and renewal of perfection of  
1586 a security interest perfected by compliance with the requirements  
1587 prescribed by a statute, regulation, or treaty described in  
1588 subsection (a) are governed by the statute, regulation, or treaty.

1589   In other respects, the security interest is subject to this



1590 article.

1591 (d) During any period in which collateral subject to a  
1592 statute specified in subsection (a)(2) is inventory held for sale  
1593 or lease by a person or leased by that person as lessor and that  
1594 person is in the business of selling goods of that kind, this  
1595 section does not apply to a security interest in that collateral  
1596 created by that person.

1597 **SECTION 75-9-312. Perfection of security interests in**  
1598 **chattel paper, deposit accounts, documents, goods covered by**  
1599 **documents, instruments, investment property, letter-of-credit**  
1600 **rights, and money; perfection by permissive filing; temporary**  
1601 **perfection without filing or transfer of possession.**

1602 (a) A security interest in chattel paper, negotiable  
1603 documents, instruments, or investment property may be perfected by  
1604 filing.

1605 (b) Except as otherwise provided in Section 75-9-315(c) and  
1606 (d) for proceeds:

1607 (1) a security interest in a deposit account may be  
1608 perfected only by control under Section 75-9-314;

1609 (2) and except as otherwise provided in Section  
1610 75-9-308(d), a security interest in a letter-of-credit right may  
1611 be perfected only by control under Section 75-9-314; and

1612 (3) a security interest in money may be perfected only  
1613 by the secured party's taking possession under Section 75-9-313.

1614 (c) While goods are in the possession of a bailee that has  
1615 issued a negotiable document covering the goods:

1616 (1) a security interest in the goods may be perfected  
1617 by perfecting a security interest in the document; and

1618 (2) a security interest perfected in the document has  
1619 priority over any security interest that becomes perfected in the  
1620 goods by another method during that time.

1621 (d) While goods are in the possession of a bailee that has  
1622 issued a nonnegotiable document covering the goods, a security

1623 interest in the goods may be perfected by:

1624 (1) issuance of a document in the name of the secured  
1625 party;

1626 (2) the bailee's receipt of notification of the secured  
1627 party's interest; or

1628 (3) filing as to the goods.

1629 (e) A security interest in certificated securities,  
1630 negotiable documents, or instruments is perfected without filing  
1631 or the taking of possession for a period of 20 days from the time  
1632 it attaches to the extent that it arises for new value given under  
1633 an authenticated security agreement.

1634 (f) A perfected security interest in a negotiable document  
1635 or goods in possession of a bailee, other than one that has issued  
1636 a negotiable document for the goods, remains perfected for 20 days  
1637 without filing if the secured party makes available to the debtor  
1638 the goods or documents representing the goods for the purpose of:

1639 (1) ultimate sale or exchange; or

1640 (2) loading, unloading, storing, shipping,  
1641 transshipping, manufacturing, processing, or otherwise dealing  
1642 with them in a manner preliminary to their sale or exchange.

1643 (g) A perfected security interest in a certificated security  
1644 or instrument remains perfected for 20 days without filing if the  
1645 secured party delivers the security certificate or instrument to  
1646 the debtor for the purpose of:

1647 (1) ultimate sale or exchange; or

1648 (2) presentation, collection, enforcement, renewal, or  
1649 registration of transfer.

1650 (h) After the 20-day period specified in subsection (e),  
1651 (f), or (g) expires, perfection depends upon compliance with this  
1652 article.

1653 **SECTION 75-9-313. When possession by or delivery to secured**  
1654 **party perfects security interest without filing.**

1655 (a) Except as otherwise provided in subsection (b), a

1656 secured party may perfect a security interest in negotiable  
1657 documents, goods, instruments, money, or tangible chattel paper by  
1658 taking possession of the collateral. A secured party may perfect  
1659 a security interest in certificated securities by taking delivery  
1660 of the certificated securities under Section 75-8-301.

1661 (b) With respect to goods covered by a certificate of title  
1662 issued by this State, a secured party may perfect a security  
1663 interest in the goods by taking possession of the goods only in  
1664 the circumstances described in Section 75-9-316(d).

1665 (c) With respect to collateral other than certificated  
1666 securities and goods covered by a document, a secured party takes  
1667 possession of collateral in the possession of a person other than  
1668 the debtor, the secured party, or a lessee of the collateral from  
1669 the debtor in the ordinary course of the debtor's business, when:

1670 (1) the person in possession authenticates a record  
1671 acknowledging that it holds possession of the collateral for the  
1672 secured party's benefit; or

1673 (2) the person takes possession of the collateral after  
1674 having authenticated a record acknowledging that it will hold  
1675 possession of collateral for the secured party's benefit.

1676 (d) If perfection of a security interest depends upon  
1677 possession of the collateral by a secured party, perfection occurs  
1678 no earlier than the time the secured party takes possession and  
1679 continues only while the secured party retains possession.

1680 (e) A security interest in a certificated security in  
1681 registered form is perfected by delivery when delivery of the  
1682 certificated security occurs under Section 75-8-301 and remains  
1683 perfected by delivery until the debtor obtains possession of the  
1684 security certificate.

1685 (f) A person in possession of collateral is not required to  
1686 acknowledge that it holds possession for a secured party's  
1687 benefit.

1688 (g) If a person acknowledges that it holds possession for

1689 the secured party's benefit:

1690 (1) the acknowledgment is effective under subsection  
1691 (c) or Section 75-8-301(a), even if the acknowledgment violates  
1692 the rights of a debtor; and

1693 (2) unless the person otherwise agrees or law other  
1694 than this article otherwise provides, the person does not owe any  
1695 duty to the secured party and is not required to confirm the  
1696 acknowledgment to another person.

1697 (h) A secured party having possession of collateral does not  
1698 relinquish possession by delivering the collateral to a person  
1699 other than the debtor or a lessee of the collateral from the  
1700 debtor in the ordinary course of the debtor's business if the  
1701 person was instructed before the delivery or is instructed  
1702 contemporaneously with the delivery:

1703 (1) to hold possession of the collateral for the  
1704 secured party's benefit; or

1705 (2) A secured party does not relinquish possession,  
1706 even if a delivery under subsection (h) violates the rights of a  
1707 debtor. A person to which collateral is delivered under  
1708 subsection (h) does not owe any duty to the secured party and is  
1709 not required to confirm the delivery to another person unless the  
1710 person otherwise agrees or law other than this article otherwise  
1711 provides.

1712 **SECTION 75-9-314. Perfection by control.**

1713 (a) A security interest in investment property, deposit  
1714 accounts, letter-of-credit rights, or electronic chattel paper may  
1715 be perfected by control of the collateral under Section 75-9-104,  
1716 75-9-105, 75-9-106, or 75-9-107.

1717 (b) A security interest in deposit accounts, electronic  
1718 chattel paper, or letter-of-credit rights is perfected by control  
1719 under Section 75-9-104, 75-9-105, or 75-9-107 when the secured  
1720 party obtains control and remains perfected by control only while  
1721 the secured party retains control.

1722 (c) A security interest in investment property is perfected  
1723 by control under Section 75-9-106 from the time the secured party  
1724 obtains control and remains perfected by control until:

1725 (1) the secured party does not have control; and

1726 (2) one of the following occurs:

1727 (A) if the collateral is a certificated security,  
1728 the debtor has or acquires possession of the security certificate;

1729 (B) if the collateral is an uncertificated  
1730 security, the issuer has registered or registers the debtor as the  
1731 registered owner; or

1732 (C) if the collateral is a security entitlement,  
1733 the debtor is or becomes the entitlement holder.

1734 **SECTION 75-9-315. Secured party's rights on disposition of**  
1735 **collateral and in proceeds.**

1736 (a) Except as otherwise provided in this article and in  
1737 Section 75-2-403(2):

1738 (1) a security interest or agricultural lien continues  
1739 in collateral notwithstanding sale, lease, license, exchange, or  
1740 other disposition thereof unless the secured party authorized the  
1741 disposition free of the security interest or agricultural lien;  
1742 and

1743 (2) a security interest attaches to any identifiable  
1744 proceeds of collateral.

1745 (b) Proceeds that are commingled with other property are  
1746 identifiable proceeds:

1747 (1) if the proceeds are goods, to the extent provided  
1748 by Section 75-9-336; and

1749 (2) if the proceeds are not goods, to the extent that  
1750 the secured party identifies the proceeds by a method of tracing,  
1751 including application of equitable principles, that is permitted  
1752 under law other than this article with respect to commingled  
1753 property of the type involved.

1754 (c) A security interest in proceeds is a perfected security

1755 interest if the security interest in the original collateral was  
1756 perfected.

1757 (d) A perfected security interest in proceeds becomes  
1758 unperfected on the 21st day after the security interest attaches  
1759 to the proceeds unless:

1760 (1) the following conditions are satisfied:

1761 (A) a filed financing statement covers the  
1762 original collateral;

1763 (B) the proceeds are collateral in which a  
1764 security interest may be perfected by filing in the office in  
1765 which the financing statement has been filed; and

1766 (C) the proceeds are not acquired with cash  
1767 proceeds;

1768 (2) the proceeds are identifiable cash proceeds; or

1769 (3) the security interest in the proceeds is perfected  
1770 other than under subsection (c) when the security interest  
1771 attaches to the proceeds or within 20 days thereafter.

1772 (e) If a filed financing statement covers the original  
1773 collateral, a security interest in proceeds which remains  
1774 perfected under subsection (d)(1) becomes unperfected at the later  
1775 of:

1776 (1) when the effectiveness of the filed financing  
1777 statement lapses under Section 75-9-515 or is terminated under  
1778 Section 75-9-513; or

1779 (2) the 21st day after the security interest attaches  
1780 to the proceeds.

1781 **SECTION 75-9-316. Continued perfection of security interest**  
1782 **following change in governing law.**

1783 (a) A security interest perfected pursuant to the law of the  
1784 jurisdiction designated in Section 75-9-301(1) or 75-9-305(c)  
1785 remains perfected until the earliest of:

1786 (1) the time perfection would have ceased under the law  
1787 of that jurisdiction;

1788           (2) the expiration of four months after a change of the  
1789 debtor's location to another jurisdiction; or

1790           (3) the expiration of one year after a transfer of  
1791 collateral to a person that thereby becomes a debtor and is  
1792 located in another jurisdiction.

1793           (b) If a security interest described in subsection (a)  
1794 becomes perfected under the law of the other jurisdiction before  
1795 the earliest time or event described in that subsection, it  
1796 remains perfected thereafter. If the security interest does not  
1797 become perfected under the law of the other jurisdiction before  
1798 the earliest time or event, it becomes unperfected and is deemed  
1799 never to have been perfected as against a purchaser of the  
1800 collateral for value.

1801           (c) A possessory security interest in collateral, other than  
1802 goods covered by a certificate of title and as-extracted  
1803 collateral consisting of goods, remains continuously perfected if:

1804           (1) the collateral is located in one jurisdiction and  
1805 subject to a security interest perfected under the law of that  
1806 jurisdiction;

1807           (2) thereafter the collateral is brought into another  
1808 jurisdiction; and

1809           (3) upon entry into the other jurisdiction, the  
1810 security interest is perfected under the law of the other  
1811 jurisdiction.

1812           (d) Except as otherwise provided in subsection (e), a  
1813 security interest in goods covered by a certificate of title which  
1814 is perfected by any method under the law of another jurisdiction  
1815 when the goods become covered by a certificate of title from this  
1816 State remains perfected until the security interest would have  
1817 become unperfected under the law of the other jurisdiction had the  
1818 goods not become so covered.

1819           (e) A security interest described in subsection (d) becomes  
1820 unperfected as against a purchaser of the goods for value and is

1821 deemed never to have been perfected as against a purchaser of the  
1822 goods for value if the applicable requirements for perfection  
1823 under Section 75-9-311(b) or 75-9-313 are not satisfied before the  
1824 earlier of:

1825 (1) the time the security interest would have become  
1826 unperfected under the law of the other jurisdiction had the goods  
1827 not become covered by a certificate of title from this State; or

1828 (2) the expiration of four months after the goods had  
1829 become so covered.

1830 (f) A security interest in deposit accounts,  
1831 letter-of-credit rights, or investment property which is perfected  
1832 under the law of the bank's jurisdiction, the issuer's  
1833 jurisdiction, a nominated person's jurisdiction, the securities  
1834 intermediary's jurisdiction, or the commodity intermediary's  
1835 jurisdiction, as applicable, remains perfected until the earlier  
1836 of:

1837 (1) the time the security interest would have become  
1838 unperfected under the law of that jurisdiction; or

1839 (2) the expiration of four months after a change of the  
1840 applicable jurisdiction to another jurisdiction.

1841 (g) If a security interest described in subsection (f)  
1842 becomes perfected under the law of the other jurisdiction before  
1843 the earlier of the time or the end of the period described in that  
1844 subsection, it remains perfected thereafter. If the security  
1845 interest does not become perfected under the law of the other  
1846 jurisdiction before the earlier of that time or the end of that  
1847 period, it becomes unperfected and is deemed never to have been  
1848 perfected as against a purchaser of the collateral for value.

1849 SUBPART 3. PRIORITY

1850 **SECTION 75-9-317. Interests that take priority over or take**  
1851 **free of security interest or agricultural lien.**

1852 (a) A security interest or agricultural lien is subordinate  
1853 to the rights of:



1854 (1) a person entitled to priority under Section  
1855 75-9-322; and

1856 (2) except as otherwise provided in subsection (e), a  
1857 person that becomes a lien creditor before the earlier of the  
1858 time:

1859 (A) the security interest or agricultural lien is  
1860 perfected; or

1861 (B) one of the conditions specified in Section  
1862 75-9-203(b)(3) is met and a financing statement covering the  
1863 collateral is filed.

1864 (b) Except as otherwise provided in subsection (e), a buyer,  
1865 other than a secured party, of tangible chattel paper, documents,  
1866 goods, instruments, or a security certificate takes free of a  
1867 security interest or agricultural lien if the buyer gives value  
1868 and receives delivery of the collateral without knowledge of the  
1869 security interest or agricultural lien and before it is perfected.

1870 (c) Except as otherwise provided in subsection (e), a lessee  
1871 of goods takes free of a security interest or agricultural lien if  
1872 the lessee gives value and receives delivery of the collateral  
1873 without knowledge of the security interest or agricultural lien  
1874 and before it is perfected.

1875 (d) A licensee of a general intangible or a buyer, other  
1876 than a secured party, of accounts, electronic chattel paper,  
1877 general intangibles, or investment property other than a  
1878 certificated security takes free of a security interest if the  
1879 licensee or buyer gives value without knowledge of the security  
1880 interest and before it is perfected.

1881 (e) Except as otherwise provided in Sections 75-9-320 and  
1882 75-9-321, if a person files a financing statement with respect to  
1883 a purchase-money security interest before or within 20 days after  
1884 the debtor receives delivery of the collateral, the security  
1885 interest takes priority over the rights of a buyer, lessee, or  
1886 lien creditor which arise between the time the security interest

1887 attaches and the time of filing.

1888           **SECTION 75-9-318. No interest retained in right to payment**  
1889 **that is sold; rights and title of seller of account or chattel**  
1890 **paper with respect to creditors and purchasers.**

1891           (a) A debtor that has sold an account, chattel paper,  
1892 payment intangible, or promissory note does not retain a legal or  
1893 equitable interest in the collateral sold.

1894           (b) For purposes of determining the rights of creditors of,  
1895 and purchasers for value of an account or chattel paper from, a  
1896 debtor that has sold an account or chattel paper, while the  
1897 buyer's security interest is unperfected, the debtor is deemed to  
1898 have rights and title to the account or chattel paper identical to  
1899 those the debtor sold.

1900           **SECTION 75-9-319. Rights and title of consignee with respect**  
1901 **to creditors and purchasers.**

1902           (a) Except as otherwise provided in subsection (b), for  
1903 purposes of determining the rights of creditors of, and purchasers  
1904 for value of goods from, a consignee, while the goods are in the  
1905 possession of the consignee, the consignee is deemed to have  
1906 rights and title to the goods identical to those the consignor had  
1907 or had power to transfer.

1908           (b) For purposes of determining the rights of a creditor of  
1909 a consignee, law other than this article determines the rights and  
1910 title of a consignee while goods are in the consignee's possession  
1911 if, under this part, a perfected security interest held by the  
1912 consignor would have priority over the rights of the creditor.

1913           **SECTION 75-9-320. Buyer of goods.**

1914           (a) Except as otherwise provided in subsection (e), a buyer  
1915 in ordinary course of business, other than a person buying farm  
1916 products from a person engaged in farming operations, takes free  
1917 of a security interest created by the buyer's seller, even if the  
1918 security interest is perfected and the buyer knows of its  
1919 existence.

1920           (b) Except as otherwise provided in subsection (e), a buyer  
1921 of goods from a person who used or bought the goods for use  
1922 primarily for personal, family, or household purposes takes free  
1923 of a security interest, even if perfected, if the buyer buys:

1924                 (1) without knowledge of the security interest;

1925                 (2) for value;

1926                 (3) primarily for the buyer's personal, family, or  
1927 household purposes; and

1928                 (4) before the filing of a financing statement covering  
1929 the goods.

1930           (c) To the extent that it affects the priority of a security  
1931 interest over a buyer of goods under subsection (b), the period of  
1932 effectiveness of a filing made in the jurisdiction in which the  
1933 seller is located is governed by Section 75-9-316(a) and (b).

1934           (d) A buyer in ordinary course of business buying oil, gas,  
1935 or other minerals at the wellhead or minehead or after extraction  
1936 takes free of an interest arising out of an encumbrance.

1937           (e) Subsections (a) and (b) do not affect a security  
1938 interest in goods in the possession of the secured party under  
1939 Section 75-9-313.

1940           (f) Notwithstanding subsection (a), a secured party may not  
1941 enforce a security interest in farm products against a buyer,  
1942 commission merchant or selling agent who purchases or sells farm  
1943 products in the ordinary course of business from or for a person  
1944 engaged in farming operations unless the secured party has  
1945 complied with the regulations issued by the Secretary of State  
1946 under subsection (g) or unless the buyer, commission merchant or  
1947 selling agent has received from the secured party or seller  
1948 written notice of the security interest which complies with the  
1949 requirements of Section 1324 of the Food Security Act of 1985, as  
1950 now enacted or as hereafter may be amended.

1951           (g) The Secretary of State shall issue regulations  
1952 implementing a central filing system relating to farm products

1953 which conforms with the requirements of Section 1324 of the Food  
1954 Security Act of 1985, as now enacted or as hereafter may be  
1955 amended. The Secretary of State is authorized to set reasonable  
1956 fees to defray the costs of the central filing system established  
1957 pursuant to this section. At least 30 days prior to the  
1958 promulgation of such regulations or any amendments thereto, the  
1959 Secretary of State shall give notice of such regulations and/or  
1960 amendments to all licensed attorneys in the State of Mississippi.

1961 **SECTION 75-9-321. Licensee of general intangible and lessee**  
1962 **of goods in ordinary course of business.**

1963 (a) In this section, "licensee in ordinary course of  
1964 business" means a person that becomes a licensee of a general  
1965 intangible in good faith, without knowledge that the license  
1966 violates the rights of another person in the general intangible,  
1967 and in the ordinary course from a person in the business of  
1968 licensing general intangibles of that kind. A person becomes a  
1969 licensee in the ordinary course if the license to the person  
1970 comports with the usual or customary practices in the kind of  
1971 business in which the licensor is engaged or with the licensor's  
1972 own usual or customary practices.

1973 (b) A licensee in ordinary course of business takes its  
1974 rights under a nonexclusive license free of a security interest in  
1975 the general intangible created by the licensor, even if the  
1976 security interest is perfected and the licensee knows of its  
1977 existence.

1978 (c) A lessee in ordinary course of business takes its  
1979 leasehold interest free of a security interest in the goods  
1980 created by the lessor, even if the security interest is perfected  
1981 and the lessee knows of its existence.

1982 **SECTION 75-9-322. Priorities among conflicting security**  
1983 **interests in and agricultural liens on same collateral.**

1984 (a) Except as otherwise provided in this section, priority  
1985 among conflicting security interests and agricultural liens in the

1986 same collateral is determined according to the following rules:

1987           (1) Conflicting perfected security interests and  
1988 agricultural liens rank according to priority in time of filing or  
1989 perfection. Priority dates from the earlier of the time a filing  
1990 covering the collateral is first made or the security interest or  
1991 agricultural lien is first perfected, if there is no period  
1992 thereafter when there is neither filing nor perfection.

1993           (2) A perfected security interest or agricultural lien  
1994 has priority over a conflicting unperfected security interest or  
1995 agricultural lien.

1996           (3) The first security interest or agricultural lien to  
1997 attach or become effective has priority if conflicting security  
1998 interests and agricultural liens are unperfected.

1999           (b) For the purposes of subsection (a)(1):

2000           (1) the time of filing or perfection as to a security  
2001 interest in collateral is also the time of filing or perfection as  
2002 to a security interest in proceeds; and

2003           (2) the time of filing or perfection as to a security  
2004 interest in collateral supported by a supporting obligation is  
2005 also the time of filing or perfection as to a security interest in  
2006 the supporting obligation.

2007           (c) Except as otherwise provided in subsection (f), a  
2008 security interest in collateral which qualifies for priority over  
2009 a conflicting security interest under Section 75-9-327, 75-9-328,  
2010 75-9-329, 75-9-330, or 75-9-331 also has priority over a  
2011 conflicting security interest in:

2012           (1) any supporting obligation for the collateral; and

2013           (2) proceeds of the collateral if:

2014           (A) the security interest in proceeds is  
2015 perfected;

2016           (B) the proceeds are cash proceeds or of the same  
2017 type as the collateral; and

2018           (C) in the case of proceeds that are proceeds of

2019 proceeds, all intervening proceeds are cash proceeds, proceeds of  
2020 the same type as the collateral, or an account relating to the  
2021 collateral.

2022 (d) Subject to subsection (e) and except as otherwise  
2023 provided in subsection (f), if a security interest in chattel  
2024 paper, deposit accounts, negotiable documents, instruments,  
2025 investment property, or letter-of-credit rights is perfected by a  
2026 method other than filing, conflicting perfected security interests  
2027 in proceeds of the collateral rank according to priority in time  
2028 of filing.

2029 (e) Subsection (d) applies only if the proceeds of the  
2030 collateral are not cash proceeds, chattel paper, negotiable  
2031 documents, instruments, investment property, or letter-of-credit  
2032 rights.

2033 (f) Subsections (a) through (e) are subject to:

2034 (1) subsection (g) and the other provisions of this  
2035 part;

2036 (2) Section 75-4-210 with respect to a security  
2037 interest of a collecting bank;

2038 (3) Section 75-5-118 with respect to a security  
2039 interest of an issuer or nominated person; and

2040 (4) Section 75-9-110 with respect to a security  
2041 interest arising under Article 2 or 2A.

2042 (g) A perfected agricultural lien on collateral has priority  
2043 over a conflicting security interest in or agricultural lien on  
2044 the same collateral if the statute creating the agricultural lien  
2045 so provides.

2046 **SECTION 75-9-323. Future advances.**

2047 (a) Except as otherwise provided in subsection (c), for  
2048 purposes of determining the priority of a perfected security  
2049 interest under Section 75-9-322(a)(1), perfection of the security  
2050 interest dates from the time an advance is made to the extent that  
2051 the security interest secures an advance that:

2052                   (1) is made while the security interest is perfected  
2053 only:

2054                   (A) under Section 75-9-309 when it attaches; or

2055                   (B) temporarily under Section 75-9-312(e), (f), or  
2056 (g); and

2057                   (2) is not made pursuant to a commitment entered into  
2058 before or while the security interest is perfected by a method  
2059 other than under Section 75-9-309 or 75-9-312(e), (f), or (g).

2060           (b) Except as otherwise provided in subsection (c), a  
2061 security interest is subordinate to the rights of a person that  
2062 becomes a lien creditor to the extent that the security interest  
2063 secures an advance made more than 45 days after the person becomes  
2064 a lien creditor unless the advance is made:

2065                   (1) without knowledge of the lien; or

2066                   (2) pursuant to a commitment entered into without  
2067 knowledge of the lien.

2068           (c) Subsections (a) and (b) do not apply to a security  
2069 interest held by a secured party that is a buyer of accounts,  
2070 chattel paper, payment intangibles, or promissory notes or a  
2071 consignor.

2072           (d) Except as otherwise provided in subsection (e), a buyer  
2073 of goods other than a buyer in ordinary course of business takes  
2074 free of a security interest to the extent that it secures advances  
2075 made after the earlier of:

2076                   (1) the time the secured party acquires knowledge of  
2077 the buyer's purchase; or

2078                   (2) 45 days after the purchase.

2079           (e) Subsection (d) does not apply if the advance is made  
2080 pursuant to a commitment entered into without knowledge of the  
2081 buyer's purchase and before the expiration of the 45-day period.

2082           (f) Except as otherwise provided in subsection (g), a lessee  
2083 of goods, other than a lessee in ordinary course of business,  
2084 takes the leasehold interest free of a security interest to the

2085 extent that it secures advances made after the earlier of:

2086 (1) the time the secured party acquires knowledge of  
2087 the lease; or

2088 (2) 45 days after the lease contract becomes  
2089 enforceable.

2090 (g) Subsection (f) does not apply if the advance is made  
2091 pursuant to a commitment entered into without knowledge of the  
2092 lease and before the expiration of the 45-day period.

2093 **SECTION 75-9-324. Priority of purchase-money security**  
2094 **interests.**

2095 (a) Except as otherwise provided in subsection (g), a  
2096 perfected purchase-money security interest in goods other than  
2097 inventory or livestock has priority over a conflicting security  
2098 interest in the same goods, and, except as otherwise provided in  
2099 Section 75-9-327, a perfected security interest in its  
2100 identifiable proceeds also has priority, if the purchase-money  
2101 security interest is perfected when the debtor receives possession  
2102 of the collateral or within 20 days thereafter.

2103 (b) Subject to subsection (c) and except as otherwise  
2104 provided in subsection (g), a perfected purchase-money security  
2105 interest in inventory has priority over a conflicting security  
2106 interest in the same inventory, has priority over a conflicting  
2107 security interest in chattel paper or an instrument constituting  
2108 proceeds of the inventory and in proceeds of the chattel paper, if  
2109 so provided in Section 75-9-330, and, except as otherwise provided  
2110 in Section 75-9-327, also has priority in identifiable cash  
2111 proceeds of the inventory to the extent the identifiable cash  
2112 proceeds are received on or before the delivery of the inventory  
2113 to a buyer, if:

2114 (1) the purchase-money security interest is perfected  
2115 when the debtor receives possession of the inventory;

2116 (2) the purchase-money secured party sends an  
2117 authenticated notification to the holder of the conflicting



2118 security interest;

2119 (3) the holder of the conflicting security interest  
2120 receives the notification within five years before the debtor  
2121 receives possession of the inventory; and

2122 (4) the notification states that the person sending the  
2123 notification has or expects to acquire a purchase-money security  
2124 interest in inventory of the debtor and describes the inventory.

2125 (c) Subsections (b)(2) through (4) apply only if the holder  
2126 of the conflicting security interest had filed a financing  
2127 statement covering the same types of inventory:

2128 (1) if the purchase-money security interest is  
2129 perfected by filing, before the date of the filing; or

2130 (2) if the purchase-money security interest is  
2131 temporarily perfected without filing or possession under Section  
2132 75-9-312(f), before the beginning of the 20-day period thereunder.

2133 (d) Subject to subsection (e) and except as otherwise  
2134 provided in subsection (g), a perfected purchase-money security  
2135 interest in livestock that are farm products has priority over a  
2136 conflicting security interest in the same livestock, and, except  
2137 as otherwise provided in Section 75-9-327, a perfected security  
2138 interest in their identifiable proceeds and identifiable products  
2139 in their unmanufactured states also has priority, if:

2140 (1) the purchase-money security interest is perfected  
2141 when the debtor receives possession of the livestock;

2142 (2) the purchase-money secured party sends an  
2143 authenticated notification to the holder of the conflicting  
2144 security interest;

2145 (3) the holder of the conflicting security interest  
2146 receives the notification within six months before the debtor  
2147 receives possession of the livestock; and

2148 (4) the notification states that the person sending the  
2149 notification has or expects to acquire a purchase-money security  
2150 interest in livestock of the debtor and describes the livestock.

2151 (e) Subsections (d)(2) through (4) apply only if the holder  
2152 of the conflicting security interest had filed a financing  
2153 statement covering the same types of livestock:

2154 (1) if the purchase-money security interest is  
2155 perfected by filing, before the date of the filing; or

2156 (2) if the purchase-money security interest is  
2157 temporarily perfected without filing or possession under Section  
2158 75-9-312(f), before the beginning of the 20-day period thereunder.

2159 (f) Except as otherwise provided in subsection (g), a  
2160 perfected purchase-money security interest in software has  
2161 priority over a conflicting security interest in the same  
2162 collateral, and, except as otherwise provided in Section 75-9-327,  
2163 a perfected security interest in its identifiable proceeds also  
2164 has priority, to the extent that the purchase-money security  
2165 interest in the goods in which the software was acquired for use  
2166 has priority in the goods and proceeds of the goods under this  
2167 section.

2168 (g) If more than one security interest qualifies for  
2169 priority in the same collateral under subsection (a), (b), (d), or  
2170 (f):

2171 (1) a security interest securing an obligation incurred  
2172 as all or part of the price of the collateral has priority over a  
2173 security interest securing an obligation incurred for value given  
2174 to enable the debtor to acquire rights in or the use of  
2175 collateral; and

2176 (2) in all other cases, Section 75-9-322(a) applies to  
2177 the qualifying security interests.

2178 **SECTION 75-9-324A. Priority of production-money security**  
2179 **interests and agricultural liens.**

2180 (a) Except as otherwise provided in subsections (c), (d),  
2181 and (e), if the requirements of subsection (b) are satisfied, a  
2182 perfected production-money security interest in production-money  
2183 crops has priority over a conflicting security interest in the

2184 same crops and, except as otherwise provided in Section 9-327,  
2185 also has priority in their identifiable proceeds.

2186 (b) A production-money security interest has priority under  
2187 subsection (a) if:

2188 (1) the production-money security interest is perfected  
2189 by filing when the production-money secured party first gives new  
2190 value to enable the debtor to produce the crops;

2191 (2) the production-money secured party sends an  
2192 authenticated notification to the holder of the conflicting  
2193 security interest not less than 10 or more than 30 days before the  
2194 production-money secured party first gives new value to enable the  
2195 debtor to produce the crops if the holder had filed a financing  
2196 statement covering the crops before the date of the filing made by  
2197 the production-money secured party; and

2198 (3) the notification states that the production-money  
2199 secured party has or expects to acquire a production-money  
2200 security interest in the debtor's crops and provides a description  
2201 of the crops.

2202 (c) Except as otherwise provided in subsection (d) or (e),  
2203 if more than one security interest qualifies for priority in the  
2204 same collateral under subsection (a), the security interests rank  
2205 according to priority in time of filing under Section 75-9-322(a).

2206 (d) To the extent that a person holding a perfected security  
2207 interest in production-money crops that are the subject of a  
2208 production-money security interest gives new value to enable the  
2209 debtor to produce the production-money crops and the value is in  
2210 fact used for the production of the production-money crops, the  
2211 security interests rank according to priority in time of filing  
2212 under Section 75-9-322(a).

2213 (e) To the extent that a person holds both an agricultural  
2214 lien and a production-money security interest in the same  
2215 collateral securing the same obligations, the rules of priority  
2216 applicable to agricultural liens govern priority.]

2217           **SECTION 75-9-325. Priority of security interests in**  
2218 **transferred collateral.**

2219           (a) Except as otherwise provided in subsection (b), a  
2220 security interest created by a debtor is subordinate to a security  
2221 interest in the same collateral created by another person if:

2222                 (1) the debtor acquired the collateral subject to the  
2223 security interest created by the other person;

2224                 (2) the security interest created by the other person  
2225 was perfected when the debtor acquired the collateral; and

2226                 (3) there is no period thereafter when the security  
2227 interest is unperfected.

2228           (b) Subsection (a) subordinates a security interest only if  
2229 the security interest:

2230                 (1) otherwise would have priority solely under Section  
2231 75-9-322(a) or 75-9-324; or

2232                 (2) arose solely under Section 75-2-711(3) or  
2233 75-2A-508(5).

2234           **SECTION 75-9-326. Priority of security interests created by**  
2235 **new debtor.**

2236           (a) Subject to subsection (b), a security interest created  
2237 by a new debtor which is perfected by a filed financing statement  
2238 that is effective solely under Section 75-9-508 in collateral in  
2239 which a new debtor has or acquires rights is subordinate to a  
2240 security interest in the same collateral which is perfected other  
2241 than by a filed financing statement that is effective solely under  
2242 Section 75-9-508.

2243           (b) The other provisions of this part determine the priority  
2244 among conflicting security interests in the same collateral  
2245 perfected by filed financing statements that are effective solely  
2246 under Section 75-9-508. However, if the security agreements to  
2247 which a new debtor became bound as debtor were not entered into by  
2248 the same original debtor, the conflicting security interests rank  
2249 according to priority in time of the new debtor's having become

2250 bound.

2251           **SECTION 75-9-327. Priority of security interests in deposit**  
2252 **account.** The following rules govern priority among conflicting  
2253 security interests in the same deposit account:

2254           (1) A security interest held by a secured party having  
2255 control of the deposit account under Section 75-9-104 has priority  
2256 over a conflicting security interest held by a secured party that  
2257 does not have control.

2258           (2) Except as otherwise provided in paragraphs (3) and  
2259 (4), security interests perfected by control under Section  
2260 75-9-314 rank according to priority in time of obtaining control.

2261           (3) Except as otherwise provided in paragraph (4), a  
2262 security interest held by the bank with which the deposit account  
2263 is maintained has priority over a conflicting security interest  
2264 held by another secured party.

2265           (4) A security interest perfected by control under  
2266 Section 75-9-104(a)(3) has priority over a security interest held  
2267 by the bank with which the deposit account is maintained.

2268           **SECTION 75-9-328. Priority of security interests in**  
2269 **investment property.** The following rules govern priority among  
2270 conflicting security interests in the same investment property:

2271           (1) A security interest held by a secured party having  
2272 control of investment property under Section 75-9-106 has priority  
2273 over a security interest held by a secured party that does not  
2274 have control of the investment property.

2275           (2) Except as otherwise provided in paragraphs (3) and  
2276 (4), conflicting security interests held by secured parties each  
2277 of which has control under Section 75-9-106 rank according to  
2278 priority in time of:

2279                   (A) if the collateral is a security, obtaining  
2280 control;

2281                   (B) if the collateral is a security entitlement  
2282 carried in a securities account and:

2283 (i) if the secured party obtained control  
2284 under Section 75-8-106(d)(1), the secured party's becoming the  
2285 person for which the securities account is maintained;

2286 (ii) if the secured party obtained control  
2287 under Section 75-8-106(d)(2), the securities intermediary's  
2288 agreement to comply with the secured party's entitlement orders  
2289 with respect to security entitlements carried or to be carried in  
2290 the securities account; or

2291 (iii) if the secured party obtained control  
2292 through another person under Section 75-8-106(d)(3), the time on  
2293 which priority would be based under this paragraph if the other  
2294 person were the secured party; or

2295 (C) if the collateral is a commodity contract  
2296 carried with a commodity intermediary, the satisfaction of the  
2297 requirement for control specified in Section 75-9-106(b)(2) with  
2298 respect to commodity contracts carried or to be carried with the  
2299 commodity intermediary.

2300 (3) A security interest held by a securities  
2301 intermediary in a security entitlement or a securities account  
2302 maintained with the securities intermediary has priority over a  
2303 conflicting security interest held by another secured party.

2304 (4) A security interest held by a commodity  
2305 intermediary in a commodity contract or a commodity account  
2306 maintained with the commodity intermediary has priority over a  
2307 conflicting security interest held by another secured party.

2308 (5) A security interest in a certificated security in  
2309 registered form which is perfected by taking delivery under  
2310 Section 75-9-313(a) and not by control under Section 75-9-314 has  
2311 priority over a conflicting security interest perfected by a  
2312 method other than control.

2313 (6) Conflicting security interests created by a broker,  
2314 securities intermediary, or commodity intermediary which are  
2315 perfected without control under Section 75-9-106 rank equally.

2316 (7) In all other cases, priority among conflicting  
2317 security interests in investment property is governed by Sections  
2318 75-9-322 and 75-9-323.

2319 **SECTION 75-9-329. Priority of security interests in**  
2320 **letter-of-credit right.** The following rules govern priority among  
2321 conflicting security interests in the same letter-of-credit right:

2322 (1) A security interest held by a secured party having  
2323 control of the letter-of-credit right under Section 75-9-107 has  
2324 priority to the extent of its control over a conflicting security  
2325 interest held by a secured party that does not have control.

2326 (2) Security interests perfected by control under  
2327 Section 75-9-314 rank according to priority in time of obtaining  
2328 control.

2329 **SECTION 75-9-330. Priority of purchaser of chattel paper or**  
2330 **instrument.**

2331 (a) A purchaser of chattel paper has priority over a  
2332 security interest in the chattel paper which is claimed merely as  
2333 proceeds of inventory subject to a security interest if:

2334 (1) in good faith and in the ordinary course of the  
2335 purchaser's business, the purchaser gives new value and takes  
2336 possession of the chattel paper or obtains control of the chattel  
2337 paper under Section 75-9-105; and

2338 (2) the chattel paper does not indicate that it has  
2339 been assigned to an identified assignee other than the purchaser.

2340 (b) A purchaser of chattel paper has priority over a  
2341 security interest in the chattel paper which is claimed other than  
2342 merely as proceeds of inventory subject to a security interest if  
2343 the purchaser gives new value and takes possession of the chattel  
2344 paper or obtains control of the chattel paper under Section  
2345 75-9-105 in good faith, in the ordinary course of the purchaser's  
2346 business, and without knowledge that the purchase violates the  
2347 rights of the secured party.

2348 (c) Except as otherwise provided in Section 75-9-327, a

2349 purchaser having priority in chattel paper under subsection (a) or  
2350 (b) also has priority in proceeds of the chattel paper to the  
2351 extent that:

2352           (1) Section 75-9-322 provides for priority in the  
2353 proceeds; or

2354           (2) the proceeds consist of the specific goods covered  
2355 by the chattel paper or cash proceeds of the specific goods, even  
2356 if the purchaser's security interest in the proceeds is  
2357 unperfected.

2358           (d) Except as otherwise provided in Section 75-9-331(a), a  
2359 purchaser of an instrument has priority over a security interest  
2360 in the instrument perfected by a method other than possession if  
2361 the purchaser gives value and takes possession of the instrument  
2362 in good faith and without knowledge that the purchase violates the  
2363 rights of the secured party.

2364           (e) For purposes of subsections (a) and (b), the holder of a  
2365 purchase-money security interest in inventory gives new value for  
2366 chattel paper constituting proceeds of the inventory.

2367           (f) For purposes of subsections (b) and (d), if chattel  
2368 paper or an instrument indicates that it has been assigned to an  
2369 identified secured party other than the purchaser, a purchaser of  
2370 the chattel paper or instrument has knowledge that the purchase  
2371 violates the rights of the secured party.

2372           **SECTION 75-9-331. Priority of rights of purchasers of**  
2373 **instruments, documents, and securities under other articles;**  
2374 **priority of interests in financial assets and security**  
2375 **entitlements under Article 8.**

2376           (a) This article does not limit the rights of a holder in  
2377 due course of a negotiable instrument, a holder to which a  
2378 negotiable document of title has been duly negotiated, or a  
2379 protected purchaser of a security. These holders or purchasers  
2380 take priority over an earlier security interest, even if  
2381 perfected, to the extent provided in Articles 3, 7, and 8.



2382 (b) This article does not limit the rights of or impose  
2383 liability on a person to the extent that the person is protected  
2384 against the assertion of a claim under Article 8.

2385 (c) Filing under this article does not constitute notice of  
2386 a claim or defense to the holders, or purchasers, or persons  
2387 described in subsections (a) and (b).

2388 **SECTION 75-9-332. Transfer of money; transfer of funds from**  
2389 **deposit account.**

2390 (a) A transferee of money takes the money free of a security  
2391 interest unless the transferee acts in collusion with the debtor  
2392 in violating the rights of the secured party.

2393 (b) A transferee of funds from a deposit account takes the  
2394 funds free of a security interest in the deposit account unless  
2395 the transferee acts in collusion with the debtor in violating the  
2396 rights of the secured party.

2397 **SECTION 75-9-333. Priority of certain liens arising by**  
2398 **operation of law.**

2399 (a) In this section, "possessory lien" means an interest,  
2400 other than a security interest or an agricultural lien:

2401 (1) which secures payment or performance of an  
2402 obligation for services or materials furnished with respect to  
2403 goods by a person in the ordinary course of the person's business;

2404 (2) which is created by statute or rule of law in favor  
2405 of the person; and

2406 (3) whose effectiveness depends on the person's  
2407 possession of the goods.

2408 (b) A possessory lien on goods has priority over a security  
2409 interest in the goods unless the lien is created by a statute that  
2410 expressly provides otherwise.

2411 **SECTION 75-9-334. Priority of security interests in fixtures**  
2412 **and crops.**

2413 (a) A security interest under this article may be created in  
2414 goods that are fixtures or may continue in goods that become

2415 fixtures. A security interest does not exist under this article  
2416 in ordinary building materials incorporated into an improvement on  
2417 land.

2418 (b) This article does not prevent creation of an encumbrance  
2419 upon fixtures under real property law.

2420 (c) In cases not governed by subsections (d) through (h), a  
2421 security interest in fixtures is subordinate to a conflicting  
2422 interest of an encumbrancer or owner of the related real property  
2423 other than the debtor.

2424 (d) Except as otherwise provided in subsection (h), a  
2425 perfected security interest in fixtures has priority over a  
2426 conflicting interest of an encumbrancer or owner of the real  
2427 property if the debtor has an interest of record in or is in  
2428 possession of the real property and:

2429 (1) the security interest is a purchase-money security  
2430 interest;

2431 (2) the interest of the encumbrancer or owner arises  
2432 before the goods become fixtures; and

2433 (3) the security interest is perfected by a fixture  
2434 filing before the goods become fixtures or within 20 days  
2435 thereafter.

2436 (e) A perfected security interest in fixtures has priority  
2437 over a conflicting interest of an encumbrancer or owner of the  
2438 real property if:

2439 (1) the debtor has an interest of record in the real  
2440 property or is in possession of the real property and the security  
2441 interest:

2442 (A) is perfected by a fixture filing before the  
2443 interest of the encumbrancer or owner is of record; and

2444 (B) has priority over any conflicting interest of  
2445 a predecessor in title of the encumbrancer or owner;

2446 (2) before the goods become fixtures, the security  
2447 interest is perfected by any method permitted by this article and

2448 the fixtures are readily removable:

2449 (A) factory or office machines;

2450 (B) equipment that is not primarily used or leased  
2451 for use in the operation of the real property; or

2452 (C) replacements of domestic appliances that are  
2453 consumer goods;

2454 (3) the conflicting interest is a lien on the real  
2455 property obtained by legal or equitable proceedings after the  
2456 security interest was perfected by any method permitted by this  
2457 article; or

2458 (4) the security interest is:

2459 (A) created in a manufactured home in a  
2460 manufactured-home transaction; and

2461 (B) perfected pursuant to a statute described in  
2462 Section 75-9-311(a)(2).

2463 (f) A security interest in fixtures, whether or not  
2464 perfected, has priority over a conflicting interest of an  
2465 encumbrancer or owner of the real property if:

2466 (1) the encumbrancer or owner has, in an authenticated  
2467 record, consented to the security interest or disclaimed an  
2468 interest in the goods as fixtures; or

2469 (2) the debtor has a right to remove the goods as  
2470 against the encumbrancer or owner.

2471 (g) The priority of the security interest under paragraph  
2472 (f)(2) continues for a reasonable time if the debtor's right to  
2473 remove the goods as against the encumbrancer or owner terminates.

2474 (h) A mortgage is a construction mortgage to the extent that  
2475 it secures an obligation incurred for the construction of an  
2476 improvement on land, including the acquisition cost of the land,  
2477 if a recorded record of the mortgage so indicates. Except as  
2478 otherwise provided in subsections (e) and (f), a security interest  
2479 in fixtures is subordinate to a construction mortgage if a record  
2480 of the mortgage is recorded before the goods become fixtures and

2481 the goods become fixtures before the completion of the  
2482 construction. A mortgage has this priority to the same extent as  
2483 a construction mortgage to the extent that it is given to  
2484 refinance a construction mortgage.

2485 (i) A perfected security interest in crops growing on real  
2486 property has priority over a conflicting interest of an  
2487 encumbrancer or owner of the real property if the debtor has an  
2488 interest of record in or is in possession of the real property.

2489 **SECTION 75-9-335. Accessions.**

2490 (a) A security interest may be created in an accession and  
2491 continues in collateral that becomes an accession.

2492 (b) If a security interest is perfected when the collateral  
2493 becomes an accession, the security interest remains perfected in  
2494 the collateral.

2495 (c) Except as otherwise provided in subsection (d), the  
2496 other provisions of this part determine the priority of a security  
2497 interest in an accession.

2498 (d) A security interest in an accession is subordinate to a  
2499 security interest in the whole which is perfected by compliance  
2500 with the requirements of a certificate-of-title statute under  
2501 Section 75-9-311(b).

2502 (e) After default, subject to Part 6, a secured party may  
2503 remove an accession from other goods if the security interest in  
2504 the accession has priority over the claims of every person having  
2505 an interest in the whole.

2506 (f) A secured party that removes an accession from other  
2507 goods under subsection (e) shall promptly reimburse any holder of  
2508 a security interest or other lien on, or owner of, the whole or of  
2509 the other goods, other than the debtor, for the cost of repair of  
2510 any physical injury to the whole or the other goods. The secured  
2511 party need not reimburse the holder or owner for any diminution in  
2512 value of the whole or the other goods caused by the absence of the  
2513 accession removed or by any necessity for replacing it. A person

2514 entitled to reimbursement may refuse permission to remove until  
2515 the secured party gives adequate assurance for the performance of  
2516 the obligation to reimburse.

2517 **SECTION 75-9-336. Commingled goods.**

2518 (a) In this section, "commingled goods" means goods that are  
2519 physically united with other goods in such a manner that their  
2520 identity is lost in a product or mass.

2521 (b) A security interest does not exist in commingled goods  
2522 as such. However, a security interest may attach to a product or  
2523 mass that results when goods become commingled goods.

2524 (c) If collateral becomes commingled goods, a security  
2525 interest attaches to the product or mass.

2526 (d) If a security interest in collateral is perfected before  
2527 the collateral becomes commingled goods, the security interest  
2528 that attaches to the product or mass under subsection (c) is  
2529 perfected.

2530 (e) Except as otherwise provided in subsection (f), the  
2531 other provisions of this part determine the priority of a security  
2532 interest that attaches to the product or mass under subsection  
2533 (c).

2534 (f) If more than one security interest attaches to the  
2535 product or mass under subsection (c), the following rules  
2536 determine priority:

2537 (1) A security interest that is perfected under  
2538 subsection (d) has priority over a security interest that is  
2539 unperfected at the time the collateral becomes commingled goods.

2540 (2) If more than one security interest is perfected  
2541 under subsection (d), the security interests rank equally in  
2542 proportion to the value of the collateral at the time it became  
2543 commingled goods.

2544 **SECTION 75-9-337. Priority of security interests in goods**  
2545 **covered by certificate of title.** If, while a security interest in  
2546 goods is perfected by any method under the law of another

2547 jurisdiction, this State issues a certificate of title that does  
2548 not show that the goods are subject to the security interest or  
2549 contain a statement that they may be subject to security interests  
2550 not shown on the certificate:

2551 (1) a buyer of the goods, other than a person in the  
2552 business of selling goods of that kind, takes free of the security  
2553 interest if the buyer gives value and receives delivery of the  
2554 goods after issuance of the certificate and without knowledge of  
2555 the security interest; and

2556 (2) the security interest is subordinate to a  
2557 conflicting security interest in the goods that attaches, and is  
2558 perfected under Section 75-9-311(b), after issuance of the  
2559 certificate and without the conflicting secured party's knowledge  
2560 of the security interest.

2561 **SECTION 75-9-338. Priority of security interest or**  
2562 **agricultural lien perfected by filed financing statement providing**  
2563 **certain incorrect information.** If a security interest or  
2564 agricultural lien is perfected by a filed financing statement  
2565 providing information described in Section 75-9-516(b)(5) which is  
2566 incorrect at the time the financing statement is filed:

2567 (1) the security interest or agricultural lien is  
2568 subordinate to a conflicting perfected security interest in the  
2569 collateral to the extent that the holder of the conflicting  
2570 security interest gives value in reasonable reliance upon the  
2571 incorrect information; and

2572 (2) a purchaser, other than a secured party, of the  
2573 collateral takes free of the security interest or agricultural  
2574 lien to the extent that, in reasonable reliance upon the incorrect  
2575 information, the purchaser gives value and, in the case of chattel  
2576 paper, documents, goods, instruments, or a security certificate,  
2577 receives delivery of the collateral.

2578 **SECTION 75-9-339. Priority subject to subordination.** This  
2579 article does not preclude subordination by agreement by a person

2580 entitled to priority.

2581 SUBPART 4. RIGHTS OF BANK

2582 **SECTION 75-9-340. Effectiveness of right of recoupment or**  
2583 **set-off against deposit account.**

2584 (a) Except as otherwise provided in subsection (c), a bank  
2585 with which a deposit account is maintained may exercise any right  
2586 of recoupment or set-off against a secured party that holds a  
2587 security interest in the deposit account.

2588 (b) Except as otherwise provided in subsection (c), the  
2589 application of this article to a security interest in a deposit  
2590 account does not affect a right of recoupment or set-off of the  
2591 secured party as to a deposit account maintained with the secured  
2592 party.

2593 (c) The exercise by a bank of a set-off against a deposit  
2594 account is ineffective against a secured party that holds a  
2595 security interest in the deposit account which is perfected by  
2596 control under Section 75-9-104(a)(3), if the set-off is based on a  
2597 claim against the debtor.

2598 **SECTION 75-9-341. Bank's rights and duties with respect to**  
2599 **deposit account.** Except as otherwise provided in Section  
2600 75-9-340(c), and unless the bank otherwise agrees in an  
2601 authenticated record, a bank's rights and duties with respect to a  
2602 deposit account maintained with the bank are not terminated,  
2603 suspended, or modified by:

2604 (1) the creation, attachment, or perfection of a  
2605 security interest in the deposit account;

2606 (2) the bank's knowledge of the security interest; or

2607 (3) the bank's receipt of instructions from the secured  
2608 party.

2609 **SECTION 75-9-342. Bank's right to refuse to enter into or**  
2610 **disclose existence of control agreement.** This article does not  
2611 require a bank to enter into an agreement of the kind described in  
2612 Section 75-9-104(a)(2), even if its customer so requests or

2613 directs. A bank that has entered into such an agreement is not  
2614 required to confirm the existence of the agreement to another  
2615 person unless requested to do so by its customer.

2616 **PART 4**

2617 **RIGHTS OF THIRD PARTIES**

2618 **SECTION 75-9-401. Alienability of debtor's rights.**

2619 (a) Except as otherwise provided in subsection (b) and  
2620 Sections 75-9-406, 75-9-407, 75-9-408, and 75-9-409, whether a  
2621 debtor's rights in collateral may be voluntarily or involuntarily  
2622 transferred is governed by law other than this article.

2623 (b) An agreement between the debtor and secured party which  
2624 prohibits a transfer of the debtor's rights in collateral or makes  
2625 the transfer a default does not prevent the transfer from taking  
2626 effect.

2627 **SECTION 75-9-402. Secured party not obligated on contract of**  
2628 **debtor or in tort.** The existence of a security interest,  
2629 agricultural lien, or authority given to a debtor to dispose of or  
2630 use collateral, without more, does not subject a secured party to  
2631 liability in contract or tort for the debtor's acts or omissions.

2632 **SECTION 75-9-403. Agreement not to assert defenses against**  
2633 **assignee.**

2634 (a) In this section, "value" has the meaning provided in  
2635 Section 75-3-303(a).

2636 (b) Except as otherwise provided in this section, an  
2637 agreement between an account debtor and an assignor not to assert  
2638 against an assignee any claim or defense that the account debtor  
2639 may have against the assignor is enforceable by an assignee that  
2640 takes an assignment:

- 2641 (1) for value;
- 2642 (2) in good faith;
- 2643 (3) without notice of a claim of a property or  
2644 possessory right to the property assigned; and
- 2645 (4) without notice of a defense or claim in recoupment



2646 of the type that may be asserted against a person entitled to  
2647 enforce a negotiable instrument under Section 75-3-305(a).

2648 (c) Subsection (b) does not apply to defenses of a type that  
2649 may be asserted against a holder in due course of a negotiable  
2650 instrument under Section 75-3-305(b).

2651 (d) In a consumer transaction, if a record evidences the  
2652 account debtor's obligation, law other than this article requires  
2653 that the record include a statement to the effect that the rights  
2654 of an assignee are subject to claims or defenses that the account  
2655 debtor could assert against the original obligee, and the record  
2656 does not include such a statement:

2657 (1) the record has the same effect as if the record  
2658 included such a statement; and

2659 (2) the account debtor may assert against an assignee  
2660 those claims and defenses that would have been available if the  
2661 record included such a statement.

2662 (e) This section is subject to law other than this article  
2663 which establishes a different rule for an account debtor who is an  
2664 individual and who incurred the obligation primarily for personal,  
2665 family, or household purposes.

2666 (f) Except as otherwise provided in subsection (d), this  
2667 section does not displace law other than this article which gives  
2668 effect to an agreement by an account debtor not to assert a claim  
2669 or defense against an assignee.

2670 **SECTION 75-9-404. Rights acquired by assignee; claims and**  
2671 **defenses against assignee.**

2672 (a) Unless an account debtor has made an enforceable  
2673 agreement not to assert defenses or claims, and subject to  
2674 subsections (b) through (e), the rights of an assignee are subject  
2675 to:

2676 (1) all terms of the agreement between the account  
2677 debtor and assignor and any defense or claim in recoupment arising  
2678 from the transaction that gave rise to the contract; and

2679           (2) any other defense or claim of the account debtor  
2680 against the assignor which accrues before the account debtor  
2681 receives a notification of the assignment authenticated by the  
2682 assignor or the assignee.

2683           (b) Subject to subsection (c) and except as otherwise  
2684 provided in subsection (d), the claim of an account debtor against  
2685 an assignor may be asserted against an assignee under subsection  
2686 (a) only to reduce the amount the account debtor owes.

2687           (c) This section is subject to law other than this article  
2688 which establishes a different rule for an account debtor who is an  
2689 individual and who incurred the obligation primarily for personal,  
2690 family, or household purposes.

2691           (d) In a consumer transaction, if a record evidences the  
2692 account debtor's obligation, law other than this article requires  
2693 that the record include a statement to the effect that the account  
2694 debtor's recovery against an assignee with respect to claims and  
2695 defenses against the assignor may not exceed amounts paid by the  
2696 account debtor under the record, and the record does not include  
2697 such a statement, the extent to which a claim of an account debtor  
2698 against the assignor may be asserted against an assignee is  
2699 determined as if the record included such a statement.

2700           (e) This section does not apply to an assignment of a  
2701 health-care-insurance receivable.

2702           **SECTION 75-9-405. Modification of assigned contract.**

2703           (a) A modification of or substitution for an assigned  
2704 contract is effective against an assignee if made in good faith.  
2705 The assignee acquires corresponding rights under the modified or  
2706 substituted contract. The assignment may provide that the  
2707 modification or substitution is a breach of contract by the  
2708 assignor. This subsection is subject to subsections (b) through  
2709 (d).

2710           (b) Subsection (a) applies to the extent that:

2711           (1) the right to payment or a part thereof under an

2712 assigned contract has not been fully earned by performance; or  
2713 (2) the right to payment or a part thereof has been  
2714 fully earned by performance and the account debtor has not  
2715 received notification of the assignment under Section 75-9-406(a).

2716 (c) This section is subject to law other than this article  
2717 which establishes a different rule for an account debtor who is an  
2718 individual and who incurred the obligation primarily for personal,  
2719 family, or household purposes.

2720 (d) This section does not apply to an assignment of a  
2721 health-care-insurance receivable.

2722 **SECTION 75-9-406. Discharge of account debtor; notification**  
2723 **of assignment; identification and proof of assignment;**  
2724 **restrictions on assignment of accounts, chattel paper, payment**  
2725 **intangibles, and promissory notes ineffective.**

2726 (a) Subject to subsections (b) through (i), an account  
2727 debtor on an account, chattel paper, or a payment intangible may  
2728 discharge its obligation by paying the assignor until, but not  
2729 after, the account debtor receives a notification, authenticated  
2730 by the assignor or the assignee, that the amount due or to become  
2731 due has been assigned and that payment is to be made to the  
2732 assignee. After receipt of the notification, the account debtor  
2733 may discharge its obligation by paying the assignee and may not  
2734 discharge the obligation by paying the assignor.

2735 (b) Subject to subsection (h), notification is ineffective  
2736 under subsection (a):

2737 (1) if it does not reasonably identify the rights  
2738 assigned;

2739 (2) to the extent that an agreement between an account  
2740 debtor and a seller of a payment intangible limits the account  
2741 debtor's duty to pay a person other than the seller and the  
2742 limitation is effective under law other than this article; or

2743 (3) at the option of an account debtor, if the  
2744 notification notifies the account debtor to make less than the

2745 full amount of any installment or other periodic payment to the  
2746 assignee, even if:

2747 (A) only a portion of the account, chattel paper,  
2748 or payment intangible has been assigned to that assignee;

2749 (B) a portion has been assigned to another  
2750 assignee; or

2751 (C) the account debtor knows that the assignment  
2752 to that assignee is limited.

2753 (c) Subject to subsection (h), if requested by the account  
2754 debtor, an assignee shall seasonably furnish reasonable proof that  
2755 the assignment has been made. Unless the assignee complies, the  
2756 account debtor may discharge its obligation by paying the  
2757 assignor, even if the account debtor has received a notification  
2758 under subsection (a).

2759 (d) Except as otherwise provided in subsection (e) and  
2760 Sections 75-2A-303 and 75-9-407, and subject to subsection (h), a  
2761 term in an agreement between an account debtor and an assignor or  
2762 in a promissory note is ineffective to the extent that it:

2763 (1) prohibits, restricts, or requires the consent of  
2764 the account debtor or person obligated on the promissory note to  
2765 the assignment or transfer of, or the creation, attachment,  
2766 perfection, or enforcement of a security interest in, the account,  
2767 chattel paper, payment intangible, or promissory note; or

2768 (2) provides that the assignment or transfer or the  
2769 creation, attachment, perfection, or enforcement of the security  
2770 interest may give rise to a default, breach, right of recoupment,  
2771 claim, defense, termination, right of termination, or remedy under  
2772 the account, chattel paper, payment intangible, or promissory  
2773 note.

2774 (e) Subsection (d) does not apply to the sale of a payment  
2775 intangible or promissory note.

2776 (f) Except as otherwise provided in Sections 75-2A-303 and  
2777 75-9-407 and subject to subsections (h) and (i), a rule of law,

2778 statute, or regulation that prohibits, restricts, or requires the  
2779 consent of a government, governmental body or official, or account  
2780 debtor to the assignment or transfer of, or creation of a security  
2781 interest in, an account or chattel paper is ineffective to the  
2782 extent that the rule of law, statute, or regulation:

2783 (1) prohibits, restricts, or requires the consent of  
2784 the government, governmental body or official, or account debtor  
2785 to the assignment or transfer of, or the creation, attachment,  
2786 perfection, or enforcement of a security interest in the account  
2787 or chattel paper; or

2788 (2) provides that the assignment or transfer or the  
2789 creation, attachment, perfection, or enforcement of the security  
2790 interest may give rise to a default, breach, right of recoupment,  
2791 claim, defense, termination, right of termination, or remedy under  
2792 the account or chattel paper.

2793 (g) Subject to subsection (h), an account debtor may not  
2794 waive or vary its option under subsection (b)(3).

2795 (h) This section is subject to law other than this article  
2796 which establishes a different rule for an account debtor who is an  
2797 individual and who incurred the obligation primarily for personal,  
2798 family, or household purposes.

2799 (i) This section does not apply to an assignment of a  
2800 health-care-insurance receivable.

2801 (j) This section prevails over any inconsistent provision of  
2802 an existing or future statute, rule or regulation of this state  
2803 unless the provision is contained in a statute of this state,  
2804 refers expressly to this section, and states that the provision  
2805 prevails over this section.

2806 **SECTION 75-9-407. Restrictions on creation or enforcement of**  
2807 **security interest in leasehold interest or in lessor's residual**  
2808 **interest.**

2809 (a) Except as otherwise provided in subsection (b), a term  
2810 in a lease agreement is ineffective to the extent that it:

2811           (1) prohibits, restricts, or requires the consent of a  
2812 party to the lease to the assignment or transfer of, or the  
2813 creation, attachment, perfection, or enforcement of a security  
2814 interest in, an interest of a party under the lease contract or in  
2815 the lessor's residual interest in the goods; or

2816           (2) provides that the assignment or transfer or the  
2817 creation, attachment, perfection, or enforcement of the security  
2818 interest may give rise to a default, breach, right of recoupment,  
2819 claim, defense, termination, right of termination, or remedy under  
2820 the lease.

2821           (b) Except as otherwise provided in Section 75-2A-303(7), a  
2822 term described in subsection (a)(2) is effective to the extent  
2823 that there is:

2824           (1) a transfer by the lessee of the lessee's right of  
2825 possession or use of the goods in violation of the term; or

2826           (2) a delegation of a material performance of either  
2827 party to the lease contract in violation of the term.

2828           (c) The creation, attachment, perfection, or enforcement of  
2829 a security interest in the lessor's interest under the lease  
2830 contract or the lessor's residual interest in the goods is not a  
2831 transfer that materially impairs the lessee's prospect of  
2832 obtaining return performance or materially changes the duty of or  
2833 materially increases the burden or risk imposed on the lessee  
2834 within the purview of Section 75-2A-303(4) unless, and then only  
2835 to the extent that, enforcement actually results in a delegation  
2836 of material performance of the lessor.

2837           **SECTION 75-9-408. Restrictions on assignment of promissory**  
2838 **notes, health-care-insurance receivables, and certain general**  
2839 **intangibles ineffective.**

2840           (a) Except as otherwise provided in subsection (b), a term  
2841 in a promissory note or in an agreement between an account debtor  
2842 and a debtor which relates to a health-care-insurance receivable  
2843 or a general intangible, including a contract, permit, license, or

2844 franchise, and which term prohibits, restricts, or requires the  
2845 consent of the person obligated on the promissory note or the  
2846 account debtor to, the assignment or transfer of, or creation,  
2847 attachment, or perfection of a security interest in, the  
2848 promissory note, health-care-insurance receivable, or general  
2849 intangible, is ineffective to the extent that the term:

2850           (1) would impair the creation, attachment, or  
2851 perfection of a security interest; or

2852           (2) provides that the assignment or transfer or the  
2853 creation, attachment, or perfection of the security interest may  
2854 give rise to a default, breach, right of recoupment, claim,  
2855 defense, termination, right of termination, or remedy under the  
2856 promissory note, health-care-insurance receivable, or general  
2857 intangible.

2858           (b) Subsection (a) applies to a security interest in a  
2859 payment intangible or promissory note only if the security  
2860 interest arises out of a sale of the payment intangible or  
2861 promissory note.

2862           (c) A rule of law, statute, or regulation that prohibits,  
2863 restricts, or requires the consent of a government, governmental  
2864 body or official, person obligated on a promissory note, or  
2865 account debtor to the assignment or transfer of, or creation of a  
2866 security interest in, a promissory note, health-care-insurance  
2867 receivable, or general intangible, including a contract, permit,  
2868 license, or franchise between an account debtor and a debtor, is  
2869 ineffective to the extent that the rule of law, statute, or  
2870 regulation:

2871           (1) would impair the creation, attachment, or  
2872 perfection of a security interest; or

2873           (2) provides that the assignment or transfer or the  
2874 creation, attachment, or perfection of the security interest may  
2875 give rise to a default, breach, right of recoupment, claim,  
2876 defense, termination, right of termination, or remedy under the

2877 promissory note, health-care-insurance receivable, or general  
2878 intangible.

2879 (d) To the extent that a term in a promissory note or in an  
2880 agreement between an account debtor and a debtor which relates to  
2881 a health-care-insurance receivable or general intangible or a rule  
2882 of law, statute, or regulation described in subsection (c) would  
2883 be effective under law other than this article but is ineffective  
2884 under subsection (a) or (c), the creation, attachment, or  
2885 perfection of a security interest in the promissory note,  
2886 health-care-insurance receivable, or general intangible:

2887 (1) is not enforceable against the person obligated on  
2888 the promissory note or the account debtor;

2889 (2) does not impose a duty or obligation on the person  
2890 obligated on the promissory note or the account debtor;

2891 (3) does not require the person obligated on the  
2892 promissory note or the account debtor to recognize the security  
2893 interest, pay or render performance to the secured party, or  
2894 accept payment or performance from the secured party;

2895 (4) does not entitle the secured party to use or assign  
2896 the debtor's rights under the promissory note,  
2897 health-care-insurance receivable, or general intangible, including  
2898 any related information or materials furnished to the debtor in  
2899 the transaction giving rise to the promissory note,  
2900 health-care-insurance receivable, or general intangible;

2901 (5) does not entitle the secured party to use, assign,  
2902 possess, or have access to any trade secrets or confidential  
2903 information of the person obligated on the promissory note or the  
2904 account debtor; and

2905 (6) does not entitle the secured party to enforce the  
2906 security interest in the promissory note, health-care-insurance  
2907 receivable, or general intangible.

2908 (e) This section prevails over any inconsistent provision of  
2909 an existing or future statute, rule or regulation of this state



2910 unless the provision is contained in a statute of this state,  
2911 refers expressly to this section, and states that the provision  
2912 prevails over this section.

2913           **SECTION 75-9-409. Restrictions on assignment of**  
2914 **letter-of-credit rights ineffective.**

2915           (a) A term in a letter of credit or a rule of law, statute,  
2916 regulation, custom, or practice applicable to the letter of credit  
2917 which prohibits, restricts, or requires the consent of an  
2918 applicant, issuer, or nominated person to a beneficiary's  
2919 assignment of or creation of a security interest in a  
2920 letter-of-credit right is ineffective to the extent that the term  
2921 or rule of law, statute, regulation, custom, or practice:

2922                   (1) would impair the creation, attachment, or  
2923 perfection of a security interest in the letter-of-credit right;  
2924 or

2925                   (2) provides that the assignment or the creation,  
2926 attachment, or perfection of the security interest may give rise  
2927 to a default, breach, right of recoupment, claim, defense,  
2928 termination, right of termination, or remedy under the  
2929 letter-of-credit right.

2930           (b) To the extent that a term in a letter of credit is  
2931 ineffective under subsection (a) but would be effective under law  
2932 other than this article or a custom or practice applicable to the  
2933 letter of credit, to the transfer of a right to draw or otherwise  
2934 demand performance under the letter of credit, or to the  
2935 assignment of a right to proceeds of the letter of credit, the  
2936 creation, attachment, or perfection of a security interest in the  
2937 letter-of-credit right:

2938                   (1) is not enforceable against the applicant, issuer,  
2939 nominated person, or transferee beneficiary;

2940                   (2) imposes no duties or obligations on the applicant,  
2941 issuer, nominated person, or transferee beneficiary; and

2942                   (3) does not require the applicant, issuer, nominated

2943 person, or transferee beneficiary to recognize the security  
2944 interest, pay or render performance to the secured party, or  
2945 accept payment or other performance from the secured party.

2946 **PART 5**

2947 **FILING**

2948 **SUBPART 1. FILING OFFICE; CONTENTS AND**

2949 **EFFECTIVENESS OF FINANCING STATEMENT**

2950 **SECTION 75-9-501. Filing office.**

2951 (a) Except as otherwise provided in subsection (b), if the  
2952 local law of this state governs perfection of a security interest  
2953 or agricultural lien, the office in which to file a financing  
2954 statement to perfect the security interest or agricultural lien  
2955 is:

2956 (1) the office designated for the filing or recording  
2957 of a record of a mortgage on the related real property, if:

2958 (A) the collateral is as-extracted collateral or  
2959 timber to be cut; or

2960 (B) the financing statement is filed as a fixture  
2961 filing and the collateral is goods that are or are to become  
2962 fixtures; or

2963 (2) the Office of the Secretary of State in all other  
2964 cases, including a case in which the collateral is goods that are  
2965 or are to become fixtures and the financing statement is not filed  
2966 as a fixture filing.

2967 (b) The office in which to file a financing statement to  
2968 perfect a security interest in collateral, including fixtures, of  
2969 a transmitting utility is the Office of the Secretary of State.  
2970 The financing statement also constitutes a fixture filing as to  
2971 the collateral indicated in the financing statement which is or is  
2972 to become fixtures.

2973 **SECTION 75-9-502. Contents of financing statement; record of**  
2974 **mortgage as financing statement; time of filing financing**  
2975 **statement.**

2976 (a) Subject to subsection (b), a financing statement is  
2977 sufficient only if it:

2978 (1) provides the name of the debtor;

2979 (2) provides the name of the secured party or a  
2980 representative of the secured party; and

2981 (3) indicates the collateral covered by the financing  
2982 statement.

2983 (b) Except as otherwise provided in Section 75-9-501(b), to  
2984 be sufficient, a financing statement that covers as-extracted  
2985 collateral or timber to be cut, or which is filed as a fixture  
2986 filing and covers goods that are or are to become fixtures, must  
2987 satisfy subsection (a) and also:

2988 (1) indicate that it covers this type of collateral;

2989 (2) indicate that it is to be filed for record in the  
2990 real property records;

2991 (3) provide a description of the real property to which  
2992 the collateral is related sufficient to give constructive notice  
2993 of a mortgage under the law of this state if the description were  
2994 contained in a record of the mortgage of the real property; and

2995 (4) if the debtor does not have an interest of record  
2996 in the real property, provide the name of a record owner.

2997 (c) A record of a mortgage is effective, from the date of  
2998 recording, as a financing statement filed as a fixture filing or  
2999 as a financing statement covering as-extracted collateral or  
3000 timber to be cut only if:

3001 (1) the record indicates the goods or accounts that it  
3002 covers;

3003 (2) the goods are or are to become fixtures related to  
3004 the real property described in the record or the collateral is  
3005 related to the real property described in the record and is  
3006 as-extracted collateral or timber to be cut;

3007 (3) the record satisfies the requirements for a  
3008 financing statement in this section other than an indication that

3009 it is to be filed in the real property records; and

3010 (4) the record is duly recorded.

3011 (d) A financing statement may be filed before a security  
3012 agreement is made or a security interest otherwise attaches.

3013 **SECTION 75-9-503. Name of debtor and secured party.**

3014 (a) A financing statement sufficiently provides the name of  
3015 the debtor:

3016 (1) if the debtor is a registered organization, only if  
3017 the financing statement provides the name of the debtor indicated  
3018 on the public record of the debtor's jurisdiction of organization  
3019 which shows the debtor to have been organized;

3020 (2) if the debtor is a decedent's estate, only if the  
3021 financing statement provides the name of the decedent and  
3022 indicates that the debtor is an estate;

3023 (3) if the debtor is a trust or a trustee acting with  
3024 respect to property held in trust, only if the financing  
3025 statement:

3026 (A) provides the name specified for the trust in  
3027 its organic documents or, if no name is specified, provides the  
3028 name of the settlor and additional information sufficient to  
3029 distinguish the debtor from other trusts having one or more of the  
3030 same settlors; and

3031 (B) indicates, in the debtor's name or otherwise,  
3032 that the debtor is a trust or is a trustee acting with respect to  
3033 property held in trust; and

3034 (4) in other cases:

3035 (A) if the debtor has a name, only if it provides  
3036 the individual or organizational name of the debtor; and

3037 (B) if the debtor does not have a name, only if it  
3038 provides the names of the partners, members, associates, or other  
3039 persons comprising the debtor.

3040 (b) A financing statement that provides the name of the  
3041 debtor in accordance with subsection (a) is not rendered

3042 ineffective by the absence of:

3043 (1) a trade name or other name of the debtor; or

3044 (2) unless required under subsection (a)(4)(B), names  
3045 of partners, members, associates, or other persons comprising the  
3046 debtor.

3047 (c) A financing statement that provides only the debtor's  
3048 trade name does not sufficiently provide the name of the debtor.

3049 (d) Failure to indicate the representative capacity of a  
3050 secured party or representative of a secured party does not affect  
3051 the sufficiency of a financing statement.

3052 (e) A financing statement may provide the name of more than  
3053 one debtor and the name of more than one secured party.

3054 **SECTION 75-9-504. Indication of collateral.** A financing  
3055 statement sufficiently indicates the collateral that it covers if  
3056 the financing statement provides:

3057 (1) a description of the collateral pursuant to Section  
3058 75-9-108; or

3059 (2) an indication that the financing statement covers  
3060 all assets or all personal property.

3061 **SECTION 75-9-505. Filing and compliance with other statutes  
3062 and treaties for consignments, leases, other bailments, and other  
3063 transactions.**

3064 (a) A consignor, lessor, or other bailor of goods, a  
3065 licensor, or a buyer of a payment intangible or promissory note  
3066 may file a financing statement, or may comply with a statute or  
3067 treaty described in Section 75-9-311(a), using the terms  
3068 "consignor," "consignee," "lessor," "lessee," "bailor," "bailee,"  
3069 "licensor," "licensee," "owner," "registered owner," "buyer,"  
3070 "seller," or words of similar import, instead of the terms  
3071 "secured party" and "debtor".

3072 (b) This part applies to the filing of a financing statement  
3073 under subsection (a) and, as appropriate, to compliance that is  
3074 equivalent to filing a financing statement under Section

3075 75-9-311(b), but the filing or compliance is not of itself a  
3076 factor in determining whether the collateral secures an  
3077 obligation. If it is determined for another reason that the  
3078 collateral secures an obligation, a security interest held by the  
3079 consignor, lessor, bailor, licensor, owner, or buyer which  
3080 attaches to the collateral is perfected by the filing or  
3081 compliance.

3082 **SECTION 75-9-506. Effect of errors or omissions.**

3083 (a) A financing statement substantially satisfying the  
3084 requirements of this part is effective, even if it has minor  
3085 errors or omissions, unless the errors or omissions make the  
3086 financing statement seriously misleading.

3087 (b) Except as otherwise provided in subsection (c), a  
3088 financing statement that fails sufficiently to provide the name of  
3089 the debtor in accordance with Section 75-9-503(a) is seriously  
3090 misleading.

3091 (c) If a search of the records of the filing office under  
3092 the debtor's correct name, using the filing office's standard  
3093 search logic, if any, would disclose a financing statement that  
3094 fails sufficiently to provide the name of the debtor in accordance  
3095 with Section 75-9-503(a), the name provided does not make the  
3096 financing statement seriously misleading.

3097 (d) For purposes of Section 75-9-508(b), the "debtor's  
3098 correct name" in subsection (c) means the correct name of the new  
3099 debtor.

3100 **SECTION 75-9-507. Effect of certain events on effectiveness**  
3101 **of financing statement.**

3102 (a) A filed financing statement remains effective with  
3103 respect to collateral that is sold, exchanged, leased, licensed,  
3104 or otherwise disposed of and in which a security interest or  
3105 agricultural lien continues, even if the secured party knows of or  
3106 consents to the disposition.

3107 (b) Except as otherwise provided in subsection (c) and

3108 Section 75-9-508, a financing statement is not rendered  
3109 ineffective if, after the financing statement is filed, the  
3110 information provided in the financing statement becomes seriously  
3111 misleading under Section 75-9-506.

3112 (c) If a debtor so changes its name that a filed financing  
3113 statement becomes seriously misleading under Section 75-9-506:

3114 (1) the financing statement is effective to perfect a  
3115 security interest in collateral acquired by the debtor before, or  
3116 within four months after, the change; and

3117 (2) the financing statement is not effective to perfect  
3118 a security interest in collateral acquired by the debtor more than  
3119 four months after the change, unless an amendment to the financing  
3120 statement which renders the financing statement not seriously  
3121 misleading is filed within four months after the change.

3122 **SECTION 75-9-508. Effectiveness of financing statement if**  
3123 **new debtor becomes bound by security agreement.**

3124 (a) Except as otherwise provided in this section, a filed  
3125 financing statement naming an original debtor is effective to  
3126 perfect a security interest in collateral in which a new debtor  
3127 has or acquires rights to the extent that the financing statement  
3128 would have been effective had the original debtor acquired rights  
3129 in the collateral.

3130 (b) If the difference between the name of the original  
3131 debtor and that of the new debtor causes a filed financing  
3132 statement that is effective under subsection (a) to be seriously  
3133 misleading under Section 75-9-506:

3134 (1) the financing statement is effective to perfect a  
3135 security interest in collateral acquired by the new debtor before,  
3136 and within four months after, the new debtor becomes bound under  
3137 Section 75-9-203(d); and

3138 (2) the financing statement is not effective to perfect  
3139 a security interest in collateral acquired by the new debtor more  
3140 than four months after the new debtor becomes bound under Section

3141 75-9-203(d) unless an initial financing statement providing the  
3142 name of the new debtor is filed before the expiration of that  
3143 time.

3144 (c) This section does not apply to collateral as to which a  
3145 filed financing statement remains effective against the new debtor  
3146 under Section 75-9-507(a).

3147 **SECTION 75-9-509. Persons entitled to file a record.**

3148 (a) A person may file an initial financing statement,  
3149 amendment that adds collateral covered by a financing statement,  
3150 or amendment that adds a debtor to a financing statement only if:

3151 (1) the debtor authorizes the filing in an  
3152 authenticated record or pursuant to subsection (b) or (c); or

3153 (2) the person holds an agricultural lien that has  
3154 become effective at the time of filing and the financing statement  
3155 covers only collateral in which the person holds an agricultural  
3156 lien.

3157 (b) By authenticating or becoming bound as debtor by a  
3158 security agreement, a debtor or new debtor authorizes the filing  
3159 of an initial financing statement, and an amendment, covering:

3160 (1) the collateral described in the security agreement;  
3161 and

3162 (2) property that becomes collateral under Section  
3163 75-9-315(a)(2), whether or not the security agreement expressly  
3164 covers proceeds.

3165 (c) By acquiring collateral in which a security interest or  
3166 agricultural lien continues under Section 75-9-315(a)(1), a debtor  
3167 authorizes the filing of an initial financing statement, and an  
3168 amendment, covering the collateral and property that becomes  
3169 collateral under Section 75-9-315(a)(2).

3170 (d) A person may file an amendment other than an amendment  
3171 that adds collateral covered by a financing statement or an  
3172 amendment that adds a debtor to a financing statement only if:

3173 (1) the secured party of record authorizes the filing;



3174 or

3175 (2) the amendment is a termination statement for a  
3176 financing statement as to which the secured party of record has  
3177 failed to file or send a termination statement as required by  
3178 Section 75-9-513(a) or (c), the debtor authorizes the filing, and  
3179 the termination statement indicates that the debtor authorized it  
3180 to be filed.

3181 (e) If there is more than one secured party of record for a  
3182 financing statement, each secured party of record may authorize  
3183 the filing of an amendment under subsection (d).

3184 **SECTION 75-9-510. Effectiveness of filed record.**

3185 (a) A filed record is effective only to the extent that it  
3186 was filed by a person that may file it under Section 75-9-509.

3187 (b) A record authorized by one secured party of record does  
3188 not affect the financing statement with respect to another secured  
3189 party of record.

3190 (c) A continuation statement that is not filed within the  
3191 six-month period prescribed by Section 75-9-515(d) is ineffective.

3192 **SECTION 75-9-511. Secured party of record.**

3193 (a) A secured party of record with respect to a financing  
3194 statement is a person whose name is provided as the name of the  
3195 secured party or a representative of the secured party in an  
3196 initial financing statement that has been filed. If an initial  
3197 financing statement is filed under Section 75-9-514(a), the  
3198 assignee named in the initial financing statement is the secured  
3199 party of record with respect to the financing statement.

3200 (b) If an amendment of a financing statement which provides  
3201 the name of a person as a secured party or a representative of a  
3202 secured party is filed, the person named in the amendment is a  
3203 secured party of record. If an amendment is filed under Section  
3204 75-9-514(b), the assignee named in the amendment is a secured  
3205 party of record.

3206 (c) A person remains a secured party of record until the

3207 filing of an amendment of the financing statement which deletes  
3208 the person.

3209 **SECTION 75-9-512. Amendment of financing statement.**

3210 (a) Subject to Section 75-9-509, a person may add or delete  
3211 collateral covered by, continue or terminate the effectiveness of,  
3212 or, subject to subsection (e), otherwise amend the information  
3213 provided in, a financing statement by filing an amendment that:

3214 (1) identifies, by its file number, the initial  
3215 financing statement to which the amendment relates; and

3216 (2) if the amendment relates to an initial financing  
3217 statement filed for record in a filing office described in Section  
3218 75-9-501(a)(1), provides the date that the initial financing  
3219 statement was filed for record and the information specified in  
3220 Section 75-9-502(b).

3221 (b) Except as otherwise provided in Section 75-9-515, the  
3222 filing of an amendment does not extend the period of effectiveness  
3223 of the financing statement.

3224 (c) A financing statement that is amended by an amendment  
3225 that adds collateral is effective as to the added collateral only  
3226 from the date of the filing of the amendment.

3227 (d) A financing statement that is amended by an amendment  
3228 that adds a debtor is effective as to the added debtor only from  
3229 the date of the filing of the amendment.

3230 (e) An amendment is ineffective to the extent it:

3231 (1) purports to delete all debtors and fails to provide  
3232 the name of a debtor to be covered by the financing statement; or

3233 (2) purports to delete all secured parties of record  
3234 and fails to provide the name of a new secured party of record.

3235 **SECTION 75-9-513. Termination statement.**

3236 (a) A secured party shall cause the secured party of record  
3237 for a financing statement to file a termination statement for the  
3238 financing statement if the financing statement covers consumer  
3239 goods and:

3240           (1) there is no obligation secured by the collateral  
3241 covered by the financing statement and no commitment to make an  
3242 advance, incur an obligation, or otherwise give value; or

3243           (2) the debtor did not authorize the filing of the  
3244 initial financing statement.

3245           (b) To comply with subsection (a), a secured party shall  
3246 cause the secured party of record to file the termination  
3247 statement:

3248           (1) within one month after there is no obligation  
3249 secured by the collateral covered by the financing statement and  
3250 no commitment to make an advance, incur an obligation, or  
3251 otherwise give value; or

3252           (2) if earlier, within 20 days after the secured party  
3253 receives an authenticated demand from a debtor.

3254           (c) In cases not governed by subsection (a), within 20 days  
3255 after a secured party receives an authenticated demand from a  
3256 debtor, the secured party shall cause the secured party of record  
3257 for a financing statement to send to the debtor a termination  
3258 statement for the financing statement or file the termination  
3259 statement in the filing office if:

3260           (1) except in the case of a financing statement  
3261 covering accounts or chattel paper that has been sold or goods  
3262 that are the subject of a consignment, there is no obligation  
3263 secured by the collateral covered by the financing statement and  
3264 no commitment to make an advance, incur an obligation, or  
3265 otherwise give value;

3266           (2) the financing statement covers accounts or chattel  
3267 paper that has been sold but as to which the account debtor or  
3268 other person obligated has discharged its obligation;

3269           (3) the financing statement covers goods that were the  
3270 subject of a consignment to the debtor but are not in the debtor's  
3271 possession; or

3272           (4) the debtor did not authorize the filing of the

3273 initial financing statement.

3274 (d) Except as otherwise provided in Section 75-9-510, upon  
3275 the filing of a termination statement with the filing office, the  
3276 financing statement to which the termination statement relates  
3277 ceases to be effective. Except as otherwise provided in Section  
3278 75-9-510, for purposes of Sections 75-9-519(g), 75-9-522(a) and  
3279 75-9-523(c), the filing with the filing office of a termination  
3280 statement relating to a financing statement that indicates that  
3281 the debtor is a transmitting utility also causes the effectiveness  
3282 of the financing statement to lapse.

3283 **SECTION 75-9-514. Assignment of powers of secured party of**  
3284 **record.**

3285 (a) Except as otherwise provided in subsection (c), an  
3286 initial financing statement may reflect an assignment of all of  
3287 the secured party's power to authorize an amendment to the  
3288 financing statement by providing the name and mailing address of  
3289 the assignee as the name and address of the secured party.

3290 (b) Except as otherwise provided in subsection (c), a  
3291 secured party of record may assign of record all or part of its  
3292 power to authorize an amendment to a financing statement by filing  
3293 in the filing office an amendment of the financing statement  
3294 which:

3295 (1) identifies, by its file number, the initial  
3296 financing statement to which it relates;

3297 (2) provides the name of the assignor; and

3298 (3) provides the name and mailing address of the  
3299 assignee.

3300 (c) An assignment of record of a security interest in a  
3301 fixture covered by a record of a mortgage which is effective as a  
3302 financing statement filed as a fixture filing under Section  
3303 75-9-502(c) may be made only by an assignment of record of the  
3304 mortgage in the manner provided by law of this state other than  
3305 the Uniform Commercial Code.

3306           **SECTION 75-9-515. Duration and effectiveness of financing**  
3307 **statement; effect of lapsed financing statement.**

3308           (a) Except as otherwise provided in subsections (b), (e),  
3309 (f), and (g), a filed financing statement is effective for a  
3310 period of five years after the date of filing.

3311           (b) Except as otherwise provided in subsections (e), (f),  
3312 and (g), an initial financing statement filed in connection with a  
3313 public-finance transaction or manufactured-home transaction is  
3314 effective for a period of 30 years after the date of filing if it  
3315 indicates that it is filed in connection with a public-finance  
3316 transaction or manufactured-home transaction.

3317           (c) The effectiveness of a filed financing statement lapses  
3318 on the expiration of the period of its effectiveness unless before  
3319 the lapse a continuation statement is filed pursuant to subsection  
3320 (d). Upon lapse, a financing statement ceases to be effective and  
3321 any security interest or agricultural lien that was perfected by  
3322 the financing statement becomes unperfected, unless the security  
3323 interest is perfected otherwise. If the security interest or  
3324 agricultural lien becomes unperfected upon lapse, it is deemed  
3325 never to have been perfected as against a purchaser of the  
3326 collateral for value.

3327           (d) A continuation statement may be filed only within six  
3328 months before the expiration of the five-year period specified in  
3329 subsection (a) or the 30-year period specified in subsection (b),  
3330 whichever is applicable.

3331           (e) Except as otherwise provided in Section 75-9-510, upon  
3332 timely filing of a continuation statement, the effectiveness of  
3333 the initial financing statement continues for a period of five  
3334 years commencing on the day on which the financing statement would  
3335 have become ineffective in the absence of the filing. Upon the  
3336 expiration of the five-year period, the financing statement lapses  
3337 in the same manner as provided in subsection (c), unless, before  
3338 the lapse, another continuation statement is filed pursuant to

3339 subsection (d). Succeeding continuation statements may be filed  
3340 in the same manner to continue the effectiveness of the initial  
3341 financing statement.

3342 (f) If a debtor is a transmitting utility and a filed  
3343 financing statement so indicates, the financing statement is  
3344 effective until a termination statement is filed.

3345 (g) A record of a mortgage that is effective as a financing  
3346 statement filed as a fixture filing under Section 75-9-502(c)  
3347 remains effective as a financing statement filed as a fixture  
3348 filing until the mortgage is released or satisfied of record or  
3349 its effectiveness otherwise terminates as to the real property.

3350 **SECTION 75-9-516. What constitutes filing; effectiveness of**  
3351 **filing.**

3352 (a) Except as otherwise provided in subsection (b),  
3353 communication of a record to a filing office and tender of the  
3354 filing fee or acceptance of the record by the filing office  
3355 constitutes filing.

3356 (b) Filing does not occur with respect to a record that a  
3357 filing office refuses to accept because:

3358 (1) the record is not communicated by a method or  
3359 medium of communication authorized by the filing office;

3360 (2) an amount equal to or greater than the applicable  
3361 filing fee is not tendered;

3362 (3) the filing office is unable to index the record  
3363 because:

3364 (A) in the case of an initial financing statement,  
3365 the record does not provide a name for the debtor;

3366 (B) in the case of an amendment or correction  
3367 statement, the record:

3368 (i) does not identify the initial financing  
3369 statement as required by Section 75-9-512 or 75-9-518, as  
3370 applicable; or

3371 (ii) identifies an initial financing statement

3372 whose effectiveness has lapsed under Section 75-9-515;

3373                   (C) in the case of an initial financing statement  
3374 that provides the name of a debtor identified as an individual or  
3375 an amendment that provides a name of a debtor identified as an  
3376 individual which was not previously provided in the financing  
3377 statement to which the record relates, the record does not  
3378 identify the debtor's last name; or

3379                   (D) in the case of a record filed, or filed for  
3380 record, in the filing office described in Section 75-9-501(a)(1),  
3381 the record does not provide a sufficient description of the real  
3382 property to which it relates;

3383                   (4) in the case of an initial financing statement or an  
3384 amendment that adds a secured party of record, the record does not  
3385 provide a name and mailing address for the secured party of  
3386 record;

3387                   (5) in the case of an initial financing statement or an  
3388 amendment that provides a name of a debtor which was not  
3389 previously provided in the financing statement to which the  
3390 amendment relates, the record does not:

3391                               (A) provide a mailing address for the debtor;

3392                               (B) indicate whether the debtor is an individual  
3393 or an organization; or

3394                               (C) if the financing statement indicates that the  
3395 debtor is an organization, provide:

3396                                       (i) a type of organization for the debtor;

3397                                       (ii) a jurisdiction of organization for the  
3398 debtor; or

3399                                       (iii) an organizational identification number  
3400 for the debtor or indicate that the debtor has none;

3401                   (6) in the case of an assignment reflected in an  
3402 initial financing statement under Section 75-9-514(a) or an  
3403 amendment filed under Section 75-9-514(b), the record does not  
3404 provide a name and mailing address for the assignee; or

3405 (7) in the case of a continuation statement, the record  
3406 is not filed within the six-month period prescribed by Section  
3407 75-9-515(d).

3408 (c) For purposes of subsection (b):

3409 (1) a record does not provide information if the filing  
3410 office is unable to read or decipher the information; and

3411 (2) a record that does not indicate that it is an  
3412 amendment or identify an initial financing statement to which it  
3413 relates, as required by Section 75-9-512, 75-9-514, or 75-9-518,  
3414 is an initial financing statement.

3415 (d) A record that is communicated to the filing office with  
3416 tender of the filing fee, but which the filing office refuses to  
3417 accept for a reason other than one set forth in subsection (b), is  
3418 effective as a filed record except as against a purchaser of the  
3419 collateral which gives value in reasonable reliance upon the  
3420 absence of the record from the files.

3421 **SECTION 75-9-517. Effect of indexing errors.** The failure of  
3422 the filing office to index a record correctly does not affect the  
3423 effectiveness of the filed record.

3424 **SECTION 75-9-518. Claim concerning inaccurate or wrongfully**  
3425 **filed record.**

3426 (a) A person may file in the filing office a correction  
3427 statement with respect to a record indexed there under the  
3428 person's name if the person believes that the record is inaccurate  
3429 or was wrongfully filed.

3430 (b) A correction statement must:

3431 (1) identify the record to which it relates by:

3432 (A) the file number assigned to the initial  
3433 financing statement to which the record relates; and

3434 (B) if the correction statement relates to a  
3435 record filed for record in a filing office described in Section  
3436 75-9-501(a)(1), the date that the initial financing statement was  
3437 filed for record and the information specified in Section



3438 75-9-502(b);

3439 (2) indicate that it is a correction statement; and

3440 (3) provide the basis for the person's belief that the  
3441 record is inaccurate and indicate the manner in which the person  
3442 believes the record should be amended to cure any inaccuracy or  
3443 provide the basis for the person's belief that the record was  
3444 wrongfully filed.

3445 (c) The filing of a correction statement does not affect the  
3446 effectiveness of an initial financing statement or other filed  
3447 record.

3448 SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

3449 **SECTION 75-9-519. Numbering, maintaining, and indexing**  
3450 **records; communicating information provided in records.**

3451 (a) For each record filed in a filing office, the filing  
3452 office shall:

3453 (1) assign a unique number to the filed record;

3454 (2) create a record that bears the number assigned to  
3455 the filed record and the date and time of filing;

3456 (3) maintain the filed record for public inspection;

3457 and

3458 (4) index the filed record in accordance with  
3459 subsections (c), (d), and (e).

3460 (b) Except as provided in subsection (i), a file number  
3461 assigned after January 1, 2002, must include a digit that:

3462 (1) is mathematically derived from or related to the  
3463 other digits of the file number; and

3464 (2) aids the filing office in determining whether a  
3465 number communicated as the file number includes a single-digit or  
3466 transpositional error.

3467 (c) Except as otherwise provided in subsections (d) and (e),  
3468 the filing office shall:

3469 (1) index an initial financing statement according to  
3470 the name of the debtor and index all filed records relating to the

3471 initial financing statement in a manner that associates with one  
3472 another an initial financing statement and all filed records  
3473 relating to the initial financing statement; and

3474 (2) index a record that provides a name of a debtor  
3475 which was not previously provided in the financing statement to  
3476 which the record relates also according to the name that was not  
3477 previously provided.

3478 (d) If a financing statement is filed as a fixture filing or  
3479 covers as-extracted collateral or timber to be cut, it must be  
3480 filed for record and the filing office shall index it:

3481 (1) under the names of the debtor and of each owner of  
3482 record shown on the financing statement as if they were the  
3483 mortgagors under a mortgage of the real property described; and

3484 (2) to the extent that the law of this State provides  
3485 for indexing of records of mortgages under the name of the  
3486 mortgagee, under the name of the secured party as if the secured  
3487 party were the mortgagee thereunder, or, if indexing is by  
3488 description, as if the financing statement were a record of a  
3489 mortgage of the real property described.

3490 (e) If a financing statement is filed as a fixture filing or  
3491 covers as-extracted collateral or timber to be cut, the filing  
3492 office shall index an assignment filed under Section 75-9-514(a)  
3493 or an amendment filed under Section 75-9-514(b):

3494 (1) under the name of the assignor as grantor; and

3495 (2) to the extent that the law of this State provides  
3496 for indexing a record of the assignment of a mortgage under the  
3497 name of the assignee, under the name of the assignee.

3498 (f) The filing office shall maintain a capability:

3499 (1) to retrieve a record by the name of the debtor and:

3500 (A) if the filing office is described in Section  
3501 75-9-501(a)(1), by the file number assigned to the initial  
3502 financing statement to which the record relates and the date and  
3503 time that the record was filed for record; or

3504 (B) if the filing office is described in Section  
3505 75-9-501(a)(2), by the file number assigned to the initial  
3506 financing statement to which the record relates; and

3507 (2) to associate and retrieve with one another an  
3508 initial financing statement and each filed record relating to the  
3509 initial financing statement.

3510 (g) The filing office may not remove a debtor's name from  
3511 the index until one year after the effectiveness of a financing  
3512 statement naming the debtor lapses under Section 75-9-515 with  
3513 respect to all secured parties of record.

3514 (h) Except as provided in subsection (i), the filing office  
3515 shall perform the acts required by subsections (a) through (e) at  
3516 the time and in the manner prescribed by filing-office rule, but  
3517 not later than two business days after the filing office receives  
3518 the record in question.

3519 (i) Subsections (b) and (h) do not apply to a filing office  
3520 described in Section 75-9-501(a)(1).

3521 **SECTION 75-9-520. Acceptance and refusal to accept record.**

3522 (a) A filing office shall refuse to accept a record for  
3523 filing for a reason set forth in Section 75-9-516(b) and may  
3524 refuse to accept a record for filing only for a reason set forth  
3525 in Section 75-9-516(b).

3526 (b) If a filing office refuses to accept a record for  
3527 filing, it shall communicate to the person that presented the  
3528 record the fact of and reason for the refusal and the date and  
3529 time the record would have been filed had the filing office  
3530 accepted it. The communication must be made at the time and in  
3531 the manner prescribed by filing-office rule but, in the case of a  
3532 filing office described in Section 75-9-501(a)(1), in no event  
3533 more than two business days after the filing office receives the  
3534 record.

3535 (c) A filed financing statement satisfying Section  
3536 75-9-502(a) and (b) is effective, even if the filing office is

3537 required to refuse to accept it for filing under subsection (a).  
3538 However, Section 75-9-338 applies to a filed financing statement  
3539 providing information described in Section 75-9-516(b)(5) which is  
3540 incorrect at the time the financing statement is filed.

3541 (d) If a record communicated to a filing office provides  
3542 information that relates to more than one debtor, this part  
3543 applies as to each debtor separately.

3544 **SECTION 75-9-521. Uniform form of written financing**  
3545 **statement and amendment.**

3546 (a) A filing office that accepts written records may not  
3547 refuse to accept a written initial financing statement in the form  
3548 and format set forth in the final official text of the 1999  
3549 revisions to Article 9 of the Uniform Commercial Code promulgated  
3550 by The American Law Institute and the National Conference of  
3551 Commissioners on Uniform State Laws, except for a reason set forth  
3552 in Section 75-9-516(b).

3553 (b) A filing office that accepts written records may not  
3554 refuse to accept a written record in the form and format set forth  
3555 in the final official text of the 1999 revisions to Article 9 of  
3556 the Uniform Commercial Code promulgated by The American Law  
3557 Institute and the National Conference of Commissioners on Uniform  
3558 State Laws, except for a reason set forth in Section 75-9-516(b).

3559 **SECTION 75-9-522. Maintenance and destruction of records.**

3560 (a) The filing office shall maintain a record of the  
3561 information provided in a filed financing statement for at least  
3562 one year after the effectiveness of the financing statement has  
3563 lapsed under Section 75-9-515 with respect to all secured parties  
3564 of record. The record must be retrievable by using the name of  
3565 the debtor and:

3566 (1) if the record was filed or recorded in the filing  
3567 office described in Section 75-9-501(a)(1), by using the file  
3568 number assigned to the initial financing statement to which the  
3569 record relates and the date that the record was filed for record;

3570 or

3571 (2) if the record was filed in the filing office  
3572 described in Section 75-9-501(a)(2), by using the file number  
3573 assigned to the initial financing statement to which the record  
3574 relates.

3575 (b) Except to the extent that a statute governing  
3576 disposition of public records provides otherwise, the filing  
3577 office immediately may destroy any written record evidencing a  
3578 financing statement. However, if the filing office destroys a  
3579 written record, it shall maintain another record of the financing  
3580 statement which complies with subsection (a).

3581 **SECTION 75-9-523. Information from filing office; sale or**  
3582 **license of records.**

3583 (a) If a person that files a written record requests an  
3584 acknowledgment of the filing, the filing office shall send to the  
3585 person an image of the record showing the number assigned to the  
3586 record pursuant to Section 75-9-519(a)(1) and the date and time of  
3587 the filing of the record. However, if the person furnishes a copy  
3588 of the record to the filing office, the filing office may instead:

3589 (1) note upon the copy the number assigned to the  
3590 record pursuant to Section 75-9-519(a)(1) and the date and time of  
3591 the filing of the record; and

3592 (2) send the copy to the person.

3593 (b) If a person files a record other than a written record,  
3594 the filing office shall communicate to the person an  
3595 acknowledgment that provides:

3596 (1) the information in the record;

3597 (2) the number assigned to the record pursuant to  
3598 Section 75-9-519(a)(1); and

3599 (3) the date and time of the filing of the record.

3600 (c) The filing office shall communicate or otherwise make  
3601 available in a record the following information to any person that  
3602 requests it:

3603           (1) whether there is on file on a date and time  
3604 specified by the filing office, but not a date earlier than three  
3605 business days before the filing office receives the request, any  
3606 financing statement that:

3607                   (A) designates a particular debtor or, if the  
3608 request so states, designates a particular debtor at the address  
3609 specified in the request;

3610                   (B) has not lapsed under Section 75-9-515 with  
3611 respect to all secured parties of record; and

3612                   (C) if the request so states, has lapsed under  
3613 Section 75-9-515 and a record of which is maintained by the filing  
3614 office under Section 75-9-522(a);

3615           (2) the date and time of filing of each financing  
3616 statement; and

3617           (3) the information provided in each financing  
3618 statement.

3619           (d) In complying with its duty under subsection (c), the  
3620 filing office may communicate information in any medium. However,  
3621 if requested, the filing office shall communicate information by  
3622 issuing its written certificate or, if so requested in writing, a  
3623 record that can be admitted into evidence in the courts of this  
3624 State without extrinsic evidence of its authenticity.

3625           (e) The filing office shall perform the acts required by  
3626 subsections (a) through (d) at the time and in the manner  
3627 prescribed by filing-office rule, but, in the case of a filing  
3628 office described in Section 75-9-501(a)(2), not later than two  
3629 business days after the filing office receives the request.

3630           (f) At least weekly, the filing office shall offer to sell  
3631 or license to the public on a nonexclusive basis, in bulk, copies  
3632 of all records filed in it under this part, in every medium from  
3633 time to time available to the filing office. This subsection  
3634 shall apply only to records filed in a filing office described in  
3635 Section 75-9-501(a)(2).

3636           **SECTION 75-9-524. Delay by filing office.** Delay by the  
3637 filing office beyond a time limit prescribed by this part is  
3638 excused if:

3639           (1) the delay is caused by interruption of  
3640 communication or computer facilities, war, emergency conditions,  
3641 failure of equipment, or other circumstances beyond control of the  
3642 filing office; and

3643           (2) the filing office exercises reasonable diligence  
3644 under the circumstances.

3645           **SECTION 75-9-525. Fees.**

3646           (a) Except as otherwise provided in subsection (e), the fee  
3647 for filing and indexing a record under this part, other than an  
3648 initial financing statement of the kind described in subsection  
3649 (b) is the amount specified in subsection (c), if applicable,  
3650 plus:

3651           (1) \$5.00 if the record is communicated in writing and  
3652 is in the standard form prescribed by the Secretary of State;

3653           (2) \$10.00 if the record is communicated in writing and  
3654 is not in the standard form prescribed by the Secretary of State;  
3655 and

3656           (3) \$3.00 if the record is communicated by another  
3657 medium authorized by filing-office rule.

3658           (b) Except as otherwise provided in subsection (e), the fee  
3659 for filing and indexing an initial financing statement of the  
3660 following kind is the amount specified in subsection (c), if  
3661 applicable, plus:

3662           (1) \$10.00 if the financing statement indicates that it  
3663 is filed in connection with a public-finance transaction;

3664           (2) \$5.00 if the financing statement indicates that it  
3665 is filed in connection with a manufactured-home transaction.

3666           (c) Except as otherwise provided in subsection (e), if a  
3667 record is communicated in writing, the fee for each additional  
3668 debtor name more than one required to be indexed is \$2.00.

3669 (d) The fee for responding to a request for information from  
3670 the filing office, including for issuing a certificate showing  
3671 whether there is on file any financing statement naming a  
3672 particular debtor, is:

3673 (1) \$5.00 if the request is communicated in writing on  
3674 the standard form prescribed by the Secretary of State;

3675 (2) \$10.00 if the request is communicated in writing  
3676 and is not in the standard form prescribed by the Secretary of  
3677 State;

3678 (3) \$3.00 if the request is communicated by another  
3679 medium authorized by filing-office rule; and

3680 (4) An additional fee of \$2.00 shall be paid by the  
3681 requesting party for each financing statement listed on the filing  
3682 officer's certificate, the aggregate of which shall be billed to  
3683 the requesting party at the time the filing officer's certificate  
3684 is issued.

3685 (e) This section does not require a fee with respect to a  
3686 record of a mortgage which is effective as a financing statement  
3687 filed as a fixture filing or as a financing statement covering  
3688 as-extracted collateral or timber to be cut under Section  
3689 75-9-502(c). However, the recording and satisfaction fees that  
3690 otherwise would be applicable under Section 25-7-9 to the record  
3691 of the mortgage apply.

3692 **SECTION 75-9-526. Filing-office rules.**

3693 (a) The Secretary of State shall adopt and publish rules to  
3694 implement this article. The filing-office rules must be:

3695 (1) consistent with this article; and

3696 (2) adopted and published in accordance with the  
3697 Mississippi Administrative Procedures Act.

3698 (b) To keep the filing-office rules and practices of the  
3699 filing office in harmony with the rules and practices of filing  
3700 offices in other jurisdictions that enact substantially this part,  
3701 and to keep the technology used by the filing office compatible



3702 with the technology used by filing offices in other jurisdictions  
3703 that enact substantially this part, the Secretary of State, so far  
3704 as is consistent with the purposes, policies, and provisions of  
3705 this article, in adopting, amending, and repealing filing-office  
3706 rules, shall:

3707 (1) consult with filing offices in other jurisdictions  
3708 that enact substantially this part; and

3709 (2) consult the most recent version of the Model Rules  
3710 promulgated by the International Association of Corporate  
3711 Administrators or any successor organization; and

3712 (3) take into consideration the rules and practices of,  
3713 and the technology used by, filing offices in other jurisdictions  
3714 that enact substantially this part.

3715 **SECTION 75-9-527. Duty to report.** The Secretary of State  
3716 shall report annually on or before January 2 to the Legislature on  
3717 the operation of the filing office. The report must contain a  
3718 statement of the extent to which:

3719 (1) the filing-office rules are not in harmony with the  
3720 rules of filing offices in other jurisdictions that enact  
3721 substantially this part and the reasons for these variations; and

3722 (2) the filing-office rules are not in harmony with the  
3723 most recent version of the Model Rules promulgated by the  
3724 International Association of Corporate Administrators, or any  
3725 successor organization, and the reasons for these variations.

3726 **PART 6**

3727 **DEFAULT**

3728 **SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST**

3729 **SECTION 75-9-601. Rights after default; judicial**  
3730 **enforcement; consignor or buyer of accounts, chattel paper,**  
3731 **payment intangibles, or promissory notes.**

3732 (a) After default, a secured party has the rights provided  
3733 in this part and, except as otherwise provided in Section  
3734 75-9-602, those provided by agreement of the parties. A secured

3735 party:

3736 (1) may reduce a claim to judgment, foreclose, or  
3737 otherwise enforce the claim, security interest, or agricultural  
3738 lien by any available judicial procedure; and

3739 (2) if the collateral is documents, may proceed either  
3740 as to the documents or as to the goods they cover.

3741 (b) A secured party in possession of collateral or control  
3742 of collateral under Section 75-9-104, 75-9-105, 75-9-106, or  
3743 75-9-107 has the rights and duties provided in Section 75-9-207.

3744 (c) The rights under subsections (a) and (b) are cumulative  
3745 and may be exercised simultaneously.

3746 (d) Except as otherwise provided in subsection (g) and  
3747 Section 75-9-605, after default, a debtor and an obligor have the  
3748 rights provided in this part and by agreement of the parties.

3749 (e) If a secured party has reduced its claim to judgment,  
3750 the lien of any levy that may be made upon the collateral by  
3751 virtue of an execution based upon the judgment relates back to the  
3752 earliest of:

3753 (1) the date of perfection of the security interest or  
3754 agricultural lien in the collateral;

3755 (2) the date of filing a financing statement covering  
3756 the collateral; or

3757 (3) any date specified in a statute under which the  
3758 agricultural lien was created.

3759 (f) A sale pursuant to an execution is a foreclosure of the  
3760 security interest or agricultural lien by judicial procedure  
3761 within the meaning of this section. A secured party may purchase  
3762 at the sale and thereafter hold the collateral free of any other  
3763 requirements of this article.

3764 (g) Except as otherwise provided in Section 75-9-607(c),  
3765 this part imposes no duties upon a secured party that is a  
3766 consignor or is a buyer of accounts, chattel paper, payment  
3767 intangibles, or promissory notes.

3768           **SECTION 75-9-602. Waiver and variance of rights and duties.**

3769       Except as otherwise provided in Section 75-9-624, to the extent  
3770 that they give rights to a debtor or obligor and impose duties on  
3771 a secured party, the debtor or obligor may not waive or vary the  
3772 rules stated in the following listed sections:

3773           (1) Section 75-9-207(b)(4)(C), which deals with use and  
3774 operation of the collateral by the secured party;

3775           (2) Section 75-9-210, which deals with requests for an  
3776 accounting and requests concerning a list of collateral and  
3777 statement of account;

3778           (3) Section 75-9-607(c), which deals with collection  
3779 and enforcement of collateral;

3780           (4) Sections 75-9-608(a) and 75-9-615(c) to the extent  
3781 that they deal with application or payment of noncash proceeds of  
3782 collection, enforcement, or disposition;

3783           (5) Sections 75-9-608(a) and 75-9-615(d) to the extent  
3784 that they require accounting for or payment of surplus proceeds of  
3785 collateral;

3786           (6) Section 75-9-609 to the extent that it imposes upon  
3787 a secured party that takes possession of collateral without  
3788 judicial process the duty to do so without breach of the peace;

3789           (7) Sections 75-9-610(b), 75-9-611, 75-9-613, and  
3790 75-9-614, which deal with disposition of collateral;

3791           (8) Section 75-9-615(f), which deals with calculation  
3792 of a deficiency or surplus when a disposition is made to the  
3793 secured party, a person related to the secured party, or a  
3794 secondary obligor;

3795           (9) Section 75-9-616, which deals with explanation of  
3796 the calculation of a surplus or deficiency;

3797           (10) Sections 75-9-620, 75-9-621, and 75-9-622, which  
3798 deal with acceptance of collateral in satisfaction of obligation;

3799           (11) Section 75-9-623, which deals with redemption of collateral;

3800           (12) Section 75-9-624, which deals with permissible waivers; and

3801 (13) Sections 75-9-625 and 75-9-626, which deal with the secured  
3802 party's liability for failure to comply with this article.

3803 **SECTION 75-9-603. Agreement on standards concerning rights**  
3804 **and duties.**

3805 (a) The parties may determine by agreement the standards  
3806 measuring the fulfillment of the rights of a debtor or obligor and  
3807 the duties of a secured party under a rule stated in Section  
3808 75-9-602 if the standards are not manifestly unreasonable.

3809 (b) Subsection (a) does not apply to the duty under Section  
3810 75-9-609 to refrain from breaching the peace.

3811 **SECTION 75-9-604. Procedure if security agreement covers**  
3812 **real property or fixtures.**

3813 (a) If a security agreement covers both personal and real  
3814 property, a secured party may proceed:

3815 (1) under this part as to the personal property without  
3816 prejudicing any rights with respect to the real property; or

3817 (2) as to both the personal property and the real  
3818 property in accordance with the rights with respect to the real  
3819 property, in which case the other provisions of this part do not  
3820 apply.

3821 (b) Subject to subsection (c), if a security agreement  
3822 covers goods that are or become fixtures, a secured party may  
3823 proceed:

3824 (1) under this part; or

3825 (2) in accordance with the rights with respect to real  
3826 property, in which case the other provisions of this part do not  
3827 apply.

3828 (c) Subject to the other provisions of this part, if a  
3829 secured party holding a security interest in fixtures has priority  
3830 over all owners and encumbrancers of the real property, the  
3831 secured party, after default, may remove the collateral from the  
3832 real property.

3833 (d) A secured party that removes collateral shall promptly

3834 reimburse any encumbrancer or owner of the real property, other  
3835 than the debtor, for the cost of repair of any physical injury  
3836 caused by the removal. The secured party need not reimburse the  
3837 encumbrancer or owner for any diminution in value of the real  
3838 property caused by the absence of the goods removed or by any  
3839 necessity of replacing them. A person entitled to reimbursement  
3840 may refuse permission to remove until the secured party gives  
3841 adequate assurance for the performance of the obligation to  
3842 reimburse.

3843           **SECTION 75-9-605. Unknown debtor or secondary obligor.** A  
3844 secured party does not owe a duty based on its status as secured  
3845 party:

3846           (1) to a person that is a debtor or obligor, unless the  
3847 secured party knows:

3848                   (A) that the person is a debtor or obligor;

3849                   (B) the identity of the person; and

3850                   (C) how to communicate with the person; or

3851           (2) to a secured party or lienholder that has filed a  
3852 financing statement against a person, unless the secured party  
3853 knows:

3854                   (A) that the person is a debtor; and

3855                   (B) the identity of the person.

3856           **SECTION 75-9-606. Time of default for agricultural lien.**

3857 For purposes of this part, a default occurs in connection with an  
3858 agricultural lien at the time the secured party becomes entitled  
3859 to enforce the lien in accordance with the statute under which it  
3860 was created.

3861           **SECTION 75-9-607. Collection and enforcement by secured**  
3862 **party.**

3863           (a) If so agreed, and in any event after default, a secured  
3864 party:

3865                   (1) may notify an account debtor or other person  
3866 obligated on collateral to make payment or otherwise render

3867 performance to or for the benefit of the secured party;

3868           (2) may take any proceeds to which the secured party is  
3869 entitled under Section 75-9-315;

3870           (3) may enforce the obligations of an account debtor or  
3871 other person obligated on collateral and exercise the rights of  
3872 the debtor with respect to the obligation of the account debtor or  
3873 other person obligated on collateral to make payment or otherwise  
3874 render performance to the debtor, and with respect to any property  
3875 that secures the obligations of the account debtor or other person  
3876 obligated on the collateral;

3877           (4) if it holds a security interest in a deposit  
3878 account perfected by control under Section 75-9-104(a)(1), may  
3879 apply the balance of the deposit account to the obligation secured  
3880 by the deposit account; and

3881           (5) if it holds a security interest in a deposit  
3882 account perfected by control under Section 75-9-104(a)(2) or (3),  
3883 may instruct the bank to pay the balance of the deposit account to  
3884 or for the benefit of the secured party.

3885           (b) If necessary to enable a secured party to exercise under  
3886 subsection (a)(3) the right of a debtor to enforce a mortgage  
3887 nonjudicially, the secured party may record in the office in which  
3888 a record of the mortgage is recorded:

3889           (1) a copy of the security agreement that creates or  
3890 provides for a security interest in the obligation secured by the  
3891 mortgage; and

3892           (2) the secured party's sworn affidavit in recordable  
3893 form stating that:

3894                   (A) a default has occurred; and

3895                   (B) the secured party is entitled to enforce the  
3896 mortgage nonjudicially.

3897           (c) A secured party shall proceed in a commercially  
3898 reasonable manner if the secured party:

3899           (1) undertakes to collect from or enforce an obligation

3900 of an account debtor or other person obligated on collateral; and  
3901 (2) is entitled to charge back uncollected collateral  
3902 or otherwise to full or limited recourse against the debtor or a  
3903 secondary obligor.

3904 (d) A secured party may deduct from the collections made  
3905 pursuant to subsection (c) reasonable expenses of collection and  
3906 enforcement, including reasonable attorney's fees and legal  
3907 expenses incurred by the secured party.

3908 (e) This section does not determine whether an account  
3909 debtor, bank, or other person obligated on collateral owes a duty  
3910 to a secured party.

3911 **SECTION 75-9-608. Application of proceeds of collection or**  
3912 **enforcement; liability for deficiency and right to surplus.**

3913 (a) If a security interest or agricultural lien secures  
3914 payment or performance of an obligation, the following rules  
3915 apply:

3916 (1) A secured party shall apply or pay over for  
3917 application the cash proceeds of collection or enforcement under  
3918 Section 75-9-607 in the following order to:

3919 (A) the reasonable expenses of collection and  
3920 enforcement and, to the extent provided for by agreement and not  
3921 prohibited by law, reasonable attorney's fees and legal expenses  
3922 incurred by the secured party;

3923 (B) the satisfaction of obligations secured by the  
3924 security interest or agricultural lien under which the collection  
3925 or enforcement is made; and

3926 (C) the satisfaction of obligations secured by any  
3927 subordinate security interest in or other lien on the collateral  
3928 subject to the security interest or agricultural lien under which  
3929 the collection or enforcement is made if the secured party  
3930 receives an authenticated demand for proceeds before distribution  
3931 of the proceeds is completed.

3932 (2) If requested by a secured party, a holder of a

3933 subordinate security interest or other lien shall furnish  
3934 reasonable proof of the interest or lien within a reasonable time.  
3935 Unless the holder complies, the secured party need not comply  
3936 with the holder's demand under paragraph (1)(C).

3937 (3) A secured party need not apply or pay over for  
3938 application noncash proceeds of collection and enforcement under  
3939 Section 75-9-607 unless the failure to do so would be commercially  
3940 unreasonable. A secured party that applies or pays over for  
3941 application noncash proceeds shall do so in a commercially  
3942 reasonable manner.

3943 (4) A secured party shall account to and pay a debtor  
3944 for any surplus, and the obligor is liable for any deficiency.

3945 (b) If the underlying transaction is a sale of accounts,  
3946 chattel paper, payment intangibles, or promissory notes, the  
3947 debtor is not entitled to any surplus, and the obligor is not  
3948 liable for any deficiency.

3949 **SECTION 75-9-609. Secured party's right to take possession**  
3950 **after default.**

3951 (a) After default, a secured party:

- 3952 (1) may take possession of the collateral; and  
3953 (2) without removal, may render equipment unusable and  
3954 dispose of collateral on a debtor's premises under Section  
3955 75-9-610.

3956 (b) A secured party may proceed under subsection (a):

- 3957 (1) pursuant to judicial process; or  
3958 (2) without judicial process, if it proceeds without  
3959 breach of the peace.

3960 (c) If so agreed, and in any event after default, a secured  
3961 party may require the debtor to assemble the collateral and make  
3962 it available to the secured party at a place to be designated by  
3963 the secured party which is reasonably convenient to both parties.

3964 **SECTION 75-9-610. Disposition of collateral after default.**

3965 (a) After default, a secured party may sell, lease, license,



3966 or otherwise dispose of any or all of the collateral in its  
3967 present condition or following any commercially reasonable  
3968 preparation or processing.

3969 (b) Every aspect of a disposition of collateral, including  
3970 the method, manner, time, place, and other terms, must be  
3971 commercially reasonable. If commercially reasonable, a secured  
3972 party may dispose of collateral by public or private proceedings,  
3973 by one or more contracts, as a unit or in parcels, and at any time  
3974 and place and on any terms.

3975 (c) A secured party may purchase collateral:

3976 (1) at a public disposition; or

3977 (2) at a private disposition only if the collateral is  
3978 of a kind that is customarily sold on a recognized market or the  
3979 subject of widely distributed standard price quotations.

3980 (d) A contract for sale, lease, license, or other  
3981 disposition includes the warranties relating to title, possession,  
3982 quiet enjoyment, and the like which by operation of law accompany  
3983 a voluntary disposition of property of the kind subject to the  
3984 contract.

3985 (e) A secured party may disclaim or modify warranties under  
3986 subsection (d):

3987 (1) in a manner that would be effective to disclaim or  
3988 modify the warranties in a voluntary disposition of property of  
3989 the kind subject to the contract of disposition; or

3990 (2) by communicating to the purchaser a record  
3991 evidencing the contract for disposition and including an express  
3992 disclaimer or modification of the warranties.

3993 (f) A record is sufficient to disclaim warranties under  
3994 subsection (e) if it indicates "There is no warranty relating to  
3995 title, possession, quiet enjoyment, or the like in this  
3996 disposition" or uses words of similar import.

3997 **SECTION 75-9-611. Notification before disposition of**  
3998 **collateral.**

3999           (a) In this section, "notification date" means the earlier  
4000 of the date on which:

4001           (1) a secured party sends to the debtor and any  
4002 secondary obligor an authenticated notification of disposition; or

4003           (2) the debtor and any secondary obligor waive the  
4004 right to notification.

4005           (b) Except as otherwise provided in subsection (d), a  
4006 secured party that disposes of collateral under Section 75-9-610  
4007 shall send to the persons specified in subsection (c) a reasonable  
4008 authenticated notification of disposition.

4009           (c) To comply with subsection (b), the secured party shall  
4010 send an authenticated notification of disposition to:

4011           (1) the debtor;

4012           (2) any secondary obligor; and

4013           (3) if the collateral is other than consumer goods:

4014           (A) any other person from which the secured party  
4015 has received, before the notification date, an authenticated  
4016 notification of a claim of an interest in the collateral;

4017           (B) any other secured party or lienholder that, 10  
4018 days before the notification date, held a security interest in or  
4019 other lien on the collateral perfected by the filing of a  
4020 financing statement that:

4021           (i) identified the collateral;

4022           (ii) was indexed under the debtor's name as  
4023 of that date; and

4024           (iii) was filed in the office in which to  
4025 file a financing statement against the debtor covering the  
4026 collateral as of that date; and

4027           (C) any other secured party that, 10 days before  
4028 the notification date, held a security interest in the collateral  
4029 perfected by compliance with a statute, regulation, or treaty  
4030 described in Section 75-9-311(a).

4031           (d) Subsection (b) does not apply if the collateral is

4032 perishable or threatens to decline speedily in value or is of a  
4033 type customarily sold on a recognized market.

4034 (e) A secured party complies with the requirement for  
4035 notification prescribed by subsection (c)(3)(B) if:

4036 (1) not later than 20 days or earlier than 30 days  
4037 before the notification date, the secured party requests, in a  
4038 commercially reasonable manner, information concerning financing  
4039 statements indexed under the debtor's name in the office indicated  
4040 in subsection (c)(3)(B); and

4041 (2) before the notification date, the secured party:

4042 (A) did not receive a response to the request for  
4043 information; or

4044 (B) received a response to the request for  
4045 information and sent an authenticated notification of disposition  
4046 to each secured party or other lienholder named in that response  
4047 whose financing statement covered the collateral.

4048 **SECTION 75-9-612. Timeliness of notification before**  
4049 **disposition of collateral.**

4050 (a) Except as otherwise provided in subsection (b), whether  
4051 a notification is sent within a reasonable time is a question of  
4052 fact.

4053 (b) In a transaction other than a consumer transaction, a  
4054 notification of disposition sent after default and 10 days or more  
4055 before the earliest time of disposition set forth in the  
4056 notification is sent within a reasonable time before the  
4057 disposition.

4058 **SECTION 75-9-613. Contents and form of notification before**  
4059 **disposition of collateral: general.** Except in a consumer-goods  
4060 transaction, the following rules apply:

4061 (1) The contents of a notification of disposition are  
4062 sufficient if the notification:

4063 (A) describes the debtor and the secured party;

4064 (B) describes the collateral that is the subject

4065 of the intended disposition;

4066 (C) states the method of intended disposition;

4067 (D) states that the debtor is entitled to an  
4068 accounting of the unpaid indebtedness and states the charge, if  
4069 any, for an accounting; and

4070 (E) states the time and place of a public  
4071 disposition or the time after which any other disposition is to be  
4072 made.

4073 (2) Whether the contents of a notification that lacks  
4074 any of the information specified in paragraph (1) are nevertheless  
4075 sufficient is a question of fact.

4076 (3) The contents of a notification providing  
4077 substantially the information specified in paragraph (1) are  
4078 sufficient, even if the notification includes:

4079 (A) information not specified by that paragraph;  
4080 or

4081 (B) minor errors that are not seriously  
4082 misleading.

4083 (4) A particular phrasing of the notification is not  
4084 required.

4085 (5) The following form of notification and the form  
4086 appearing in Section 75-9-614(3), when completed, each provides  
4087 sufficient information:

4088 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

4089 To: [Name of debtor, obligor, or other  
4090 other person to which the  
4091 notification is sent]

4092 From: [Name, address, and telephone number  
4093 of secured party]

4094 Name of Debtor(s): Include only if debtor(s) are not an  
4095 addressee]

4096 [For a public disposition:]

4097 We will sell (or lease or license, as applicable) the

4098 [describe collateral] to the highest qualified bidder in

4099 public as follows:

4100 Day and Date \_\_\_\_\_

4101 Time: \_\_\_\_\_

4102 Place: \_\_\_\_\_

4103 [For a private disposition:]

4104 We will sell (or lease or license, as applicable), the

4105 [describe collateral] privately sometime after [day and  
4106 date].

4107 You are entitled to an accounting of the unpaid indebtedness  
4108 secured by the property that we intend to sell (or lease or  
4109 license, as applicable) (for a charge of \$\_\_\_\_\_. You may  
4110 request an accounting by calling us at [telephone number].

4111 [END OF FORM]

4112 **SECTION 75-9-614. Contents and form of notification before**  
4113 **disposition of collateral: consumer-goods transaction.** In a  
4114 consumer-goods transaction, the following rules apply:

4115 (1) A notification of disposition must provide the  
4116 following information:

4117 (A) the information specified in Section  
4118 75-9-613(1);

4119 (B) a description of any liability for a  
4120 deficiency of the person to which the notification is sent;

4121 (C) a telephone number from which the amount that  
4122 must be paid to the secured party to redeem the collateral under  
4123 Section 75-9-623 is available; and

4124 (D) a telephone number or mailing address from  
4125 which additional information concerning the disposition and the  
4126 obligation secured is available.

4127 (2) A particular phrasing of the notification is not  
4128 required.

4129 (3) The following form of notification, when completed,  
4130 provides sufficient information:

4131 Name and address of secured party:

4132 Date:

4133 **NOTICE OF OUR PLAN TO SELL PROPERTY**

4134 Name and address of any obligor who is also a debtor:

4135 Subject: [Identification of transaction]

4136

4137 We have your: [describe collateral] because you broke  
4138 promises in our agreement.

4139

4140 *[For a public disposition:]*

4141 We will sell [describe collateral] at public sale. A sale  
4142 could include a lease or license. The sale will be held as  
4143 follows:

4144 Date: \_\_\_\_\_

4145 Time: \_\_\_\_\_

4146 Place: \_\_\_\_\_

4147 You may attend the sale and bring bidders if you want.

4148

4149 *[For a private disposition]*

4150 We will sell [describe collateral] at private sale sometime  
4151 after [date]. A sale could include a lease or license.

4152

4153 The money that we get from the sale (after paying our costs) will  
4154 reduce the amount you owe. If we get less money than you owe, you  
4155 [will or will not, as applicable] still owe us the difference.

4156 If we get more money than you owe, you will get the extra money,  
4157 unless we must pay it to someone else.

4158

4159 You can get the property back at any time before we sell it by  
4160 paying us the full amount you owe which is then due or past due,  
4161 (excluding any amount that would not be due except for an  
4162 acceleration provision), including our expenses. To learn the  
4163 exact amount you must pay, call us at [telephone number].

4164  
4165 If you want us to explain to you in writing how we have figured  
4166 the amount that you owe us, you may call us at [telephone  
4167 number], or write us at [secured party's address] and  
4168 request a written explanation. We will charge you \$\_\_\_\_\_ for  
4169 the explanation if we sent you another written explanation of the  
4170 amount you owe us within the last six months.

4171  
4172 If you need more information about the sale call us at  
4173 [telephone number], or write us at [secured party's  
4174 address].

4175  
4176 We are sending this notice to the following other people who have  
4177 an interest in [describe collateral] or who owe money under  
4178 your agreement:

4179 Names of all other debtors and obligors, if any:

4180 **[END OF FORM]**

4181 (4) A notification in the form of paragraph (3) is  
4182 sufficient, even if additional information appears at the end of  
4183 the form.

4184 (5) A notification in the form of paragraph (3) is  
4185 sufficient, even if it includes errors in information not required  
4186 by paragraph (1), unless the error is misleading with respect to  
4187 rights arising under this article.

4188 (6) If a notification under this section is not in the  
4189 form of paragraph (3), law other than this article determines the  
4190 effect of including information not required by paragraph (1).

4191 **SECTION 75-9-615. Application of proceeds of disposition;**  
4192 **liability for deficiency and right to surplus.**

4193 (a) A secured party shall apply or pay over for application  
4194 the cash proceeds of disposition under Section 75-9-610 in the  
4195 following order to:

4196 (1) the reasonable expenses of retaking, holding,

4197 preparing for disposition, processing, and disposing, and, to the  
4198 extent provided for by agreement and not prohibited by law,  
4199 reasonable attorney's fees and legal expenses incurred by the  
4200 secured party;

4201 (2) the satisfaction of obligations secured by the  
4202 security interest or agricultural lien under which the disposition  
4203 is made;

4204 (3) the satisfaction of obligations secured by any  
4205 subordinate security interest in or other subordinate lien on the  
4206 collateral if:

4207 (A) the secured party receives from the holder of  
4208 the subordinate security interest or other lien an authenticated  
4209 demand for proceeds before distribution of the proceeds is  
4210 completed; and

4211 (B) in a case in which a consignor has an interest  
4212 in the collateral, the subordinate security interest or other lien  
4213 is senior to the interest of the consignor; and

4214 (4) a secured party that is a consignor of the  
4215 collateral if the secured party receives from the consignor an  
4216 authenticated demand for proceeds before distribution of the  
4217 proceeds is completed.

4218 (b) If requested by a secured party, a holder of a  
4219 subordinate security interest or other lien shall furnish  
4220 reasonable proof of the interest or lien within a reasonable time.

4221 Unless the holder does so, the secured party need not comply with  
4222 the holder's demand under subsection (a)(3).

4223 (c) A secured party need not apply or pay over for  
4224 application noncash proceeds of disposition under Section 75-9-610  
4225 unless the failure to do so would be commercially unreasonable. A  
4226 secured party that applies or pays over for application noncash  
4227 proceeds shall do so in a commercially reasonable manner.

4228 (d) If the security interest under which a disposition is  
4229 made secures payment or performance of an obligation, after making



4230 the payments and applications required by subsection (a) and  
4231 permitted by subsection (c):

4232 (1) unless subsection (a)(4) requires the secured party  
4233 to apply or pay over cash proceeds to a consignor, the secured  
4234 party shall account to and pay a debtor for any surplus; and

4235 (2) the obligor is liable for any deficiency.

4236 (e) If the underlying transaction is a sale of accounts,  
4237 chattel paper, payment intangibles, or promissory notes:

4238 (1) the debtor is not entitled to any surplus; and

4239 (2) the obligor is not liable for any deficiency.

4240 (f) The surplus or deficiency following a disposition is  
4241 calculated based on the amount of proceeds that would have been  
4242 realized in a disposition complying with this part to a transferee  
4243 other than the secured party, a person related to the secured  
4244 party, or a secondary obligor if:

4245 (1) the transferee in the disposition is the secured  
4246 party, a person related to the secured party, or a secondary  
4247 obligor; and

4248 (2) the amount of proceeds of the disposition is  
4249 significantly below the range of proceeds that a complying  
4250 disposition to a person other than the secured party, a person  
4251 related to the secured party, or a secondary obligor would have  
4252 brought.

4253 (g) A secured party that receives cash proceeds of a  
4254 disposition in good faith and without knowledge that the receipt  
4255 violates the rights of the holder of a security interest or other  
4256 lien that is not subordinate to the security interest or  
4257 agricultural lien under which the disposition is made:

4258 (1) takes the cash proceeds free of the security  
4259 interest or other lien;

4260 (2) is not obligated to apply the proceeds of the  
4261 disposition to the satisfaction of obligations secured by the  
4262 security interest or other lien; and

4263 (3) is not obligated to account to or pay the holder of  
4264 the security interest or other lien for any surplus.

4265 **SECTION 75-9-616. Explanation of calculation of surplus or**  
4266 **deficiency.**

4267 (a) In this section:

4268 (1) "Explanation" means a writing that:

4269 (A) states the amount of the surplus or  
4270 deficiency;

4271 (B) provides an explanation in accordance with  
4272 subsection (c) of how the secured party calculated the surplus or  
4273 deficiency;

4274 (C) states, if applicable, that future debits,  
4275 credits, charges, including additional credit service charges or  
4276 interest, rebates, and expenses may affect the amount of the  
4277 surplus or deficiency; and

4278 (D) provides a telephone number or mailing address  
4279 from which additional information concerning the transaction is  
4280 available.

4281 (2) "Request" means a record:

4282 (A) authenticated by a debtor or consumer obligor;

4283 (B) requesting that the recipient provide an  
4284 explanation; and

4285 (C) sent after disposition of the collateral under  
4286 Section 75-9-610.

4287 (b) In a consumer-goods transaction in which the debtor is  
4288 entitled to a surplus or a consumer obligor is liable for a  
4289 deficiency under Section 75-9-615, the secured party shall:

4290 (1) send an explanation to the debtor or consumer  
4291 obligor, as applicable, after the disposition and:

4292 (A) before or when the secured party accounts to  
4293 the debtor and pays any surplus or first makes written demand on  
4294 the consumer obligor after the disposition for payment of the  
4295 deficiency; and

4296 (B) within 14 days after receipt of a request; or  
4297 (2) in the case of a consumer obligor who is liable for  
4298 a deficiency, within 14 days after receipt of a request, send to  
4299 the consumer obligor a record waiving the secured party's right to  
4300 a deficiency.

4301 (c) To comply with subsection (a)(1)(B), a writing must  
4302 provide the following information in the following order:

4303 (1) the aggregate amount of obligations secured by the  
4304 security interest under which the disposition was made, and, if  
4305 the amount reflects a rebate of unearned interest or credit  
4306 service charge, an indication of that fact, calculated as of a  
4307 specified date:

4308 (A) if the secured party takes or receives  
4309 possession of the collateral after default, not more than 35 days  
4310 before the secured party takes or receives possession; or

4311 (B) if the secured party takes or receives  
4312 possession of the collateral before default or does not take  
4313 possession of the collateral, not more than 35 days before the  
4314 disposition;

4315 (2) the amount of proceeds of the disposition;

4316 (3) the aggregate amount of the obligations after  
4317 deducting the amount of proceeds;

4318 (4) the amount, in the aggregate or by type, and types  
4319 of expenses, including expenses of retaking, holding, preparing  
4320 for disposition, processing, and disposing of the collateral, and  
4321 attorney's fees secured by the collateral which are known to the  
4322 secured party and relate to the current disposition;

4323 (5) the amount, in the aggregate or by type, and types  
4324 of credits, including rebates of interest or credit service  
4325 charges, to which the obligor is known to be entitled and which  
4326 are not reflected in the amount in paragraph (1); and

4327 (6) the amount of the surplus or deficiency.

4328 (d) A particular phrasing of the explanation is not

4329 required. An explanation complying substantially with the  
4330 requirements of subsection (a) is sufficient, even if it includes  
4331 minor errors that are not seriously misleading.

4332 (e) A debtor or consumer obligor is entitled without charge  
4333 to one response to a request under this section during any  
4334 six-month period in which the secured party did not send to the  
4335 debtor or consumer obligor an explanation pursuant to subsection  
4336 (b)(1). The secured party may require payment of a charge not  
4337 exceeding \$25 for each additional response.

4338 **SECTION 75-9-617. Rights of transferee of collateral.**

4339 (a) A secured party's disposition of collateral after  
4340 default:

4341 (1) transfers to a transferee for value all of the  
4342 debtor's rights in the collateral;

4343 (2) discharges the security interest under which the  
4344 disposition is made; and

4345 (3) discharges any subordinate security interest or  
4346 other subordinate lien.

4347 (b) A transferee that acts in good faith takes free of the  
4348 rights and interests described in subsection (a), even if the  
4349 secured party fails to comply with this article or the  
4350 requirements of any judicial proceeding.

4351 (c) If a transferee does not take free of the rights and  
4352 interests described in subsection (a), the transferee takes the  
4353 collateral subject to:

4354 (1) the debtor's rights in the collateral;

4355 (2) the security interest or agricultural lien under  
4356 which the disposition is made; and

4357 (3) any other security interest or other lien.

4358 **SECTION 75-9-618. Rights and duties of certain secondary**  
4359 **obligors.**

4360 (a) A secondary obligor acquires the rights and becomes  
4361 obligated to perform the duties of the secured party after the

4362 secondary obligor:

4363           (1) receives an assignment of a secured obligation from  
4364 the secured party;

4365           (2) receives a transfer of collateral from the secured  
4366 party and agrees to accept the rights and assume the duties of the  
4367 secured party; or

4368           (3) is subrogated to the rights of a secured party with  
4369 respect to collateral.

4370           (b) An assignment, transfer, or subrogation described in  
4371 subsection (a):

4372           (1) is not a disposition of collateral under Section  
4373 75-9-610; and

4374           (2) relieves the secured party of further duties under  
4375 this article.

4376           **SECTION 75-9-619. Transfer of record or legal title.**

4377           (a) In this section, "transfer statement" means a record  
4378 authenticated by a secured party stating:

4379           (1) that the debtor has defaulted in connection with an  
4380 obligation secured by specified collateral;

4381           (2) that the secured party has exercised its  
4382 post-default remedies with respect to the collateral;

4383           (3) that, by reason of the exercise, a transferee has  
4384 acquired the rights of the debtor in the collateral; and

4385           (4) the name and mailing address of the secured party,  
4386 debtor, and transferee.

4387           (b) A transfer statement entitles the transferee to the  
4388 transfer of record of all rights of the debtor in the collateral  
4389 specified in the statement in any official filing, recording,  
4390 registration, or certificate-of-title system covering the  
4391 collateral. If a transfer statement is presented with the  
4392 applicable fee and request form to the official or office  
4393 responsible for maintaining the system, the official or office  
4394 shall:

4395 (1) accept the transfer statement;  
4396 (2) promptly amend its records to reflect the transfer;  
4397 and  
4398 (3) if applicable, issue a new appropriate certificate  
4399 of title in the name of the transferee.

4400 (c) A transfer of the record or legal title to collateral to  
4401 a secured party under subsection (b) or otherwise is not of itself  
4402 a disposition of collateral under this article and does not of  
4403 itself relieve the secured party of its duties under this article.

4404 **SECTION 75-9-620. Acceptance of collateral in full or**  
4405 **partial satisfaction of obligation; compulsory disposition of**  
4406 **collateral.**

4407 (a) Except as otherwise provided in subsection (g), a  
4408 secured party may accept collateral in full or partial  
4409 satisfaction of the obligation it secures only if:

4410 (1) the debtor consents to the acceptance under  
4411 subsection (c);

4412 (2) the secured party does not receive, within the time  
4413 set forth in subsection (d), a notification of objection to the  
4414 proposal authenticated by:

4415 (A) a person to which the secured party was  
4416 required to send a proposal under Section 75-9-621; or

4417 (B) any other person, other than the debtor,  
4418 holding an interest in the collateral subordinate to the security  
4419 interest that is the subject of the proposal;

4420 (3) if the collateral is consumer goods, the collateral  
4421 is not in the possession of the debtor when the debtor consents to  
4422 the acceptance; and

4423 (4) subsection (e) does not require the secured party  
4424 to dispose of the collateral or the debtor waives the requirement  
4425 pursuant to Section 75-9-624.

4426 (b) A purported or apparent acceptance of collateral under  
4427 this section is ineffective unless:

4428           (1) the secured party consents to the acceptance in an  
4429 authenticated record or sends a proposal to the debtor; and  
4430           (2) the conditions of subsection (a) are met.  
4431       (c) For purposes of this section:  
4432           (1) a debtor consents to an acceptance of collateral in  
4433 partial satisfaction of the obligation it secures only if the  
4434 debtor agrees to the terms of the acceptance in a record  
4435 authenticated after default; and  
4436           (2) a debtor consents to an acceptance of collateral in  
4437 full satisfaction of the obligation it secures only if the debtor  
4438 agrees to the terms of the acceptance in a record authenticated  
4439 after default or the secured party:  
4440           (A) sends to the debtor after default a proposal  
4441 that is unconditional or subject only to a condition that  
4442 collateral not in the possession of the secured party be preserved  
4443 or maintained;  
4444           (B) in the proposal, proposes to accept collateral  
4445 in full satisfaction of the obligation it secures; and  
4446           (C) does not receive a notification of objection  
4447 authenticated by the debtor within 20 days after the proposal is  
4448 sent.  
4449       (d) To be effective under subsection (a)(2), a notification  
4450 of objection must be received by the secured party:  
4451           (1) in the case of a person to which the proposal was  
4452 sent pursuant to Section 75-9-621, within 20 days after  
4453 notification was sent to that person; and  
4454           (2) in other cases:  
4455           (A) within 20 days after the last notification was  
4456 sent pursuant to Section 75-9-621; or  
4457           (B) if a notification was not sent, before the  
4458 debtor consents to the acceptance under subsection (c).  
4459       (e) A secured party that has taken possession of collateral  
4460 shall dispose of the collateral pursuant to Section 75-9-610

4461 within the time specified in subsection (f) if:

4462 (1) 60 percent of the cash price has been paid in the  
4463 case of a purchase-money security interest in consumer goods; or

4464 (2) 60 percent of the principal amount of the  
4465 obligation secured has been paid in the case of a  
4466 non-purchase-money security interest in consumer goods.

4467 (f) To comply with subsection (e), the secured party shall  
4468 dispose of the collateral:

4469 (1) within 90 days after taking possession; or

4470 (2) within any longer period to which the debtor and  
4471 all secondary obligors have agreed in an agreement to that effect  
4472 entered into and authenticated after default.

4473 (g) In a consumer transaction, a secured party may not  
4474 accept collateral in partial satisfaction of the obligation it  
4475 secures.

4476 **SECTION 75-9-621. Notification of proposal to accept**  
4477 **collateral.**

4478 (a) A secured party that desires to accept collateral in  
4479 full or partial satisfaction of the obligation it secures shall  
4480 send its proposal to:

4481 (1) any person from which the secured party has  
4482 received, before the debtor consented to the acceptance, an  
4483 authenticated notification of a claim of an interest in the  
4484 collateral;

4485 (2) any other secured party or lienholder that, 10 days  
4486 before the debtor consented to the acceptance, held a security  
4487 interest in or other lien on the collateral perfected by the  
4488 filing of a financing statement that:

4489 (A) identified the collateral;

4490 (B) was indexed under the debtor's name as of that  
4491 date; and

4492 (C) was filed in the office or offices in which to  
4493 file a financing statement against the debtor covering the



4494 collateral as of that date; and

4495           (3) any other secured party that, 10 days before the  
4496 debtor consented to the acceptance, held a security interest in  
4497 the collateral perfected by compliance with a statute, regulation,  
4498 or treaty described in Section 75-9-311(a).

4499           (b) A secured party that desires to accept collateral in  
4500 partial satisfaction of the obligation it secures shall send its  
4501 proposal to any secondary obligor in addition to the persons  
4502 described in subsection (a).

4503           **SECTION 75-9-622. Effect of acceptance of collateral.**

4504           (a) A secured party's acceptance of collateral in full or  
4505 partial satisfaction of the obligation it secures:

4506           (1) discharges the obligation to the extent consented  
4507 to by the debtor;

4508           (2) transfers to the secured party all of a debtor's  
4509 rights in the collateral;

4510           (3) discharges the security interest or agricultural  
4511 lien that is the subject of the debtor's consent and any  
4512 subordinate security interest or other subordinate lien; and

4513           (4) terminates any other subordinate interest.

4514           (b) A subordinate interest is discharged or terminated under  
4515 subsection (a), even if the secured party fails to comply with  
4516 this article.

4517           **SECTION 75-9-623. Right to redeem collateral.**

4518           (a) A debtor, any secondary obligor, or any other secured  
4519 party or lienholder may redeem collateral.

4520           (b) To redeem collateral, a person shall tender:

4521           (1) fulfillment of all obligations secured by the  
4522 collateral then due or past due (excluding any sums that would not  
4523 be due except for an acceleration provision); and

4524           (2) the reasonable expenses and attorney's fees  
4525 described in Section 75-9-615(a)(1).

4526           (c) A redemption may occur at any time before a secured

4527 party:

4528 (1) has collected collateral under Section 75-9-607;

4529 (2) has disposed of collateral or entered into a  
4530 contract for its disposition under Section 75-9-610; or

4531 (3) has accepted collateral in full or partial  
4532 satisfaction of the obligation it secures under Section 75-9-622.

4533 **SECTION 75-9-624. Waiver.**

4534 (a) A debtor or secondary obligor may waive the right to  
4535 notification of disposition of collateral under Section 75-9-611  
4536 only by an agreement to that effect entered into and authenticated  
4537 after default.

4538 (b) A debtor may waive the right to require disposition of  
4539 collateral under Section 75-9-620(e) only by an agreement to that  
4540 effect entered into and authenticated after default.

4541 (c) Except in a consumer-goods transaction, a debtor or  
4542 secondary obligor may waive the right to redeem collateral under  
4543 Section 75-9-623 only by an agreement to that effect entered into  
4544 and authenticated after default.

4545 SUBPART 2. NONCOMPLIANCE WITH ARTICLE

4546 **SECTION 75-9-625. Remedies for secured party's failure to**  
4547 **comply with article.**

4548 (a) If it is established that a secured party is not  
4549 proceeding in accordance with this article, a court may order or  
4550 restrain collection, enforcement, or disposition of collateral on  
4551 appropriate terms and conditions.

4552 (b) Subject to subsections (c), (d), and (f), a person is  
4553 liable for damages in the amount of any loss caused by a failure  
4554 to comply with this article. Loss caused by a failure to comply  
4555 may include loss resulting from the debtor's inability to obtain,  
4556 or increased costs of, alternative financing.

4557 (c) Except as otherwise provided in Section 75-9-628:

4558 (1) a person that, at the time of the failure, was a  
4559 debtor, was an obligor, or held a security interest in or other

4560 lien on the collateral may recover damages under subsection (b)  
4561 for its loss; and

4562           (2) if the collateral is consumer goods, a person that  
4563 was a debtor or a secondary obligor at the time a secured party  
4564 failed to comply with this part may recover for that failure in  
4565 any event an amount not less than the credit service charge plus  
4566 10 percent of the principal amount of the obligation or the  
4567 time-price differential plus 10 percent of the cash price.

4568           (d) A debtor whose deficiency is eliminated under Section  
4569 75-9-626 may recover damages for the loss of any surplus.  
4570 However, a debtor or secondary obligor whose deficiency is  
4571 eliminated or reduced under Section 75-9-626 may not otherwise  
4572 recover under subsection (b) for noncompliance with the provisions  
4573 of this part relating to collection, enforcement, disposition, or  
4574 acceptance.

4575           (e) In addition to any damages recoverable under subsection  
4576 (b), the debtor, consumer obligor, or person named as a debtor in  
4577 a filed record, as applicable, may recover \$500 in each case from  
4578 a person that:

4579           (1) fails to comply with Section 75-9-208;

4580           (2) fails to comply with Section 75-9-209;

4581           (3) files a record that the person is not entitled to  
4582 file under Section 75-9-509(a);

4583           (4) fails to cause the secured party of record to file  
4584 or send a termination statement as required by Section 75-9-513(a)  
4585 or (c);

4586           (5) fails to comply with Section 75-9-616(b)(1) and  
4587 whose failure is part of a pattern, or consistent with a practice,  
4588 of noncompliance; or

4589           (6) fails to comply with Section 75-9-616(b)(2).

4590           (f) A debtor or consumer obligor may recover damages under  
4591 subsection (b) and, in addition, \$500 in each case from a person  
4592 that, without reasonable cause, fails to comply with a request

4593 under Section 75-9-210. A recipient of a request under Section  
4594 75-9-210 which never claimed an interest in the collateral or  
4595 obligations that are the subject of a request under that section  
4596 has a reasonable excuse for failure to comply with the request  
4597 within the meaning of this subsection.

4598 (g) If a secured party fails to comply with a request  
4599 regarding a list of collateral or a statement of account under  
4600 Section 75-9-210, the secured party may claim a security interest  
4601 only as shown in the list or statement included in the request as  
4602 against a person that is reasonably misled by the failure.

4603 **SECTION 75-9-626. Action in which deficiency or surplus is**  
4604 **in issue.**

4605 (a) In an action arising from a transaction, other than a  
4606 consumer transaction, in which the amount of a deficiency or  
4607 surplus is in issue, the following rules apply:

4608 (1) A secured party need not prove compliance with the  
4609 provisions of this part relating to collection, enforcement,  
4610 disposition, or acceptance unless the debtor or a secondary  
4611 obligor places the secured party's compliance in issue.

4612 (2) If the secured party's compliance is placed in  
4613 issue, the secured party has the burden of establishing that the  
4614 collection, enforcement, disposition, or acceptance was conducted  
4615 in accordance with this part.

4616 (3) Except as otherwise provided in Section 75-9-628,  
4617 if a secured party fails to prove that the collection,  
4618 enforcement, disposition, or acceptance was conducted in  
4619 accordance with the provisions of this part relating to  
4620 collection, enforcement, disposition, or acceptance, the liability  
4621 of a debtor or a secondary obligor for a deficiency is limited to  
4622 an amount by which the sum of the secured obligation, expenses,  
4623 and attorney's fees exceeds the greater of:

4624 (A) the proceeds of the collection, enforcement,  
4625 disposition, or acceptance; or

4626 (B) the amount of proceeds that would have been  
4627 realized had the noncomplying secured party proceeded in  
4628 accordance with the provisions of this part relating to  
4629 collection, enforcement, disposition, or acceptance.

4630 (4) For purposes of paragraph (3)(B), the amount of  
4631 proceeds that would have been realized is equal to the sum of the  
4632 secured obligation, expenses, and attorney's fees unless the  
4633 secured party proves that the amount is less than that sum.

4634 (5) If a deficiency or surplus is calculated under  
4635 Section 75-9-615(f), the debtor or obligor has the burden of  
4636 establishing that the amount of proceeds of the disposition is  
4637 significantly below the range of prices that a complying  
4638 disposition to a person other than the secured party, a person  
4639 related to the secured party, or a secondary obligor would have  
4640 brought.

4641 (b) The limitation of the rules in subsection (a) to  
4642 transactions other than consumer transactions is intended to leave  
4643 to the court the determination of the proper rules in consumer  
4644 transactions. The court may not infer from that limitation the  
4645 nature of the proper rule in consumer transactions and may  
4646 continue to apply established approaches.

4647 **SECTION 75-9-627. Determination of whether conduct was**  
4648 **commercially reasonable.**

4649 (a) The fact that a greater amount could have been obtained  
4650 by a collection, enforcement, disposition, or acceptance at a  
4651 different time or in a different method from that selected by the  
4652 secured party is not of itself sufficient to preclude the secured  
4653 party from establishing that the collection, enforcement,  
4654 disposition, or acceptance was made in a commercially reasonable  
4655 manner.

4656 (b) A disposition of collateral is made in a commercially  
4657 reasonable manner if the disposition is made:

4658 (1) in the usual manner on any recognized market;

4659           (2) at the price current in any recognized market at  
4660 the time of the disposition; or

4661           (3) otherwise in conformity with reasonable commercial  
4662 practices among dealers in the type of property that was the  
4663 subject of the disposition.

4664           (c) A collection, enforcement, disposition, or acceptance is  
4665 commercially reasonable if it has been approved:

4666                 (1) in a judicial proceeding;

4667                 (2) by a bona fide creditors' committee;

4668                 (3) by a representative of creditors; or

4669                 (4) by an assignee for the benefit of creditors.

4670           (d) Approval under subsection (c) need not be obtained, and  
4671 lack of approval does not mean that the collection, enforcement,  
4672 disposition, or acceptance is not commercially reasonable.

4673           **SECTION 75-9-628. Nonliability and limitation on liability**  
4674 **of secured party; liability of secondary obligor.**

4675           (a) Unless a secured party knows that a person is a debtor  
4676 or obligor, knows the identity of the person, and knows how to  
4677 communicate with the person:

4678                 (1) the secured party is not liable to the person, or  
4679 to a secured party or lienholder that has filed a financing  
4680 statement against the person, for failure to comply with this  
4681 article; and

4682                 (2) the secured party's failure to comply with this  
4683 article does not affect the liability of the person for a  
4684 deficiency.

4685           (b) A secured party is not liable because of its status as  
4686 secured party:

4687                 (1) to a person that is a debtor or obligor, unless the  
4688 secured party knows:

4689                         (A) that the person is a debtor or obligor;

4690                         (B) the identity of the person; and

4691                         (C) how to communicate with the person; or

4692           (2) to a secured party or lienholder that has filed a  
4693 financing statement against a person, unless the secured party  
4694 knows:

4695                   (A) that the person is a debtor; and

4696                   (B) the identity of the person.

4697           (c) A secured party is not liable to any person, and a  
4698 person's liability for a deficiency is not affected, because of  
4699 any act or omission arising out of the secured party's reasonable  
4700 belief that a transaction is not a consumer-goods transaction or a  
4701 consumer transaction or that goods are not consumer goods, if the  
4702 secured party's belief is based on its reasonable reliance on:

4703                   (1) a debtor's representation concerning the purpose  
4704 for which collateral was to be used, acquired, or held; or

4705                   (2) an obligor's representation concerning the purpose  
4706 for which a secured obligation was incurred.

4707           (d) A secured party is not liable to any person under  
4708 Section 75-9-625(c)(2) for its failure to comply with Section  
4709 75-9-616.

4710           (e) A secured party is not liable under Section  
4711 75-9-625(c)(2) more than once with respect to any one secured  
4712 obligation.

4713                                   **PART 7**

4714                                   **TRANSITION**

4715           **SECTION 75-9-701. Definitions.** (1) References in Part 7 to  
4716 "this act" refer to the legislative enactment by which this part  
4717 is added to Article 9 of the Uniform Commercial Code.

4718           (2) References in this part to "former Article 9" are to  
4719 Article 9 found in Chapter 9 of Title 75 as in effect on June 30,  
4720 2001.

4721           **SECTION 75-9-702. Savings clause.**

4722           (a) Except as otherwise provided in this part, this act  
4723 applies to a transaction or lien within its scope, even if the  
4724 transaction or lien was entered into or created before this act

4725 takes effect.

4726 (b) Except as otherwise provided in subsection (c) and  
4727 Sections 75-9-703 through 75-9-709:

4728 (1) transactions and liens that were not governed by  
4729 former Article 9, were validly entered into or created before this  
4730 act takes effect, and would be subject to this act if they had  
4731 been entered into or created after this act takes effect, and the  
4732 rights, duties, and interests flowing from those transactions and  
4733 liens remain valid after this act takes effect; and

4734 (2) the transactions and liens may be terminated,  
4735 completed, consummated, and enforced as required or permitted by  
4736 this act or by the law that otherwise would apply if this act had  
4737 not taken effect.

4738 (c) This act does not affect an action, case, or proceeding  
4739 commenced before this act takes effect.

4740 **SECTION 75-9-703. Security interest perfected before**  
4741 **effective date.**

4742 (a) A security interest that is enforceable immediately  
4743 before this act takes effect and would have priority over the  
4744 rights of a person that becomes a lien creditor at that time is a  
4745 perfected security interest under this act if, when this act takes  
4746 effect, the applicable requirements for enforceability and  
4747 perfection under this act are satisfied without further action.

4748 (b) Except as otherwise provided in Section 75-9-705, if,  
4749 immediately before this act takes effect, a security interest is  
4750 enforceable and would have priority over the rights of a person  
4751 that becomes a lien creditor at that time, but the applicable  
4752 requirements for enforceability or perfection under this act are  
4753 not satisfied when this act takes effect, the security interest:

4754 (1) is a perfected security interest for one year after  
4755 this act takes effect;

4756 (2) remains enforceable thereafter only if the security  
4757 interest becomes enforceable under Section 75-9-203 before the



4758 year expires; and

4759 (3) remains perfected thereafter only if the applicable  
4760 requirements for perfection under this act are satisfied before  
4761 the year expires.

4762 **SECTION 75-9-704. Security interest unperfected before**

4763 **effective date.** A security interest that is enforceable  
4764 immediately before this act takes effect but which would be  
4765 subordinate to the rights of a person that becomes a lien creditor  
4766 at that time:

4767 (1) remains an enforceable security interest for one  
4768 year after this act takes effect;

4769 (2) remains enforceable thereafter if the security  
4770 interest becomes enforceable under Section 75-9-203 when this act  
4771 takes effect or within one year thereafter; and

4772 (3) becomes perfected:

4773 (A) without further action, when this act takes  
4774 effect if the applicable requirements for perfection under this  
4775 act are satisfied before or at that time; or

4776 (B) when the applicable requirements for  
4777 perfection are satisfied if the requirements are satisfied after  
4778 that time.

4779 **SECTION 75-9-705. Effectiveness of action taken before**

4780 **effective date.**

4781 (a) If action, other than the filing of a financing  
4782 statement, is taken before this act takes effect and the action  
4783 would have resulted in priority of a security interest over the  
4784 rights of a person that becomes a lien creditor had the security  
4785 interest become enforceable before this act takes effect, the  
4786 action is effective to perfect a security interest that attaches  
4787 under this act within one year after this act takes effect. An  
4788 attached security interest becomes unperfected one year after this  
4789 act takes effect unless the security interest becomes a perfected  
4790 security interest under this act before the expiration of that

4791 period.

4792 (b) The filing of a financing statement before this act  
4793 takes effect is effective to perfect a security interest to the  
4794 extent the filing would satisfy the applicable requirements for  
4795 perfection under this act.

4796 (c) This act does not render ineffective an effective  
4797 financing statement that, before this act takes effect, is filed  
4798 and satisfies the applicable requirements for perfection under the  
4799 law of the jurisdiction governing perfection as provided in former  
4800 Section 75-9-103. However, except as otherwise provided in  
4801 subsections (d) and (e) and Section 75-9-706, the financing  
4802 statement ceases to be effective at the earlier of:

4803 (1) the time the financing statement would have ceased  
4804 to be effective under the law of the jurisdiction in which it is  
4805 filed; or

4806 (2) June 30, 2006.

4807 (d) The filing of a continuation statement after this act  
4808 takes effect does not continue the effectiveness of the financing  
4809 statement filed before this act takes effect. However, upon the  
4810 timely filing of a continuation statement after this act takes  
4811 effect and in accordance with the law of the jurisdiction  
4812 governing perfection as provided in Part 3, the effectiveness of a  
4813 financing statement filed in the same office in that jurisdiction  
4814 before this act takes effect continues for the period provided by  
4815 the law of that jurisdiction.

4816 (e) Subsection (c)(2) applies to a financing statement that,  
4817 before this act takes effect, is filed against a transmitting  
4818 utility and satisfies the applicable requirements for perfection  
4819 under the law of the jurisdiction governing perfection as provided  
4820 in former Section 75-9-103 only to the extent that Part 3 provides  
4821 that the law of a jurisdiction other than the jurisdiction in  
4822 which the financing statement is filed governs perfection of a  
4823 security interest in collateral covered by the financing

4824 statement.

4825 (f) A financing statement that includes a financing  
4826 statement filed before this act takes effect and a continuation  
4827 statement filed after this act takes effect is effective only to  
4828 the extent that it satisfies the requirements of Part 5 for an  
4829 initial financing statement.

4830 **SECTION 75-9-706. When initial financing statement suffices**  
4831 **to continue effectiveness of financing statement.**

4832 (a) The filing of an initial financing statement in the  
4833 office specified in Section 75-9-501 continues the effectiveness  
4834 of a financing statement filed before this act takes effect if:

4835 (1) the filing of an initial financing statement in  
4836 that office would be effective to perfect a security interest  
4837 under this act;

4838 (2) the pre-effective-date financing statement was  
4839 filed in an office in another State or another office in this  
4840 State; and

4841 (3) the initial financing statement satisfies  
4842 subsection (c).

4843 (b) The filing of an initial financing statement under  
4844 subsection (a) continues the effectiveness of the  
4845 pre-effective-date financing statement:

4846 (1) if the initial financing statement is filed before  
4847 this act takes effect, for the period provided in former Section  
4848 75-9-403 with respect to a financing statement; and

4849 (2) if the initial financing statement is filed after  
4850 this act takes effect, for the period provided in Section 75-9-515  
4851 with respect to an initial financing statement.

4852 (c) To be effective for purposes of subsection (a), an  
4853 initial financing statement must:

4854 (1) satisfy the requirements of Part 5 for an initial  
4855 financing statement;

4856 (2) identify the pre-effective-date financing statement

4857 by indicating the office in which the financing statement was  
4858 filed and providing the dates of filing and file numbers, if any,  
4859 of the financing statement and of the most recent continuation  
4860 statement filed with respect to the financing statement; and  
4861 (3) indicate that the pre-effective-date financing  
4862 statement remains effective.

4863 **SECTION 75-9-707. Amendment of pre-effective-date financing**  
4864 **statement.**

4865 (a) In this section, "pre-effective-date financing  
4866 statement" means a financing statement filed before this act takes  
4867 effect.

4868 (b) After this act takes effect, a person may add or delete  
4869 collateral covered by, continue or terminate the effectiveness of,  
4870 or otherwise amend the information provided in, a  
4871 pre-effective-date financing statement only in accordance with the  
4872 law of the jurisdiction governing perfection as provided in Part

4873 (3) However, the effectiveness of a pre-effective-date  
4874 financing statement also may be terminated in accordance with the  
4875 law of the jurisdiction in which the financing statement is filed.

4876 (c) Except as otherwise provided in subsection (d), if the  
4877 law of this State governs perfection of a security interest, the  
4878 information in a pre-effective-date financing statement may be  
4879 amended after this act takes effect only if:

4880 (1) the pre-effective-date financing statement and an  
4881 amendment are filed in the office specified in Section 75-9-501;

4882 (2) an amendment is filed in the office specified in  
4883 Section 75-9-501 concurrently with, or after the filing in that  
4884 office of, an initial financing statement that satisfies Section  
4885 75-9-706(c); or

4886 (3) an initial financing statement that provides the  
4887 information as amended and satisfies Section 75-9-706(c) is filed  
4888 in the office specified in Section 75-9-501.

4889 (d) If the law of this state governs perfection of a

4890 security interest, the effectiveness of a pre-effective-date  
4891 financing statement may be continued only under Section  
4892 75-9-705(d) and (f) or 75-9-706.

4893 (e) Whether or not the law of this state governs perfection  
4894 of a security interest, the effectiveness of a pre-effective-date  
4895 financing statement filed in this state may be terminated after  
4896 this act takes effect by filing a termination statement in the  
4897 office in which the pre-effective-date financing statement is  
4898 filed, unless an initial financing statement that satisfies  
4899 Section 75-9-706(c) has been filed in the office specified by the  
4900 law of the jurisdiction governing perfection as provided in Part 3  
4901 as the office in which to file a financing statement.

4902 **SECTION 75-9-708. Persons entitled to file initial financing**  
4903 **statement or continuation statement.** A person may file an initial  
4904 financing statement or a continuation statement under this part  
4905 if:

4906 (1) the secured party of record authorizes the filing;  
4907 and

4908 (2) the filing is necessary under this part:

4909 (A) to continue the effectiveness of a financing  
4910 statement filed before this act takes effect; or

4911 (B) to perfect or continue the perfection of a  
4912 security interest.

4913 **SECTION 75-9-709. Priority.**

4914 (a) This act determines the priority of conflicting claims  
4915 to collateral. However, if the relative priorities of the claims  
4916 were established before this act takes effect, former Article 9  
4917 determines priority.

4918 (b) For purposes of Section 75-9-322(a), the priority of a  
4919 security interest that becomes enforceable under Section 75-9-203  
4920 of this act dates from the time this act takes effect if the  
4921 security interest is perfected under this act by the filing of a  
4922 financing statement before this act takes effect which would not

4923 have been effective to perfect the security interest under former  
4924 Article 9. This subsection does not apply to conflicting security  
4925 interests each of which is perfected by the filing of such a  
4926 financing statement.

4927           **SECTION 75-9-710. Special transitional provisions for**  
4928 **maintaining and searching local records.**

4929           (a) In this section:

4930                   (1) "Local-filing office" means a filing office, other  
4931 than the statewide central filing office identified in Section  
4932 75-9-401(1) of former Article 9, that is designated as the proper  
4933 place to file a financing statement under Section 75-9-401(1) of  
4934 former Article 9. The term applies only with respect to a record  
4935 that covers a type of collateral as to which the filing office is  
4936 designated in that section as the proper place to file.

4937                   (2) "Former-Article-9 record" mean:

4938                           (A) financing statements and other records that  
4939 have been filed in a local-filing office before July 1, 2001, and  
4940 that are, or upon processing and indexing will be, reflected in  
4941 the index maintained, as of June 30, 2001, by the local-filing  
4942 office for financing statements and other records filed in the  
4943 local-filing office before July 1, 2001, and

4944                           (B) the index as of June 30, 2001.

4945           The term does not include records presented to a local-filing  
4946 office for filing after June 30, 2001, whether or not the records  
4947 relate to financing statements filed in the local-filing office  
4948 before July 1, 2001.

4949                   (3) "Mortgage," "as-extracted collateral," "fixture  
4950 filing," "goods" and "fixtures" have the meanings set forth in  
4951 Revised Article 9 for those terms.

4952           (b) Except as expressly provided in Part 5 of Article 9 as  
4953 effective on and after July 1, 2001, a local-filing office must  
4954 not accept for filing a record presented after June 30, 2001,

4955 whether or not the record relates to a financing statement filed  
4956 in the local-filing office before July 1, 2001.

4957 (c) Until July 1, 2008, each local-filing office must  
4958 maintain all former-Article-9 records in accordance with former  
4959 Article 9. A former-Article-9 record that is not reflected on the  
4960 index maintained at June 30, 2001, by the local-filing office must  
4961 be processed and indexed, and reflected on the index as of June  
4962 30, 2001, as soon as practicable but in any event no later than  
4963 July 30, 2001.

4964 (d) Until at least June 30, 2008, each local-filing office  
4965 must respond to requests for information with respect to  
4966 former-Article-9 records relating to a debtor and issue  
4967 certificates in accordance with former Article 9.

4968 (1) Upon request in writing of any person, the filing  
4969 officer shall issue his certificate showing whether there is on  
4970 file, on the date and hour stated therein, any presently effective  
4971 financing statements naming a particular debtor thereof, and if  
4972 there is, giving the date and hour of filing and file number of  
4973 each such financing statement and the name and address of each  
4974 secured party or his assignee therein. Each such request shall be  
4975 accompanied by a search fee of \$5.00 if the request is made on the  
4976 standard form prescribed by the Secretary of State, and otherwise  
4977 it shall be \$10.00. An additional fee of \$2.00 shall be paid by  
4978 the requesting party for each financing statement listed on the  
4979 filing officer's certificate, the aggregate of which shall be  
4980 billed to the requesting party at the time the filing officer's  
4981 certificate is issued. Failure to pay the additional fee by any  
4982 requesting party when due may result in denial of further service  
4983 to the requesting party until the amount due has been paid.

4984 (2) Upon request, the filing officer shall furnish a  
4985 copy of any presently effective financing statements on file for a  
4986 uniform fee of \$2.00 per page naming a particular debtor when the  
4987 request is made on the form and in the manner hereinbefore

4988 provided for listing the same.

4989 (e) After June 30, 2008, each local-filing office may remove  
4990 and destroy, in accordance with any then applicable record  
4991 retention law of this State, all former-Article-9 records,  
4992 including the related index.

4993 (f) This section does not apply, with respect to financing  
4994 statements and other records, to a filing office in which  
4995 mortgages or records of mortgages on real property are required to  
4996 be filed or recorded, if:

4997 (1) the collateral is timber to be cut or as-extracted  
4998 collateral, or

4999 (2) the record is or relates to a financing statement  
5000 filed as a fixture filing and the collateral is goods that are or  
5001 are to become fixtures.

5002 SECTION 2. Sections 75-9-101, 75-9-102, 75-9-103, 75-9-104,  
5003 75-9-105, 75-9-106, 75-9-107, 75-9-108, 75-9-109, 75-9-110,  
5004 75-9-111, 75-9-112, 75-9-113, 75-9-114, 75-9-115, 75-9-116,  
5005 75-9-201, 75-9-202, 75-9-203, 75-9-204, 75-9-205, 75-9-206,  
5006 75-9-207, 75-9-208, 75-9-301, 75-9-302, 75-9-303, 75-9-304,  
5007 75-9-305, 75-9-306, 75-9-307, 75-9-308, 75-9-309, 75-9-310,  
5008 75-9-311, 75-9-312, 75-9-313, 75-9-314, 75-9-315, 75-9-316,  
5009 75-9-317, 75-9-318, 75-9-319 75-9-401, 75-9-402, 75-9-403,  
5010 75-9-404, 75-9-405, 75-9-406, 75-9-407, 75-9-408, 75-9-409,  
5011 75-9-410, 75-9-501, 75-9-502, 75-9-503, 75-9-504, 75-9-505,  
5012 75-9-506, and 75-9-507, Mississippi Code of 1972, which comprise  
5013 Uniform Commercial Code Article 9 - Secured Transactions, are  
5014 repealed.

5015 SECTION 3. Section 75-1-105, Mississippi Code of 1972, is  
5016 amended as follows:[CSQ1]

5017 75-1-105. (1) Except as provided hereafter in this section,  
5018 when a transaction bears a reasonable relation to this state and  
5019 also to another state or nation the parties may agree that the law  
5020 either of this state or of such other state or nation shall govern



5021 their rights and duties. Failing such agreement, this code  
5022 applies to transactions bearing an appropriate relation to this  
5023 state. Provided, however, the law of the State of Mississippi  
5024 shall always govern the rights and duties of the parties in regard  
5025 to disclaimers of implied warranties of merchantability or  
5026 fitness, limitations of remedies for breaches of implied  
5027 warranties of merchantability or fitness, or the necessity for  
5028 privity of contract to maintain a civil action for breach of  
5029 implied warranties of merchantability or fitness notwithstanding  
5030 any agreement by the parties that the laws of some other state or  
5031 nation shall govern the rights and duties of the parties.

5032 (2) Where one of the following provisions of this act  
5033 specifies the applicable law, that provision governs and a  
5034 contrary agreement is effective only to the extent permitted by  
5035 the law (including the conflict of laws rules) so specified:

5036 Rights of creditors against sold goods. Section 75-2-402.

5037 Applicability of the Article on Leases. Sections 75-2A-105  
5038 and 75-2A-106.

5039 Applicability of the Article on Bank Deposits and  
5040 Collections. Section 75-4-102.

5041 Governing law in the Article on Funds Transfers. Section  
5042 75-4A-507.

5043 Applicability of the Article on Investment Securities.  
5044 Section 75-8-110.

5045 Law governing perfection, the effect of perfection or  
5046 nonperfection, and the priority of security interests and  
5047 agricultural liens. Sections 75-9-301 through 75-9-307.

5048 SECTION 4. Section 75-1-201, Mississippi Code of 1972, is  
5049 amended as follows:[CSQ2]

5050 75-1-201. Subject to additional definitions contained in the  
5051 subsequent chapters of this code which are applicable to specific  
5052 chapters or parts thereof, and unless the context otherwise  
5053 requires, in this code:

5054           (1) "Action" in the sense of a judicial proceeding  
5055 includes recoupment, counterclaim, set-off, suit in equity and any  
5056 other proceedings in which rights are determined.

5057           (2) "Aggrieved party" means a party entitled to resort  
5058 to a remedy.

5059           (3) "Agreement" means the bargain of the parties in  
5060 fact as found in their language or by implication from other  
5061 circumstances including course of dealing or usage of trade or  
5062 course of performance as provided in this code (Sections 75-1-205  
5063 and 75-2-208). Whether an agreement has legal consequences is  
5064 determined by the provisions of this code, if applicable;  
5065 otherwise by the law of contracts (Section 75-1-103). (Compare  
5066 "Contract.")

5067           (4) "Bank" means any person engaged in the business of  
5068 banking.

5069           (5) "Bearer" means the person in possession of an  
5070 instrument, document of title, or certificated security payable to  
5071 bearer or indorsed in blank.

5072           (6) "Bill of lading" means a document evidencing the  
5073 receipt of goods for shipment issued by a person engaged in the  
5074 business of transporting or forwarding goods, and includes an  
5075 airbill. "Airbill" means a document serving for air  
5076 transportation as a bill of lading does for marine or rail  
5077 transportation, and includes an air consignment note or air  
5078 waybill.

5079           (7) "Branch" includes a separately incorporated foreign  
5080 branch of a bank.

5081           (8) "Burden of establishing" a fact means the burden of  
5082 persuading the triers of fact that the existence of the fact is  
5083 more probable than its nonexistence.

5084           (9) "Buyer in ordinary course of business" means a  
5085 person that buys goods in good faith, without knowledge that the  
5086 sale \* \* \* violates the \* \* \* rights \* \* \* of another person in

5087 the goods, and in the ordinary course from a person, other than a  
5088 pawnbroker, in the business of selling goods of that kind \* \* \*.  
5089 A person buys goods in the ordinary course if the sale to the  
5090 person comports with the usual or customary practices in the kind  
5091 of business in which the seller is engaged or with the seller's  
5092 own usual or customary practices. A person that sells oil, gas,  
5093 or other minerals at the wellhead or minehead is a person in the  
5094 business of selling goods of that kind. A buyer in the ordinary  
5095 course of business may buy for cash, by exchange of other  
5096 property, or on secured or unsecured credit, and may acquire goods  
5097 or documents of title under a pre-existing contract for  
5098 sale \* \* \*. Only a buyer that takes possession of the goods or  
5099 has a right to recover the goods from the seller under Article 2  
5100 may be a buyer in ordinary course of business. A person that  
5101 acquires goods in a transfer in bulk or as security for or in  
5102 total or partial satisfaction of a money debt is not a buyer in  
5103 ordinary course of business.

5104 (10) "Conspicuous": A term or clause is conspicuous  
5105 when it is so written that a reasonable person against whom it is  
5106 to operate ought to have noticed it. A printed heading in  
5107 capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous.  
5108 Language in the body of a form is "conspicuous" if it is in larger  
5109 or other contrasting type or color. But in a telegram any stated  
5110 term is "conspicuous." Whether a term or clause is "conspicuous"  
5111 or not is for decision by the court.

5112 (11) "Contract" means the total legal obligation which  
5113 results from the parties' agreement as affected by this code and  
5114 any other applicable rules of law. (Compare "Agreement.")

5115 (12) "Creditor" includes a general creditor, a secured  
5116 creditor, a lien creditor and any representative of creditors,  
5117 including an assignee for the benefit of creditors, a trustee in  
5118 bankruptcy, a receiver in equity and an executor or administrator  
5119 of an insolvent debtor's or assignor's estate.

5120           (13) "Defendant" includes a person in the position of  
5121 defendant in a cross-action or counterclaim.

5122           (14) "Delivery" with respect to instruments, documents  
5123 of title, chattel paper, or certificated securities means  
5124 voluntary transfer of possession.

5125           (15) "Document of title" includes bill of lading, dock  
5126 warrant, dock receipt, warehouse receipt or order for the delivery  
5127 of goods, and also any other document which in the regular course  
5128 of business or financing is treated as adequately evidencing that  
5129 the person in possession of it is entitled to receive, hold and  
5130 dispose of the document and the goods it covers. To be a document  
5131 of title a document must purport to be issued by or addressed to a  
5132 bailee and purport to cover goods in the bailee's possession which  
5133 are either identified or are fungible portions of an identified  
5134 mass.

5135           (16) "Fault" means wrongful act, omission or breach.

5136           (17) "Fungible" with respect to goods or securities  
5137 means goods or securities of which any unit is, by nature or usage  
5138 of trade, the equivalent of any other like unit. Goods which are  
5139 not fungible shall be deemed fungible for the purposes of this  
5140 code to the extent that under a particular agreement or document  
5141 unlike units are treated as equivalents.

5142           (18) "Genuine" means free of forgery or counterfeiting.

5143           (19) "Good faith" means honesty in fact in the conduct  
5144 or transaction concerned.

5145           (20) "Holder," with respect to a negotiable instrument,  
5146 means the person in possession if the instrument is payable to  
5147 bearer or, in the case of an instrument payable to an identified  
5148 person, if the identified person is in possession. "Holder," with  
5149 respect to a document of title, means the person in possession if  
5150 the goods are deliverable to bearer or to the order of the person  
5151 in possession.

5152           (21) To "honor" is to pay or to accept and pay, or

5153 where a credit so engages to purchase or discount a draft  
5154 complying with the terms of the credit.

5155 (22) "Insolvency proceedings" includes any assignment  
5156 for the benefit of creditors or other proceedings intended to  
5157 liquidate or rehabilitate the estate of the person involved.

5158 (23) A person is "insolvent" who either has ceased to  
5159 pay his debts in the ordinary course of business or cannot pay his  
5160 debts as they become due or is insolvent within the meaning of the  
5161 federal bankruptcy law.

5162 (24) "Money" means a medium of exchange authorized or  
5163 adopted by a domestic or foreign government and includes a  
5164 monetary unit of account established by an intergovernmental  
5165 organization or by agreement between two (2) or more nations.

5166 (25) A person has "notice" of a fact when

5167 (a) He has actual knowledge of it; or

5168 (b) He has received a notice or notification of  
5169 it; or

5170 (c) From all the facts and circumstances known to  
5171 him at the time in question he has reason to know that it exists.

5172 A person "knows" or has "knowledge" of a fact when he has  
5173 actual knowledge of it. "Discover" or "learn" or a word or phrase  
5174 of similar import refers to knowledge rather than to reason to  
5175 know. The time and circumstances under which a notice or  
5176 notification may cease to be effective are not determined by this  
5177 code.

5178 (26) A person "notifies" or "gives" a notice or  
5179 notification to another by taking such steps as may be reasonably  
5180 required to inform the other in ordinary course whether or not  
5181 such other actually comes to know of it. A person "receives" a  
5182 notice or notification when:

5183 (a) It comes to his attention; or

5184 (b) It is duly delivered at the place of business  
5185 through which the contract was made or at any other place held out

5186 by him as the place for receipt of such communications.

5187           (27) Notice, knowledge or a notice or notification  
5188 received by an organization is effective for a particular  
5189 transaction from the time when it is brought to the attention of  
5190 the individual conducting that transaction, and in any event from  
5191 the time when it would have been brought to his attention if the  
5192 organization had exercised due diligence. An organization  
5193 exercises due diligence if it maintains reasonable routines for  
5194 communicating significant information to the person conducting the  
5195 transaction and there is reasonable compliance with the routines.

5196 Due diligence does not require an individual acting for the  
5197 organization to communicate information unless such communication  
5198 is part of his regular duties or unless he has reason to know of  
5199 the transaction and that the transaction would be materially  
5200 affected by the information.

5201           (28) "Organization" includes a corporation, government  
5202 or governmental subdivision or agency, business trust, estate,  
5203 trust, partnership or association, two (2) or more persons having  
5204 a joint or common interest, or any other legal or commercial  
5205 entity.

5206           (29) "Party," as distinct from "third party," means a  
5207 person who has engaged in a transaction or made an agreement  
5208 within this code.

5209           (30) "Person" includes an individual or an organization  
5210 (see Section 75-1-102).

5211           (31) "Presumption" or "presumed" means that the trier  
5212 of fact must find the existence of the fact presumed unless and  
5213 until evidence is introduced which would support a finding of its  
5214 nonexistence.

5215           (32) "Purchase" includes taking by sale, discount,  
5216 negotiation, mortgage, pledge, lien, security interest, issue or  
5217 reissue, gift or any other voluntary transaction creating an  
5218 interest in property.

5219 (33) "Purchaser" means a person who takes by purchase.

5220 (34) "Remedy" means any remedial right to which an  
5221 aggrieved party is entitled with or without resort to a tribunal.

5222 (35) "Representative" includes an agent, an officer of  
5223 a corporation or association, and a trustee, executor or  
5224 administrator of an estate, or any other person empowered to act  
5225 for another.

5226 (36) "Rights" includes remedies.

5227 (37) "Security interest" means an interest in personal  
5228 property or fixtures which secures payment or performance of an  
5229 obligation.

5230 (a) \* \* \* The term also includes any interest of a  
5231 consignor and a buyer of accounts, chattel paper, a payment  
5232 intangible, or a promissory note in a transaction that is subject  
5233 to Article 9. The special property interest of a buyer of goods  
5234 on identification of such goods to a contract for sale under  
5235 Section 75-2-401 is not a "security interest," but a buyer may  
5236 also acquire "security interest," by complying with Article 9.  
5237 Except as otherwise provided in Section 75-2-505, the right of a  
5238 seller or lessor of goods under Article 2 or 2A to retain or  
5239 acquire possession of the goods is not a "security interest", but  
5240 a seller or lessor may also acquire a "security interest" by  
5241 complying with Article 9. The retention or reservation of title  
5242 by a seller of goods notwithstanding shipment or delivery to the  
5243 buyer (Section 75-2-401) is limited in effect to a reservation of  
5244 a security interest.

5245 (b) Whether a transaction creates a lease or  
5246 security interest is determined by the facts of each case;  
5247 however, a transaction creates a security interest if the  
5248 consideration the lessee is to pay the lessor for the right to  
5249 possession and use of the goods is an obligation for the term of  
5250 the lease not subject to termination by the lessee, and

5251 (i) The original term of the lease is equal

5252 to or greater than the remaining economic life of the goods,

5253 (ii) The lessee is bound to renew the lease  
5254 for the remaining economic life of the goods or is bound to become  
5255 the owner of the goods,

5256 (iii) The lessee has an option to renew the  
5257 lease for the remaining economic life of the goods for no  
5258 additional consideration or nominal additional consideration upon  
5259 compliance with the lease agreement, or

5260 (iv) The lessee has an option to become the  
5261 owner of the goods for no additional consideration or nominal  
5262 additional consideration upon compliance with the lease agreement.

5263 (c) A transaction does not create a security  
5264 interest merely because it provides that

5265 (i) The present value of the consideration  
5266 the lessee is obligated to pay the lessor for the right to  
5267 possession and use of the goods is substantially equal to or is  
5268 greater than the fair market value of the goods at the time the  
5269 lease is entered into,

5270 (ii) The lessee assumes risk of loss of the  
5271 goods, or agrees to pay taxes, insurance, filing, recording, or  
5272 registration fees, or service or maintenance costs with respect to  
5273 the goods,

5274 (iii) The lessee has an option to renew the  
5275 lease or to become the owner of the goods,

5276 (iv) The lessee has an option to renew the  
5277 lease for a fixed rent that is equal to or greater than the  
5278 reasonably predictable fair market rent for the use of the goods  
5279 for the term of the renewal at the time the option is to be  
5280 performed, or

5281 (v) The lessee has an option to become the  
5282 owner of the goods for a fixed price that is equal to or greater  
5283 than the reasonably predictable fair market value of the goods at  
5284 the time the option is to be performed.



5285 (d) For purposes of this subsection (37):  
5286 (i) Additional consideration is not nominal  
5287 if  
5288 1. When the option to renew the lease is  
5289 granted to the lessee the rent is stated to be the fair market  
5290 rent for the use of the goods for the term of the renewal  
5291 determined at the time the option is to be performed, or  
5292 2. When the option to become the owner  
5293 of the goods is granted to the lessee the price is stated to be  
5294 the fair market value of the goods determined at the time the  
5295 option is to be performed. Additional consideration is nominal if  
5296 it is less than the lessee's reasonably predictable cost of  
5297 performing under the lease agreement if the option is not  
5298 exercised;  
5299 (ii) "Reasonably predictable" and "remaining  
5300 economic life of the goods" are to be determined with reference to  
5301 the fact and circumstances at the time the transaction is entered  
5302 into; and  
5303 (iii) "Present value" means the amount as of  
5304 a date certain of one or more sums payable in the future,  
5305 discounted to the date certain. The discount is determined by the  
5306 interest rate specified by the parties if the rate is not  
5307 manifestly unreasonable at the time the transaction is entered  
5308 into; otherwise, the discount is determined by a commercially  
5309 reasonable rate that takes into account the facts and  
5310 circumstances of each case at the time the transaction was entered  
5311 into.  
5312 (38) "Send" in connection with any writing or notice  
5313 means to deposit in the mail or deliver for transmission by any  
5314 other usual means of communication with postage or cost of  
5315 transmission provided for and properly addressed and in the case  
5316 of an instrument to an address specified thereon or otherwise  
5317 agreed, or if there be none to any address reasonable under the

5318 circumstances. The receipt of any writing or notice within the  
5319 time at which it would have arrived if properly sent has the  
5320 effect of a proper sending.

5321 (39) "Signed" includes any symbol executed or adopted  
5322 by a party with present intention to authenticate a writing.

5323 (40) "Surety" includes guarantor.

5324 (41) "Telegram" includes a message transmitted by  
5325 radio, teletype, cable, any mechanical method of transmission, or  
5326 the like.

5327 (42) "Term" means that portion of an agreement which  
5328 relates to a particular matter.

5329 (43) "Unauthorized" signature means one made without  
5330 actual, implied, or apparent authority and includes a forgery.

5331 (44) "Value." Except as otherwise provided with respect  
5332 to negotiable instruments and bank collections (Sections 75-3-303,  
5333 75-4-208 and 75-4-209) a person gives "value" for rights if he  
5334 acquires them:

5335 (a) In return for a binding commitment to extend  
5336 credit or for the extension of immediately available credit  
5337 whether or not drawn upon and whether or not a charge-back is  
5338 provided for in the event of difficulties in collection; or

5339 (b) As security for or in total or partial  
5340 satisfaction of a pre-existing claim; or

5341 (c) By accepting delivery pursuant to a  
5342 pre-existing contract for purchase; or

5343 (d) Generally, in return for any consideration  
5344 sufficient to support a simple contract.

5345 (45) "Warehouse receipt" means a receipt issued by a  
5346 person engaged in the business of storing goods for hire.

5347 (46) "Written" or "writing" includes printing,  
5348 typewriting, or any other intentional reduction to tangible form.

5349 SECTION 5. Section 75-2-103, Mississippi Code of 1972, is  
5350 amended as follows:[CSQ3]

5351           75-2-103. (1) In this chapter unless the context otherwise  
5352 requires:

5353           (a) "Buyer" means a person who buys or contracts to buy  
5354 goods.

5355           (b) "Good faith" in the case of a merchant means  
5356 honesty in fact and the observance of reasonable commercial  
5357 standards of fair dealing in the trade.

5358           (c) "Receipt" of goods means taking physical possession  
5359 of them.

5360           (d) "Seller" means a person who sells or contracts to  
5361 sell goods.

5362           (2) Other definitions applying to this chapter or to  
5363 specified parts thereof, and the sections in which they appear  
5364 are:

5365	"Acceptance"	Section <u>75-2-606</u> .
5366	"Banker's credit"	Section <u>75-2-325</u> .
5367	"Between merchants"	Section <u>75-2-104</u> .
5368	"Cancellation"	Section <u>75-2-106(4)</u> .
5369	"Commercial unit"	Section <u>75-2-105</u> .
5370	"Confirmed credit"	Section <u>75-2-325</u> .
5371	"Conforming to contract"	Section <u>75-2-106</u> .
5372	"Contract for sale"	Section <u>75-2-106</u> .
5373	"Cover"	Section <u>75-2-712</u> .
5374	"Entrusting"	Section <u>75-2-403</u> .
5375	"Financing agency"	Section <u>75-2-104</u> .
5376	"Future goods"	Section <u>75-2-105</u> .
5377	"Goods"	Section <u>75-2-105</u> .
5378	"Identification"	Section <u>75-2-501</u> .
5379	"Installment contract"	Section <u>75-2-612</u> .
5380	"Letter of Credit"	Section <u>75-2-325</u> .
5381	"Lot"	Section <u>75-2-105</u> .
5382	"Merchant"	Section <u>75-2-104</u> .
5383	"Overseas"	Section <u>75-2-323</u> .

5384 "Person in position of seller" Section 75-2-707.  
5385 "Present sale" Section 75-2-106.  
5386 "Sale" Section 75-2-106.  
5387 "Sale on approval" Section 75-2-326.  
5388 "Sale or return" Section 75-2-326.  
5389 "Termination" Section 75-2-106.

5390 (3) The following definitions in other chapters apply to  
5391 this chapter:

5392 "Check" Section 75-3-104.  
5393 "Consignee" Section 75-7-102.  
5394 "Consignor" Section 75-7-102.  
5395 "Consumer goods" Section 75-9-102.  
5396 "Dishonor" Section 75-3-502.  
5397 "Draft" Section 75-3-104.

5398 (4) In addition Chapter 1 contains general definitions and  
5399 principles of construction and interpretation applicable  
5400 throughout this chapter.

5401 SECTION 6. Section 75-2-210, Mississippi Code of 1972, is  
5402 amended as follows:[CSQ4]

5403 75-2-210. (1) A party may perform his duty through a  
5404 delegate unless otherwise agreed or unless the other party has a  
5405 substantial interest in having his original promisor perform or  
5406 control the acts required by the contract. No delegation of  
5407 performance relieves the party delegating of any duty to perform  
5408 or any liability for breach.

5409 (2) Except as otherwise provided in Section 75-9-406, unless  
5410 otherwise agreed, all rights of either seller or buyer can be  
5411 assigned except where the assignment would materially change the  
5412 duty of the other party, or increase materially the burden or risk  
5413 imposed on him by his contract, or impair materially his chance of  
5414 obtaining return performance. A right to damages for breach of  
5415 the whole contract or a right arising out of the assignor's due  
5416 performance of his entire obligation can be assigned despite

5417 agreement otherwise.

5418       (3) The creation, attachment, perfection, or enforcement of  
5419 a security interest in the seller's interest under a contract is  
5420 not a transfer that materially changes the duty of or increases  
5421 materially the burden or risk imposed on the buyer or impairs  
5422 materially the buyer's chance of obtaining return performance  
5423 within the purview of subsection (2) unless, and then only to the  
5424 extent that, enforcement actually results in a delegation of  
5425 material performance of the seller. Even in that event, the  
5426 creation, attachment, perfection, and enforcement of the security  
5427 interest remain effective, but (i) the seller is liable to the  
5428 buyer for damages caused by the delegation to the extent that the  
5429 damages could not reasonably be prevented by the buyer, and (ii) a  
5430 court having jurisdiction may grant other appropriate relief,  
5431 including cancellation of the contract for sale or an injunction  
5432 against enforcement of the security interest or consummation of  
5433 the enforcement.

5434       (4) Unless the circumstances indicate the contrary a  
5435 prohibition of assignment of "the contract" is to be construed as  
5436 barring only the delegation to the assignee of the assignor's  
5437 performance.

5438       (5) An assignment of "the contract" or of "all my rights  
5439 under the contract" or an assignment in similar general terms is  
5440 an assignment of rights and unless the language or the  
5441 circumstances (as in an assignment for security) indicate the  
5442 contrary, it is a delegation of performance of the duties of the  
5443 assignor and its acceptance by the assignee constitutes a promise  
5444 by him to perform those duties. This promise is enforceable by  
5445 either the assignor or the other party to the original contract.

5446       (6) The other party may treat any assignment which delegates  
5447 performance as creating reasonable grounds for insecurity and may  
5448 without prejudice to his rights against the assignor demand  
5449 assurances from the assignee (Section 75-2-609).

5450 SECTION 7. Section 75-2-326, Mississippi Code of 1972, is  
5451 amended as follows:[CSQ5]

5452 75-2-326. (1) Unless otherwise agreed, if delivered goods  
5453 may be returned by the buyer even though they conform to the  
5454 contract, the transaction is

5455 (a) a "sale on approval" if the goods are delivered  
5456 primarily for use, and

5457 (b) a "sale or return" if the goods are delivered  
5458 primarily for resale.

5459 (2) \* \* \* Goods held on approval are not subject to the  
5460 claims of the buyer's creditors until acceptance; goods held on  
5461 sale or return are subject to such claims while in the buyer's  
5462 possession.

5463 \* \* \*

5464 (3) Any "or return" term of a contract for sale is to be  
5465 treated as a separate contract for sale within the statute of  
5466 frauds section of this chapter (Section 75-2-201) and as  
5467 contradicting the sale aspect of the contract within the  
5468 provisions of this chapter on parol or extrinsic evidence (Section  
5469 75-2-202).

5470 SECTION 8. Section 75-2-502, Mississippi Code of 1972, is  
5471 amended as follows:[CSQ6]

5472 75-2-502. **Buyer's right to goods on seller's repudiation,**  
5473 **failure to deliver, or insolvency.**

5474 (1) Subject to subsections (2) and (3) and even though the  
5475 goods have not been shipped a buyer who has paid a part or all of  
5476 the price of goods in which he has a special property under the  
5477 provisions of Section 75-2-501 may on making and keeping good a  
5478 tender of any unpaid portion of their price recover them from the  
5479 seller if:

5480 (a) In the case of goods bought for personal, family or  
5481 household purposes, the seller repudiates or fails to deliver as  
5482 required by the contract; or

5483           (b) In all cases, the seller becomes insolvent within  
5484 ten (10) days after receipt of the first installment on their  
5485 price.

5486           (2) The buyer's right to recover the goods under subsection  
5487 (1)(a) vests upon acquisition of a special property, even if the  
5488 seller had not then repudiated or failed to deliver.

5489           (3) If the identification creating his special property has  
5490 been made by the buyer he acquires the right to recover the goods  
5491 only if they conform to the contract for sale.

5492           SECTION 9. Section 75-2-716, Mississippi Code of 1972, is  
5493 amended as follows:[CSQ7]

5494           75-2-716. (1) Specific performance may be decreed where the  
5495 goods are unique or in other proper circumstances.

5496           (2) The decree for specific performance may include such  
5497 terms and conditions as to payment of the price, damages, or other  
5498 relief as the court may deem just.

5499           (3) The buyer has a right of replevin for goods identified  
5500 to the contract if after reasonable effort he is unable to effect  
5501 cover for such goods or the circumstances reasonably indicate that  
5502 such effort will be unavailing or if the goods have been shipped  
5503 under reservation and satisfaction of the security interest in  
5504 them has been made or tendered. In the case of goods bought for  
5505 personal, family, or household purposes, the buyer's right of  
5506 replevin vests upon acquisition of a special property, even if the  
5507 seller had not then repudiated or failed to deliver.

5508           SECTION 10. Section 75-2A-103, Mississippi Code of 1972, is  
5509 amended as follows:[CSQ8]

5510           75-2A-103. (1) In this chapter unless the context otherwise  
5511 requires:

5512           (a) "Buyer in ordinary course of business" means a  
5513 person who in good faith and without knowledge that the sale to  
5514 him is in violation of the ownership rights or security interest  
5515 or leasehold interest of a third party in the goods, buys in

5516 ordinary course from a person in the business of selling goods of  
5517 that kind but does not include a pawnbroker. "Buying" may be for  
5518 cash or by exchange of other property or on secured or unsecured  
5519 credit and includes receiving goods or documents of title under a  
5520 preexisting contract for sale but does not include a transfer in  
5521 bulk or as security for or in total or partial satisfaction of a  
5522 money debt.

5523 (b) "Cancellation" occurs when either party puts an end  
5524 to the lease contract for default by the other party.

5525 (c) "Commercial unit" means such a unit of goods as by  
5526 commercial usage is a single whole for purposes of lease and  
5527 division of which materially impairs its character or value on the  
5528 market or in use. A commercial unit may be a single article, as a  
5529 machine, or a set of articles, as a suite of furniture or a line  
5530 of machinery, or a quantity, as a gross or carload, or any other  
5531 unit treated in use or in the relevant market as a single whole.

5532 (d) "Conforming" goods or performance under a lease  
5533 contract means goods or performance that are in accordance with  
5534 the obligations under the lease contract.

5535 (e) "Consumer lease" means a lease that a lessor  
5536 regularly engaged in the business of leasing or selling makes to a  
5537 lessee who is an individual and who takes under the lease  
5538 primarily for a personal, family or household purpose, if the  
5539 total payments to be made under the lease contract, excluding  
5540 payments for options to renew or buy, do not exceed Twenty-five  
5541 Thousand Dollars (\$25,000.00).

5542 (f) "Fault" means wrongful act, omission, breach or  
5543 default.

5544 (g) "Finance lease" means a lease with respect to  
5545 which:

5546 (i) the lessor does not select, manufacture, or  
5547 supply the goods;

5548 (ii) the lessor acquires the goods or the right to



5549 possession and use of the goods in connection with the lease; and

5550 (iii) one of the following occurs:

5551 (A) the lessee receives a copy of the  
5552 contract by which the lessor acquired the goods or the right to  
5553 possession and use of the goods before signing the lease contract;

5554 (B) the lessee's approval of the contract by  
5555 which the lessor acquired the goods or the right to possession and  
5556 use of the goods is a condition to effectiveness of the lease  
5557 contract;

5558 (C) the lessee, before signing the lease  
5559 contract, receives an accurate and complete statement designating  
5560 the promises and warranties, and any disclaimers of warranties,  
5561 limitations or modifications of remedies, or liquidated damages,  
5562 including those of a third party, such as the manufacturer of the  
5563 goods, provided to the lessor by the person supplying the goods in  
5564 connection with or as part of the contract by which the lessor  
5565 acquired the goods or the right to possession and use of the  
5566 goods; or

5567 (D) if the lease is not a consumer lease, the  
5568 lessor, before the lessee signs the lease contract, informs the  
5569 lessee in writing (a) of the identity of the person supplying the  
5570 goods to the lessor, unless the lessee has selected that person  
5571 and directed the lessor to acquire the goods or the right to  
5572 possession and use of the goods from that person, (b) that the  
5573 lessee is entitled under this chapter to the promises and  
5574 warranties, including those of any third party, provided to the  
5575 lessor by the person supplying the goods in connection with or as  
5576 part of the contract by which the lessor acquired the goods or the  
5577 right to possession and use of the goods, and (c) that the lessee  
5578 may communicate with the person supplying the goods to the lessor  
5579 and receive an accurate and complete statement of those promises  
5580 and warranties, including any disclaimers and limitations of them  
5581 or of remedies.

5582           (h) "Goods" means all things that are movable at the  
5583 time of identification to the lease contract, or are fixtures  
5584 (Section 75-2A-309), but the term does not include money,  
5585 documents, instruments, accounts, chattel paper, general  
5586 intangibles or minerals or the like, including oil and gas, before  
5587 extraction. The term also includes the unborn young of animals.

5588           (i) "Installment lease contract" means a lease contract  
5589 that authorizes or requires the delivery of goods in separate lots  
5590 to be separately accepted, even though the lease contract contains  
5591 a clause "each delivery is a separate lease" or its equivalent.

5592           (j) "Lease" means a transfer of the right to possession  
5593 and use of goods for a term in return for consideration, but a  
5594 sale, including a sale on approval or a sale or return, or  
5595 retention or creation of a security interest is not a lease.  
5596 Unless the context clearly indicates otherwise, the term includes  
5597 a sublease.

5598           (k) "Lease agreement" means the bargain, with respect  
5599 to the lease, of the lessor and the lessee in fact as found in  
5600 their language or by implication from other circumstances  
5601 including course of dealing or usage of trade or course of  
5602 performance as provided in this chapter. Unless the context  
5603 clearly indicates otherwise, the term includes a sublease  
5604 agreement.

5605           (l) "Lease contract" means the total legal obligation  
5606 that results from the lease agreement as affected by this chapter  
5607 and any other applicable rules of law. Unless the context clearly  
5608 indicates otherwise, the term includes a sublease contract.

5609           (m) "Leasehold interest" means the interest of the  
5610 lessor or the lessee under a lease contract.

5611           (n) "Lessee" means a person who acquires the right to  
5612 possession and use of goods under a lease. Unless the context  
5613 clearly indicates otherwise, the term includes a sublease.

5614           (o) "Lessee in ordinary course of business" means a

5615 person who in good faith and without knowledge that the lease to  
5616 him is in violation of the ownership rights or security interest  
5617 or leasehold interest of a third party in the goods leases in  
5618 ordinary course from a person in the business of selling or  
5619 leasing goods of that kind but does not include a pawnbroker.  
5620 "Leasing" may be for cash or by exchange of other property or on  
5621 secured or unsecured credit and includes receiving goods or  
5622 documents of title under a preexisting lease contract but does not  
5623 include a transfer in bulk or as security for or in total or  
5624 partial satisfaction of a money debt.

5625           (p) "Lessor" means a person who transfers the right to  
5626 possession and use of goods under a lease. Unless the context  
5627 clearly indicates otherwise, the term includes a sublessor.

5628           (q) "Lessor's residual interest" means the lessor's  
5629 interest in the goods after expiration, termination or  
5630 cancellation of the lease contract.

5631           (r) "Lien" means a charge against or interest in goods  
5632 to secure payment of a debt or performance of an obligation, but  
5633 the term does not include a security interest.

5634           (s) "Lot" means a parcel or a single article that is  
5635 the subject matter of a separate lease or delivery, whether or not  
5636 it is sufficient to perform the lease contract.

5637           (t) "Merchant lessee" means a lessee that is a merchant  
5638 with respect to goods of the kind subject to the lease.

5639           (u) "Present value" means the amount as of a date  
5640 certain of one or more sums payable in the future, discounted to  
5641 the date certain. The discount is determined by the interest rate  
5642 specified by the parties if the rate was not manifestly  
5643 unreasonable at the time the transaction was entered into;  
5644 otherwise, the discount is determined by a commercially reasonable  
5645 rate that takes into account the facts and circumstances of each  
5646 case at the time the transaction was entered into.

5647           (v) "Purchase" includes taking by sale, lease,

5648 mortgage, security interest, pledge, gift or any other voluntary  
5649 transaction creating an interest in goods.

5650 (w) "Sublease" means a lease of goods the right to  
5651 possession and use of which was acquired by the lessor as a lessee  
5652 under an existing lease.

5653 (x) "Supplier" means a person from whom a lessor buys  
5654 or leases goods to be leased under a finance lease.

5655 (y) "Supply contract" means a contract under which a  
5656 lessor buys or leases goods to be leased.

5657 (z) "Termination" occurs when either party pursuant to  
5658 a power created by agreement or law puts an end to the lease  
5659 contract otherwise than for default.

5660 (2) Other definitions applying to this chapter and the  
5661 sections in which they appear are:

5662 "Accessions." Section 75-2A-310(1).

5663 "Construction mortgage." Section 75-2A-309(1)(d).

5664 "Encumbrance." Section 75-2A-309(1)(e).

5665 "Fixtures." Section 75-2A-309(1)(a).

5666 "Fixture filing." Section 75-2A-309(1)(b).

5667 "Purchase money lease." Section 75-2A-309(1)(c).

5668 (3) The following definitions in other chapters apply to  
5669 this chapter:

5670 "Account" Section 75-9-102(a)(2).

5671 "Between merchants" Section 75-2-104(3).

5672 "Buyer" Section 75-2-103(1)(a).

5673 "Chattel paper" Section 75-9-102(a)(11).

5674 "Consumer goods" Section 75-9-102(a)(23).

5675 "Document" Section 75-9-102(a)(30).

5676 "Entrusting" Section 75-2-403(3).

5677 "General intangible" Section 75-9-102(a)(42).

5678 "Good faith" Section 75-2-103(1)(b).

5679 "Instrument" Section 75-9-102(a)(47).

5680 "Merchant" Section 75-2-104(1).

5681 "Mortgage" Section 75-9-102(a)(55).  
5682 "Pursuant to commitment" Section 75-9-102(a)(68).  
5683 "Receipt" Section 75-2-103(1)(c).  
5684 "Sale" Section 75-2-106(1).  
5685 "Sale on approval" Section 75-2-326.  
5686 "Sale or return" Section 75-2-326.  
5687 "Seller" Section 75-2-103(1)(d).

5688 (4) In addition, Chapter 1 contains general definitions and  
5689 principles of construction and interpretation applicable  
5690 throughout this chapter.

5691 SECTION 11. Section 75-2A-303, Mississippi Code of 1972, is  
5692 amended as follows:[CSQ9]

5693 75-2A-303. (1) As used in this section, "creation of a  
5694 security interest" includes the sale of a lease contract that is  
5695 subject to Chapter 9, Secured Transactions, by reason of Section  
5696 75-9-109(a)(3).

5697 (2) Except as provided in subsection (3) of Section  
5698 75-9-705, a provision in a lease agreement which (i) prohibits the  
5699 voluntary or involuntary transfer, including a transfer by sale,  
5700 sublease, creation or enforcement of a security interest, or  
5701 attachment, levy, or other judicial process, of an interest of a  
5702 party under the lease contract or of the lessor's residual  
5703 interest in the goods, or (ii) makes such a transfer an event of  
5704 default, gives rise to the rights and remedies provided in  
5705 subsection (4), but a transfer that is prohibited or is an event  
5706 of default under the lease agreement is otherwise effective.

5707 \* \* \*

5708 (3) A provision in a lease agreement which (i) prohibits a  
5709 transfer of a right to damages for default with respect to the  
5710 whole lease contract or of a right to payment arising out of the  
5711 transferor's due performance of the transferor's entire  
5712 obligation, or (ii) makes such a transfer an event of default, is  
5713 not enforceable, and such a transfer is not a transfer that

5714 materially impairs the prospect of obtaining return performance  
5715 by, materially changes the duty of, or materially increases the  
5716 burden or risk imposed on, the other party to the lease contract  
5717 within the purview of subsection (4).

5718 (4) Subject to subsections (3) and Section 75-9-407:

5719 (a) If a transfer is made which is made an event of  
5720 default under a lease agreement, the party to the lease contract  
5721 not making the transfer, unless that party waives the default or  
5722 otherwise agrees, has the rights and remedies described in Section  
5723 75-2A-501(2);

5724 (b) If paragraph (a) is not applicable and if a  
5725 transfer is made that (i) is prohibited under a lease agreement or  
5726 (ii) materially impairs the prospect of obtaining return  
5727 performance by, materially changes the duty of, or materially  
5728 increases the burden or risk imposed on, the other party to the  
5729 lease contract, unless the party not making the transfer agrees at  
5730 any time to the transfer in the lease contract or otherwise, then,  
5731 except as limited by contract, (i) the transferor is liable to the  
5732 party not making the transfer for damages caused by the transfer  
5733 to the extent that the damages could not reasonably be prevented  
5734 by the party not making the transfer and (ii) a court having  
5735 jurisdiction may grant other appropriate relief, including  
5736 cancellation of the lease contract or an injunction against the  
5737 transfer.

5738 (5) A transfer of "the lease" or of "all my rights under the  
5739 lease," or a transfer in similar general terms, is a transfer of  
5740 rights and, unless the language or the circumstances, as in a  
5741 transfer for security, indicate the contrary, the transfer is a  
5742 delegation of duties by the transferor to the transferee.  
5743 Acceptance by the transferee constitutes a promise by the  
5744 transferee to perform those duties. The promise is enforceable by  
5745 either the transferor or the other party to the lease contract.

5746 (6) Unless otherwise agreed by the lessor and the lessee, a

5747 delegation of performance does not relieve the transferor as  
5748 against the other party of any duty to perform or of any liability  
5749 for default.

5750       (7) In a consumer lease, to prohibit the transfer of an  
5751 interest of a party under the lease contract or to make a transfer  
5752 an event of default, the language must be specific, by a writing,  
5753 and conspicuous.

5754       SECTION 12. Section 75-2A-307, Mississippi Code of 1972, is  
5755 amended as follows:[CSQ10]

5756       75-2A-307. (1) Except as otherwise provided in Section  
5757 75-2A-306, a creditor of a lessee takes subject to the lease  
5758 contract.

5759       (2) Except as otherwise provided in subsection (3), \* \* \*  
5760 and in Sections 75-2A-306 and 75-2A-308, a creditor of a lessor  
5761 takes subject to the lease contract unless \* \* \* the creditor  
5762 holds a lien that attached to the goods before the lease contract  
5763 became enforceable.

5764       \* \* \*

5765       (3) Except as otherwise provided in Section 75-9-317,  
5766 75-9-321 and 75-9-323, a lessee takes a leasehold interest subject  
5767 to a security interest held by a creditor of the lessor.

5768       \* \* \*

5769       SECTION 13. Section 75-2A-309, Mississippi Code of 1972, is  
5770 amended as follows:[CSQ11]

5771       75-2A-309. (1) In this section:

5772           (a) Goods are "fixtures" when they become so related to  
5773 particular real estate that an interest in them arises under real  
5774 estate law;

5775           (b) A "fixture filing" is the filing, in the office  
5776 where a record of a mortgage on the real estate would be filed or  
5777 recorded, of a financing statement covering goods that are or are  
5778 to become fixtures and conforming to the requirements of Section  
5779 75-9-502(a) and (b);

5780           (c) A lease is a "purchase money lease" unless the  
5781 lessee has possession or use of the goods or the right to  
5782 possession or use of the goods before the lease agreement is  
5783 enforceable;

5784           (d) A mortgage is a "construction mortgage" to the  
5785 extent it secures an obligation incurred for the construction of  
5786 an improvement on land including the acquisition cost of the land,  
5787 if the recorded writing so indicates; and

5788           (e) "Encumbrance" includes real estate mortgages and  
5789 other liens on real estate and all other rights in real estate  
5790 that are not ownership interests.

5791           (2) Under this chapter a lease may be of goods that are  
5792 fixtures or may continue in goods that become fixtures, but no  
5793 lease exists under this chapter of ordinary building materials  
5794 incorporated into an improvement on land.

5795           (3) This chapter does not prevent creation of a lease of  
5796 fixtures pursuant to real estate law.

5797           (4) The perfected interest of a lessor of fixtures has  
5798 priority over a conflicting interest of an encumbrancer or owner  
5799 of the real estate if:

5800           (a) The lease is a purchase money lease, the  
5801 conflicting interest of the encumbrancer or owner arises before  
5802 the goods become fixtures, the interest of the lessor is perfected  
5803 by a fixture filing before the goods become fixtures or within ten  
5804 (10) days thereafter, and the lessee has an interest of record in  
5805 the real estate or is in possession of the real estate; or

5806           (b) The interest of the lessor is perfected by a  
5807 fixture filing before the interest of the encumbrancer or owner is  
5808 of record, the lessor's interest has priority over any conflicting  
5809 interest of a predecessor in title of the encumbrancer or owner,  
5810 and the lessee has an interest of record in the real estate or is  
5811 in possession of the real estate.

5812           (5) The interest of a lessor of fixtures, whether or not



5813 perfected, has priority over the conflicting interest of an  
5814 encumbrancer or owner of the real estate if:

5815           (a) The fixtures are readily removable factory or  
5816 office machines, readily removable equipment that is not primarily  
5817 used or leased for use in the operation of the real estate, or  
5818 readily removable replacements of domestic appliances that are  
5819 goods subject to a consumer lease, and before the goods become  
5820 fixtures the lease contract is enforceable; or

5821           (b) The conflicting interest is a lien on the real  
5822 estate obtained by legal or equitable proceedings after the lease  
5823 contract is enforceable; or

5824           (c) The encumbrancer or owner has consented in writing  
5825 to the lease or has disclaimed an interest in the goods as  
5826 fixtures; or

5827           (d) The lessee has a right to remove the goods as  
5828 against the encumbrancer or owner. If the lessee's right to  
5829 remove terminates, the priority of the interest of the lessor  
5830 continues for a reasonable time.

5831           (6) Notwithstanding subsection (4)(a) but otherwise subject  
5832 to subsections (4) and (5), the interest of a lessor of fixtures,  
5833 including the lessor's residual interest, is subordinate to the  
5834 conflicting interest of an encumbrancer of the real estate under a  
5835 construction mortgage recorded before the goods become fixtures if  
5836 the goods become fixtures before the completion of the  
5837 construction. To the extent given to refinance a construction  
5838 mortgage, the conflicting interest of an encumbrancer of the real  
5839 estate under a mortgage has this priority to the same extent as  
5840 the encumbrancer of the real estate under the construction  
5841 mortgage.

5842           (7) In cases not within the preceding subsections, priority  
5843 between the interest of a lessor of fixtures, including the  
5844 lessor's residual interest, and the conflicting interest of an  
5845 encumbrancer or owner of the real estate who is not the lessee is

5846 determined by the priority rules governing conflicting interests  
5847 in real estate.

5848 (8) If the interest of a lessor of fixtures, including the  
5849 lessor's residual interest, has priority over all conflicting  
5850 interests of all owners and encumbrancers of the real estate, the  
5851 lessor or the lessee may (i) on default, expiration, termination  
5852 or cancellation of the lease agreement but subject to the lease  
5853 agreement and this chapter, or (ii) if necessary to enforce other  
5854 rights and remedies of the lessor or lessee under this chapter,  
5855 remove the goods from the real estate, free and clear of all  
5856 conflicting interests of all owners and encumbrancers of the real  
5857 estate, but the lessor or lessee must reimburse any encumbrancer  
5858 or owner of the real estate who is not the lessee and who has not  
5859 otherwise agreed for the cost of repair of any physical injury,  
5860 but not for any diminution in value of the real estate caused by  
5861 the absence of the goods removed or by any necessity of replacing  
5862 them. A person entitled to reimbursement may refuse permission to  
5863 remove until the party seeking removal gives adequate security for  
5864 the performance of this obligation.

5865 (9) Even though the lease agreement does not create a  
5866 security interest, the interest of a lessor of fixtures, including  
5867 the lessor's residual interest, is perfected by filing a financing  
5868 statement as a fixture filing for leased goods that are or are to  
5869 become fixtures in accordance with the relevant provisions of the  
5870 Chapter on Secured Transactions (Chapter 9).

5871 SECTION 14. Section 75-4-210, Mississippi Code of 1972, is  
5872 amended as follows:[CSQ12]

5873 75-4-210. (a) A collecting bank has a security interest in  
5874 an item and any accompanying documents or the proceeds of either:

5875 (1) In case of an item deposited in an account, to the  
5876 extent to which credit given for the item has been withdrawn or  
5877 applied;

5878 (2) In case of an item for which it has given credit

5879 available for withdrawal as of right, to the extent of the credit  
5880 given, whether or not the credit is drawn upon or there is a right  
5881 of charge-back; or

5882 (3) If it makes an advance on or against the item.

5883 (b) If credit given for several items received at one time  
5884 or pursuant to a single agreement is withdrawn or applied in part,  
5885 the security interest remains upon all the items, any accompanying  
5886 documents or the proceeds of either. For the purpose of this  
5887 section, credits first given are first withdrawn.

5888 (c) Receipt by a collecting bank of a final settlement for  
5889 an item is a realization on its security interest in the item,  
5890 accompanying documents, and proceeds. So long as the bank does  
5891 not receive final settlement for the item or give up possession of  
5892 the item or accompanying documents for purposes other than  
5893 collection, the security interest continues to that extent and is  
5894 subject to Chapter 9, but:

5895 (1) No security agreement is necessary to make the  
5896 security interest enforceable (Section 75-9-203(b)(3)(A));

5897 (2) No filing is required to perfect the security  
5898 interest; and

5899 (3) The security interest has priority over conflicting  
5900 perfected security interests in the item, accompanying documents,  
5901 or proceeds.

5902 SECTION 15. The following shall be codified as Section  
5903 75-5-118, Mississippi Code of 1972:

5904 **75-5-118. Security interest of issuer or nominated person.**

5905 (a) An issuer or nominated person has a security interest in  
5906 a document presented under a letter of credit to the extent that  
5907 the issuer or nominated person honors or gives value for the  
5908 presentation.

5909 (b) So long as and to the extent that an issuer or nominated  
5910 person has not been reimbursed or has not otherwise recovered the  
5911 value given with respect to a security interest in a document

5912 under subsection (a), the security interest continues and is  
5913 subject to Article 9 of the Uniform Commercial Code, but:

5914 (1) a security agreement is not necessary to make the  
5915 security interest enforceable under Section 75-9-203(b)(3);

5916 (2) if the document is presented in a medium other than  
5917 a written or other tangible medium, the security interest is  
5918 perfected; and

5919 (3) if the document is presented in a written or other  
5920 tangible medium and is not a certificated security, chattel paper,  
5921 a document of title, an instrument, or a letter of credit, the  
5922 security interest is perfected and has priority over a conflicting  
5923 security interest in the document so long as the debtor does not  
5924 have possession of the document.

5925 SECTION 16. Section 75-7-503, Mississippi Code of 1972, is  
5926 amended as follows:[CSQ13]

5927 75-7-503. (1) A document of title confers no right in goods  
5928 against a person who before issuance of the document had a legal  
5929 interest or a perfected security interest in them and who neither

5930 (a) delivered or entrusted them or any document of  
5931 title covering them to the bailor or his nominee with actual or  
5932 apparent authority to ship, store or sell or with power to obtain  
5933 delivery under this chapter (Section 75-7-403) or with power of  
5934 disposition under this code (Sections 75-2-403 and 75-9-320) or  
5935 other statute or rule of law; nor

5936 (b) acquiesced in the procurement by the bailor or his  
5937 nominee of any document of title.

5938 (2) Title to goods based upon an unaccepted delivery order  
5939 is subject to the rights of anyone to whom a negotiable warehouse  
5940 receipt or bill of lading covering the goods has been duly  
5941 negotiated. Such a title may be defeated under the next section  
5942 to the same extent as the rights of the issuer or a transferee  
5943 from the issuer.

5944 (3) Title to goods based upon a bill of lading issued to a

5945 freight forwarder is subject to the rights of anyone to whom a  
5946 bill issued by the freight forwarder is duly negotiated; but  
5947 delivery by the carrier in accordance with Part 4 of this chapter  
5948 pursuant to its own bill of lading discharges the carrier's  
5949 obligation to deliver.

5950 SECTION 17. Section 75-8-103, Mississippi Code of 1972, is  
5951 amended as follows:[CSQ14]

5952 75-8-103. (a) A share or similar equity interest issued by  
5953 a corporation, business trust, joint stock company, or similar  
5954 entity is a security.

5955 (b) An "investment company security" is a security.

5956 "Investment company security" means a share or similar equity  
5957 interest issued by an entity that is registered as an investment  
5958 company under the federal investment company laws, an interest in  
5959 a unit investment trust that is so registered, or a face-amount  
5960 certificate issued by a face-amount certificate company that is so  
5961 registered. Investment company security does not include an  
5962 insurance policy or endowment policy or annuity contract issued by  
5963 an insurance company.

5964 (c) An interest in a partnership or limited liability  
5965 company is not a security unless it is dealt in or traded on  
5966 securities exchanges or in securities markets, its terms expressly  
5967 provide that it is a security governed by this chapter, or it is  
5968 an investment company security. However, an interest in a  
5969 partnership or limited liability company is a financial asset if  
5970 it is held in a securities account.

5971 (d) A writing that is a security certificate is governed by  
5972 this chapter and not by Chapter 3, even though it also meets the  
5973 requirements of that chapter. However, a negotiable instrument  
5974 governed by Chapter 3 is a financial asset if it is held in a  
5975 securities account.

5976 (e) An option or similar obligation issued by a clearing  
5977 corporation to its participants is not a security, but is a

5978 financial asset.

5979 (f) A commodity contract, as defined in Section  
5980 75-9-102(a)(15), is not a security or a financial asset.

5981 SECTION 18. Section 75-8-106, Mississippi Code of 1972, is  
5982 amended as follows:[CSQ15]

5983 75-8-106. (a) A purchaser has "control" of a certificated  
5984 security in bearer form if the certificated security is delivered  
5985 to the purchaser.

5986 (b) A purchaser has "control" of a certificated security in  
5987 registered form if the certificated security is delivered to the  
5988 purchaser, and:

5989 (1) The certificate is indorsed to the purchaser or in  
5990 blank by an effective endorsement; or

5991 (2) The certificate is registered in the name of the  
5992 purchaser, upon original issue or registration of transfer by the  
5993 issuer.

5994 (c) A purchaser has "control" of an uncertificated security  
5995 if:

5996 (1) The uncertificated security is delivered to the  
5997 purchaser; or

5998 (2) The issuer has agreed that it will comply with  
5999 instructions originated by the purchaser without further consent  
6000 by the registered owner.

6001 (d) A purchaser has "control" of a security entitlement if:

6002 (1) The purchaser becomes the entitlement holder; \* \* \*

6003 (2) The securities intermediary has agreed that it will  
6004 comply with entitlement orders originated by the purchaser without  
6005 further consent by the entitlement holder; or

6006 (3) Another person has control of the security  
6007 entitlement on behalf of the purchaser or, having previously  
6008 acquired control of the security entitlement, acknowledges that it  
6009 has control on behalf of the purchaser.

6010 (e) If an interest in a security entitlement is granted by

6011 the entitlement holder to the entitlement holder's own securities  
6012 intermediary, the securities intermediary has control.

6013 (f) A purchaser who has satisfied the requirements of  
6014 subsection (c) \* \* \* or (d) \* \* \* has control, even if the  
6015 registered owner in the case of subsection (c) \* \* \* or the  
6016 entitlement holder in the case of subsection (d) \* \* \* retains the  
6017 right to make substitutions for the uncertificated security or  
6018 security entitlement, to originate instructions or entitlement  
6019 orders to the issuer or securities intermediary, or otherwise to  
6020 deal with the uncertificated security or security entitlement.

6021 (g) An issuer or a securities intermediary may not enter  
6022 into an agreement of the kind described in subsection (c)(2) or  
6023 (d)(2) without the consent of the registered owner or entitlement  
6024 holder, but an issuer or a securities intermediary is not required  
6025 to enter into such an agreement even though the registered owner  
6026 or entitlement holder so directs. An issuer or securities  
6027 intermediary that has entered into such an agreement is not  
6028 required to confirm the existence of the agreement to another  
6029 party unless requested to do so by the registered owner or  
6030 entitlement holder.

6031 SECTION 19. Section 75-8-110, Mississippi Code of 1972, is  
6032 amended as follows:[CSQ16]

6033 75-8-110. (a) The local law of the issuer's jurisdiction,  
6034 as specified in subsection (d), governs:

6035 (1) The validity of a security;

6036 (2) The rights and duties of the issuer with respect to  
6037 registration of transfer;

6038 (3) The effectiveness of registration of transfer by  
6039 the issuer;

6040 (4) Whether the issuer owes any duties to an adverse  
6041 claimant to a security; and

6042 (5) Whether an adverse claim can be asserted against a  
6043 person to whom transfer of a certificated or uncertificated

6044 security is registered or a person who obtains control of an  
6045 uncertificated security.

6046 (b) The local law of the securities intermediary's  
6047 jurisdiction, as specified in subsection (e), governs:

6048 (1) Acquisition of a security entitlement from the  
6049 securities intermediary;

6050 (2) The rights and duties of the securities  
6051 intermediary and entitlement holder arising out of a security  
6052 entitlement;

6053 (3) Whether the securities intermediary owes any duties  
6054 to an adverse claimant to a security entitlement; and

6055 (4) Whether an adverse claim can be asserted against a  
6056 person who acquires a security entitlement from the securities  
6057 intermediary or a person who purchases a security entitlement or  
6058 interest therein from an entitlement holder.

6059 (c) The local law of the jurisdiction in which a security  
6060 certificate is located at the time of delivery governs whether an  
6061 adverse claim can be asserted against a person to whom the  
6062 security certificate is delivered.

6063 (d) "Issuer's jurisdiction" means the jurisdiction under  
6064 which the issuer of the security is organized or, if permitted by  
6065 the law of that jurisdiction, the law of another jurisdiction  
6066 specified by the issuer. An issuer organized under the law of  
6067 this state may specify the law of another jurisdiction as the law  
6068 governing the matters specified in subsection (a)(2) through (5).

6069 (e) The following rules determine a "securities  
6070 intermediary's jurisdiction" for purposes of this section:

6071 (1) If an agreement between the securities intermediary  
6072 and its entitlement holder governing the securities account  
6073 expressly provides that a particular jurisdiction is the  
6074 securities intermediary's jurisdiction for the purposes of this  
6075 part, this article or the Uniform Commercial Code, that  
6076 jurisdiction is the securities intermediary's jurisdiction.



6077           (2) If paragraph (1) does not apply and an agreement  
6078 between the securities intermediary and its entitlement holder  
6079 governing the securities account expressly provides that the  
6080 agreement is governed by the law of a particular jurisdiction,  
6081 that jurisdiction is the securities intermediary's jurisdiction.

6082           (3) If neither paragraph (1) nor paragraph (2) applies  
6083 and an agreement between the securities intermediary and its  
6084 entitlement holder \* \* \* expressly provides that the securities  
6085 account is maintained at an office in a particular jurisdiction,  
6086 that jurisdiction is the securities intermediary's jurisdiction.

6087           (4) If none of the preceding paragraphs of this  
6088 subsection apply, the securities intermediary's jurisdiction is  
6089 the jurisdiction in which \* \* \* the office identified in an  
6090 account statement as the office serving the entitlement holder's  
6091 account is located.

6092           (5) If none of the preceding paragraphs of this  
6093 subsection apply, the securities intermediary's jurisdiction is  
6094 the jurisdiction in which the chief executive office of the  
6095 securities intermediary is located.

6096           (f) A securities intermediary's jurisdiction is not  
6097 determined by the physical location of certificates representing  
6098 financial assets, or by the jurisdiction in which is organized the  
6099 issuer of the financial asset with respect to which an entitlement  
6100 holder has a security entitlement, or by the location of  
6101 facilities for data processing or other record keeping concerning  
6102 the account.

6103           SECTION 20. Section 75-8-301, Mississippi Code of 1972, is  
6104 amended as follows:[CSQ17]

6105           75-8-301. (a) Delivery of a certificated security to a  
6106 purchaser occurs when:

6107           (1) The purchaser acquires possession of the security  
6108 certificate;

6109           (2) Another person, other than a securities

6110 intermediary, either acquires possession of the security  
6111 certificate on behalf of the purchaser or, having previously  
6112 acquired possession of the certificate, acknowledges that it holds  
6113 for the purchaser; or

6114 (3) A securities intermediary acting on behalf of the  
6115 purchaser acquires possession of the security certificate, only if  
6116 the certificate is in registered form and is (i) registered in the  
6117 name of the purchaser, (ii) payable to the order of the purchaser,  
6118 or (iii) specially indorsed to the purchaser by an effective  
6119 endorsement and has not been indorsed to the securities  
6120 intermediary or in blank.

6121 (b) Delivery of an uncertificated security to a purchaser  
6122 occurs when:

6123 (1) The issuer registers the purchaser as the  
6124 registered owner, upon original issue or registration of transfer;  
6125 or

6126 (2) Another person, other than a securities  
6127 intermediary, either becomes the registered owner of the  
6128 uncertificated security on behalf of the purchaser or, having  
6129 previously become the registered owner, acknowledges that it holds  
6130 for the purchaser.

6131 SECTION 21. Section 75-8-302, Mississippi Code of 1972, is  
6132 amended as follows:[CSQ18]

6133 75-8-302. (a) Except as otherwise provided in subsections  
6134 (b) and (c), \* \* \* a purchaser of a certificated or uncertificated  
6135 security acquires all rights in the security that the transferor  
6136 had or had power to transfer.

6137 (b) A purchaser of a limited interest acquires rights only  
6138 to the extent of the interest purchased.

6139 (c) A purchaser of a certificated security who as a previous  
6140 holder had notice of an adverse claim does not improve its  
6141 position by taking from a protected purchaser.

6142 SECTION 22. Section 75-8-510, Mississippi Code of 1972, is

6143 amended as follows:[CSQ19]

6144           75-8-510. (a) In a case not covered by the priority rules  
6145 in Article 9 or the rules stated in subsection (c), an action  
6146 based on an adverse claim to a financial asset or security  
6147 entitlement, whether framed in conversion, replevin, constructive  
6148 trust, equitable lien, or other theory, may not be asserted  
6149 against a person who purchases a security entitlement, or an  
6150 interest therein, from an entitlement holder if the purchaser  
6151 gives value, does not have notice of the adverse claim, and  
6152 obtains control.

6153           (b) If an adverse claim could not have been asserted against  
6154 an entitlement holder under Section 75-8-502, the adverse claim  
6155 cannot be asserted against a person who purchases a security  
6156 entitlement, or an interest therein, from the entitlement holder.

6157           (c) In a case not covered by the priority rules in Chapter  
6158 9, a purchaser for value of a security entitlement, or an interest  
6159 therein, who obtains control has priority over a purchaser of a  
6160 security entitlement, or an interest therein, who does not obtain  
6161 control. Except as otherwise provided in subsection (d),  
6162 purchasers who have control rank according to priority in time of:

6163           (1) The purchaser's becoming the person for whom the  
6164 securities account, in which the security entitlement is carried,  
6165 is maintained, if the purchaser obtained control under Section  
6166 75-8-106(d)(1);

6167           (2) The securities intermediary's agreement to comply  
6168 with the purchaser's entitlement orders with respect to security  
6169 entitlements carried or to be carried in the securities account in  
6170 which the security entitlement is carried, if the purchaser  
6171 obtained control under Section 75-8-106(d)(2); or

6172           (3) If the purchaser obtained control through another  
6173 person under Section 75-8-106(d)(3), the time on which priority  
6174 would be based under this subsection if the other person were the  
6175 secured party.

6176        (d) A securities intermediary as purchaser has priority over  
6177 a conflicting purchaser who has control unless otherwise agreed by  
6178 the securities intermediary.

6179        SECTION 23. Section 71-3-43, Mississippi Code of 1972, is  
6180 amended as follows:[MS20]

6181        71-3-43. No assignment, release, or commutation of  
6182 compensation or benefits due or payable under this chapter, except  
6183 as provided by this chapter, shall be valid; and such compensation  
6184 and benefits shall be exempt from all claims of creditors and from  
6185 levy, execution, and attachment or other remedy for recovery or  
6186 collection of a debt, which exemption may be waived. This section  
6187 prevails over Sections 75-9-406 and 75-9-408 of Article 9 of the  
6188 Uniform Commercial Code to the extent, if any, that these sections  
6189 may otherwise be applicable.

6190        SECTION 24. Section 25-7-9, Mississippi Code of 1972, is  
6191 amended as follows:[CSQ21]

6192        25-7-9. (1) The clerks of the chancery courts shall charge  
6193 the following fees:

6194           (a) For the act of certifying copies  
6195 of filed documents, for each complete documents.....\$1.00

6196           (b) Recording deeds, wills, leases,  
6197 amendments, subordinations, liens, releases,  
6198 cancellations, orders, decrees, oaths, etc.,  
6199 including indexing.....6.00

6200           Sectional index entries per section  
6201 or subdivision.....1.00

6202           (c) Recording deeds of trust, mortgages  
6203 and financing statements filed in the chancery  
6204 clerk's office pursuant to Part 5 of Article 9 of  
6205 the Uniform Commercial Code-Secured Transactions.....10.00

6206           Sectional index entries per section or  
6207 Subdivision.....1.00

6208           (d) (i) Recording oil and gas leases,

6209	etc., including indexing in general indices.....	12.00
6210	Sectional index entries per section or	
6211	Subdivision.....	1.00
6212	(ii) Recording oil and gas	
6213	cancellations, assignments, etc., including	
6214	indexing in general indices:	
6215	First page.....	5.00
6216	Each additional page.....	2.00
6217	Abstracting each section or subdivision.....	1.00
6218	Sectional index entries per section or	
6219	Subdivision.....	6.00
6220	(e) Furnishing copies of any papers of record or on	
6221	file and entering marginal notations on documents of record:	
6222	If performed by the clerk or his employee,	
6223	per page.....	50
6224	If performed by any other person, per page.....	25
6225	(f) For each day's attendance on the board of	
6226	supervisors, for himself and one (1) deputy, each.....	20.00
6227	(g) For other services as clerk of the	
6228	board of supervisors an allowance shall be made to	
6229	him (payable semiannually at the July and January	
6230	meetings) out of the county treasury, an annual sum	
6231	not exceeding.....	1,500.00
6232	(h) For each day's attendance on the	
6233	chancery court, to be approved by the chancellor:	
6234	For the first chancellor sitting only,	
6235	clerk and two (2) deputies, each.....	30.00
6236	For the second chancellor sitting,	
6237	clerk Only.....	30.00
6238	Provided that the fees herein prescribed shall be	
6239	the total remuneration for the clerk and his deputies for	
6240	attending chancery court.	
6241	(i) On order of the court, clerks and not more than two	

6242 (2) deputies may be allowed five (5) extra days for each term of  
6243 court for attendance upon the court to get up records.

6244 (j) For those services required by Part 7 of Article 9  
6245 of the Uniform Commercial Code - Secured Transactions, the fees  
6246 provided in Chapter 9 of Title 75.

6247 (k) For public service not otherwise specifically  
6248 provided for, the chancery court may by order allow the clerk to  
6249 be paid by the county on the order of the board of supervisors, an  
6250 annual sum not exceeding.....5,000.00

6251 The chancery clerk shall itemize on the original document a  
6252 detailed fee bill of all charges due or paid for filing, recording  
6253 and abstracting same. No person shall be required to pay such  
6254 fees until same have been so itemized, but said fees may be  
6255 demanded before the document is recorded.

6256 (2) In accordance with Uniform Chancery Court Rule 9.01 as  
6257 approved by Order of the Mississippi Supreme Court, the following  
6258 fees shall be a total fee for all services performed by the clerk  
6259 with respect to a complaint which shall be payable upon filing and  
6260 shall accrue to the chancery clerk at the time of filing. The  
6261 clerk or his successor in office shall perform all duties set  
6262 forth without additional compensation or fee to wit:

- 6263 (a) Divorce to be contested.....\$ 75.00
- 6264 (b) Divorce uncontested.....30.00
- 6265 (c) Alteration of birth or marriage  
6266 certificate.....25.00
- 6267 (d) Removal of minority.....25.00
- 6268 (e) Guardianship or conservatorship.....75.00
- 6269 (f) Estate of deceased, intestate.....75.00
- 6270 (g) Estate of deceased, testate.....75.00
- 6271 (h) Adoption.....75.00
- 6272 (i) Land dispute.....75.00
- 6273 (j) Injunction.....75.00
- 6274 (k) Settlement of small claim.....30.00

- 6275 (l) Contempt in child support.....75.00  
6276 (m) Partition suit.....75.00  
6277 (n) Any cross-complaint.....25.00

6278 Cost of process shall be borne by the issuing party.

6279 Additionally, should the attorney or person filing the pleadings  
6280 desire the clerk to pay the cost to the sheriff for serving  
6281 process on one person or more, or to pay the cost of publication,  
6282 the clerk shall demand the actual charges therefor, at the time of  
6283 filing.

6284 SECTION 25. Section 85-7-1, Mississippi Code of 1972, which  
6285 provides for liens on crops, is repealed.

6286 SECTION 26. Section 41-29-177, Mississippi Code of 1972, is  
6287 amended as follows:[MS22]

6288 41-29-177. (1) Except as otherwise provided in Section  
6289 41-29-176, Mississippi Code of 1972, when any property, other than  
6290 a controlled substance, raw material or paraphernalia, is seized  
6291 under the Uniform Controlled Substances Law, proceedings under  
6292 this section shall be instituted within thirty (30) days from the  
6293 date of seizure or the subject property shall be immediately  
6294 returned to the party from whom seized.

6295 (2) A petition for forfeiture shall be filed in the name of  
6296 the State of Mississippi, the county or the municipality and may  
6297 be filed in the county in which the seizure is made, the county in  
6298 which the criminal prosecution is brought or the county in which  
6299 the owner of the seized property is found. Forfeiture proceedings  
6300 may be brought in the circuit court or the county court if a  
6301 county court exists in the county and the value of the seized  
6302 property is within the jurisdictional limits of the county court  
6303 as set forth in Section 9-9-21, Mississippi Code of 1972. A copy  
6304 of such petition shall be served upon the following persons by  
6305 service of process in the same manner as in civil cases:

- 6306 (a) The owner of the property, if address is known;  
6307 (b) Any secured party who has registered his lien or

6308 filed a financing statement as provided by law, if the identity of  
6309 such secured party can be ascertained by the Bureau of Narcotics  
6310 or the local law enforcement agency by making a good faith effort  
6311 to ascertain the identity of such secured party as described in  
6312 subsections (3), (4), (5), (6) and (7) of this section;

6313 (c) Any other bona fide lienholder or secured party or  
6314 other person holding an interest in the property in the nature of  
6315 a security interest of whom the Mississippi Bureau of Narcotics or  
6316 the local law enforcement agency has actual knowledge;

6317 (d) Any holder of a mortgage, deed of trust, lien or  
6318 encumbrance of record, if the property is real estate, by making a  
6319 good faith inquiry as described in subsection (8) of this section;  
6320 and

6321 (e) Any person in possession of property subject to  
6322 forfeiture at the time that it was seized.

6323 (3) If the property is a motor vehicle susceptible of  
6324 titling under the Mississippi Motor Vehicle Title Law and if there  
6325 is any reasonable cause to believe that the vehicle has been  
6326 titled, the Bureau of Narcotics or the local law enforcement  
6327 agency shall make inquiry of the State Tax Commission as to what  
6328 the records of the State Tax Commission show as to who is the  
6329 record owner of the vehicle and who, if anyone, holds any lien or  
6330 security interest which affects the vehicle.

6331 (4) If the property is a motor vehicle and is not titled in  
6332 the State of Mississippi, then the Bureau of Narcotics or the  
6333 local law enforcement agency shall attempt to ascertain the name  
6334 and address of the person in whose name the vehicle is licensed,  
6335 and if the vehicle is licensed in a state which has in effect a  
6336 certificate of title law, the bureau or the local law enforcement  
6337 agency shall make inquiry of the appropriate agency of that state  
6338 as to what the records of the agency show as to who is the record  
6339 owner of the vehicle and who, if anyone, holds any lien, security  
6340 interest or other instrument in the nature of a security device



6341 which affects the vehicle.

6342 (5) If the property is of a nature that a financing  
6343 statement is required by the laws of this state to be filed to  
6344 perfect a security interest affecting the property and if there is  
6345 any reasonable cause to believe that a financing statement  
6346 covering the security interest has been filed under the laws of  
6347 this state, the Bureau of Narcotics or the local law enforcement  
6348 agency shall make inquiry of the appropriate office designated in  
6349 Section 75-9-501, Mississippi Code of 1972, as to what the records  
6350 show as to who is the record owner of the property and who, if  
6351 anyone, has filed a financing statement affecting the property.

6352 (6) If the property is an aircraft or part thereof and if  
6353 there is any reasonable cause to believe that an instrument in the  
6354 nature of a security device affects the property, then the Bureau  
6355 of Narcotics or the local law enforcement agency shall make  
6356 inquiry of the Mississippi Department of Transportation as to what  
6357 the records of the Federal Aviation Administration show as to who  
6358 is the record owner of the property and who, if anyone, holds an  
6359 instrument in the nature of a security device which affects the  
6360 property.

6361 (7) In the case of all other personal property subject to  
6362 forfeiture, if there is any reasonable cause to believe that an  
6363 instrument in the nature of a security device affects the  
6364 property, then the Bureau of Narcotics or the local law  
6365 enforcement agency shall make a good faith inquiry to identify the  
6366 holder of any such instrument.

6367 (8) If the property is real estate, the Bureau of Narcotics  
6368 or the local law enforcement agency shall make inquiry of the  
6369 chancery clerk of the county wherein the property is located to  
6370 determine who is the owner of record and who, if anyone, is a  
6371 holder of a bona fide mortgage, deed of trust, lien or  
6372 encumbrance.

6373 (9) In the event the answer to an inquiry states that the

6374 record owner of the property is any person other than the person  
6375 who was in possession of it when it was seized, or states that any  
6376 person holds any lien, encumbrance, security interest, other  
6377 interest in the nature of a security interest, mortgage or deed of  
6378 trust which affects the property, the Bureau of Narcotics or the  
6379 local law enforcement agency shall cause any record owner and also  
6380 any lienholder, secured party, other person who holds an interest  
6381 in the property in the nature of a security interest, or holder of  
6382 an encumbrance, mortgage or deed of trust which affects the  
6383 property to be named in the petition of forfeiture and to be  
6384 served with process in the same manner as in civil cases.

6385 (10) If the owner of the property cannot be found and served  
6386 with a copy of the petition of forfeiture, or if no person was in  
6387 possession of the property subject to forfeiture at the time that  
6388 it was seized and the owner of the property is unknown, the Bureau  
6389 of Narcotics or the local law enforcement agency shall file with  
6390 the clerk of the court in which the proceeding is pending an  
6391 affidavit to such effect, whereupon the clerk of the court shall  
6392 publish notice of the hearing addressed to "the Unknown Owner of  
6393 \_\_\_\_\_," filling in the blank space with a reasonably  
6394 detailed description of the property subject to forfeiture.  
6395 Service by publication shall contain the other requisites  
6396 prescribed in Section 11-33-41, and shall be served as provided in  
6397 Section 11-33-37, Mississippi Code of 1972, for publication of  
6398 notice for attachments at law.

6399 (11) No proceedings instituted pursuant to the provisions of  
6400 this article shall proceed to hearing unless the judge conducting  
6401 the hearing is satisfied that this section has been complied with.  
6402 Any answer received from an inquiry required by subsections (3)  
6403 through (8) of this section shall be introduced into evidence at  
6404 the hearing.

6405 SECTION 27. Section 49-7-251, Mississippi Code of 1972, is  
6406 amended as follows:[MS23]

6407           49-7-251. (1) Except as otherwise provided in Section  
6408 49-7-257, when any property is seized pursuant to Section  
6409 49-7-103, 49-15-21(2) or 59-21-33, Mississippi Code of 1972,  
6410 proceedings under this section shall be instituted promptly.  
6411 Provided, however, that the seizing law enforcement agency may, in  
6412 the sound exercise of discretion, decide not to bring a forfeiture  
6413 action if the interests of bona fide lienholders or secured  
6414 creditors equal or exceed the value of the seized property, or if  
6415 other factors would produce a negative economic result. Provided  
6416 further, that no property shall be subject to forfeiture which has  
6417 been stolen from its owner if the owner can be identified and  
6418 prosecution for the theft has been initiated.

6419           (2) A petition for forfeiture shall be filed promptly in the  
6420 name of the State of Mississippi, the county or the municipality  
6421 and may be filed in the county in which the seizure is made, the  
6422 county in which the criminal prosecution is brought or the county  
6423 in which the owner of the seized property is found. Forfeiture  
6424 proceedings may be brought in the circuit court or the county  
6425 court if a county court exists in the county and the value of the  
6426 seized property is within the jurisdictional limits of the county  
6427 court as set forth in Section 9-9-21, Mississippi Code of 1972. A  
6428 copy of such petition shall be served upon the following persons  
6429 by service of process in the same manner as in civil cases:

6430           (a) The owner of the property, if address is known;

6431           (b) Any secured party who has registered his lien or  
6432 filed a financing statement as provided by law, if the identity of  
6433 such secured party can be ascertained by the Department of  
6434 Wildlife Conservation or the local law enforcement agency by  
6435 making a good faith effort to ascertain the identity of such  
6436 secured party as described in subsections (3), (4), (5), (6) and  
6437 (7) of this section;

6438           (c) Any other bona fide lienholder or secured party or  
6439 other person holding an interest in the property in the nature of

6440 a security interest of whom the Department of Wildlife  
6441 Conservation or the local law enforcement agency has actual  
6442 knowledge; and

6443 (d) Any person in possession of property subject to  
6444 forfeiture at the time that it was seized.

6445 (3) If the property is a motor vehicle susceptible of  
6446 titling under the Mississippi Motor Vehicle Title Law and if there  
6447 is any reasonable cause to believe that the vehicle has been  
6448 titled, the Department of Wildlife Conservation or the local law  
6449 enforcement agency shall make inquiry of the State Tax Commission  
6450 as to what the records of the State Tax Commission show as to who  
6451 is the record owner of the vehicle and who, if anyone, holds any  
6452 lien or security interest which affects the vehicle.

6453 (4) If the property is a motor vehicle and is not titled in  
6454 the State of Mississippi, then the Department of Wildlife  
6455 Conservation or the local law enforcement agency shall attempt to  
6456 ascertain the name and address of the person in whose name the  
6457 vehicle is licensed, and if the vehicle is licensed in a state  
6458 which has in effect a certificate of title law, the Department of  
6459 Wildlife Conservation or the local law enforcement agency shall  
6460 make inquiry of the appropriate agency of that state as to what  
6461 the records of the agency show as to who is the record owner of  
6462 the vehicle and who, if anyone, holds any lien, security interest  
6463 or other instrument in the nature of a security device which  
6464 affects the vehicle.

6465 (5) If the property is of a nature that a financing  
6466 statement is required by the laws of this state to be filed to  
6467 perfect a security interest affecting the property and if there is  
6468 any reasonable cause to believe that a financing statement  
6469 covering the security interest has been filed under the laws of  
6470 this state, the Department of Wildlife Conservation or the local  
6471 law enforcement agency shall make inquiry of the appropriate  
6472 office designated in Section 75-9-501, Mississippi Code of 1972,

6473 as to what the records show as to who is the record owner of the  
6474 property and who, if anyone, has filed a financing statement  
6475 affecting the property.

6476 (6) If the property is an aircraft or part thereof and if  
6477 there is any reasonable cause to believe that an instrument in the  
6478 nature of a security device affects the property, then the  
6479 Department of Wildlife Conservation or the local law enforcement  
6480 agency shall make inquiry of the Administrator of the Mississippi  
6481 Aeronautics Commission as to what the records of the Federal  
6482 Aviation Administration show as to who is the record owner of the  
6483 property and who, if anyone, holds an instrument in the nature of  
6484 a security device which affects the property.

6485 (7) In the case of all other personal property subject to  
6486 forfeiture, if there is any reasonable cause to believe that an  
6487 instrument in the nature of a security device affects the  
6488 property, then the Department of Wildlife Conservation or the  
6489 local law enforcement agency shall make a good faith inquiry to  
6490 identify the holder of any such instrument.

6491 (8) In the event the answer to an inquiry states that the  
6492 record owner of the property is any person other than the person  
6493 who was in possession of it when it was seized, or states that any  
6494 person holds any lien, encumbrance, security interest, other  
6495 interest in the nature of a security interest, mortgage or deed of  
6496 trust which affects the property, the Department of Wildlife  
6497 Conservation or the local law enforcement agency shall cause any  
6498 record owner and also any lienholder, secured party, other person  
6499 who holds an interest in the property in the nature of a security  
6500 interest which affects the property to be named in the petition of  
6501 forfeiture and to be served with process in the same manner as in  
6502 civil cases.

6503 (9) If the owner of the property cannot be found and served  
6504 with a copy of the petition of forfeiture, or if no person was in  
6505 possession of the property subject to forfeiture at the time that

6506 it was seized and the owner of the property is unknown, the  
6507 Department of Wildlife Conservation or the local law enforcement  
6508 agency shall file with the clerk of the court in which the  
6509 proceeding is pending an affidavit to such effect, whereupon the  
6510 clerk of the court shall publish notice of the hearing addressed  
6511 to "the Unknown Owner of \_\_\_\_\_," filling in the blank  
6512 space with a reasonably detailed description of the property  
6513 subject to forfeiture. Service by publication shall contain the  
6514 other requisites prescribed in Section 11-33-41, Mississippi Code  
6515 of 1972, and shall be served as provided in Section 11-33-37,  
6516 Mississippi Code of 1972, for publication of notice for  
6517 attachments at law.

6518 (10) No proceedings instituted pursuant to the provisions of  
6519 this section shall proceed to hearing unless the judge conducting  
6520 the hearing is satisfied that this section has been complied with.

6521 Any answer received from an inquiry required by subsections (3)  
6522 through (7) of this section shall be introduced into evidence at  
6523 the hearing.

6524 SECTION 28. Section 67-1-93, Mississippi Code of 1972, is  
6525 amended as follows:[MS24]

6526 67-1-93. (1) Except as otherwise provided in Section  
6527 67-1-99, when any property, other than an alcoholic beverage or  
6528 raw material, is seized under this chapter or Chapter 31 of Title  
6529 97, Mississippi Code of 1972, proceedings under this section shall  
6530 be instituted promptly.

6531 (2) A petition for forfeiture shall be filed promptly in the  
6532 name of the State of Mississippi with the clerk of the circuit or  
6533 county court of the county in which the seizure is made. A copy  
6534 of such petition shall be served upon the following persons by  
6535 service of process in the same manner as in civil cases:

6536 (a) The owner of the property, if address is known;

6537 (b) Any secured party who has registered his lien or  
6538 filed a financing statement as provided by law, if the identity of

6539 such secured party can be ascertained by the agent or agency which  
6540 seized the property making a good faith effort to ascertain the  
6541 identity of such secured party as described in subsections (3),  
6542 (4), (5), (6) and (7) of this section;

6543 (c) Any other bona fide lienholder or secured party or  
6544 other person holding an interest in the property in the nature of  
6545 a security interest of whom the agent or agency has actual  
6546 knowledge; and

6547 (d) Any person in possession of property subject to  
6548 forfeiture at the time that it was seized.

6549 (3) If the property is a motor vehicle susceptible of  
6550 titling under the Mississippi Motor Vehicle Title Law and if there  
6551 is any reasonable cause to believe that the vehicle has been  
6552 titled, the agent or agency shall make inquiry of the State Tax  
6553 Commission as to what the records of the State Tax Commission show  
6554 as to who is the record owner of the vehicle and who, if anyone,  
6555 holds any lien or security interest which affects the vehicle.

6556 (4) If the property is a motor vehicle and is not titled in  
6557 the State of Mississippi then the agent or agency shall attempt to  
6558 ascertain the name and address of the person in whose name the  
6559 vehicle is licensed, and if the vehicle is licensed in a state  
6560 which has in effect a certificate of title law, the agent or  
6561 agency shall make inquiry of the appropriate agency of that state  
6562 to determine through such agency's records the name of the record  
6563 owner of the vehicle and who, if anyone, holds any lien, security  
6564 interest or other instrument in the nature of a security device  
6565 which affects the vehicle.

6566 (5) If the property is of a nature that a financing  
6567 statement is required by the laws of this state to be filed to  
6568 perfect a security interest affecting the property and if there is  
6569 any reasonable cause to believe that a financing statement  
6570 covering the security interest has been filed under the laws of  
6571 this state, the agent or agency shall make inquiry of the

6572 appropriate office designated in Section 75-9-501 to determine  
6573 through the records of such office the name of the record owner of  
6574 the property and who, if anyone, has filed a financing statement  
6575 affecting the property.

6576 (6) If the property is an aircraft or part thereof and if  
6577 there is any reasonable cause to believe that an instrument in the  
6578 nature of a security device affects the property, then the agent  
6579 or agency shall make inquiry of the Administrator of the Federal  
6580 Aviation Administration to determine through records of the  
6581 administrator the name of the record owner of the property and  
6582 who, if anyone, holds an instrument in the name of a security  
6583 device which affects the property.

6584 (7) In the case of all other property other than an  
6585 alcoholic beverage or raw material subject to forfeiture, if there  
6586 is any reasonable cause to believe that an instrument in the  
6587 nature of a security device affects the property, then the agent  
6588 or agency shall make a good faith inquiry to identify the holder  
6589 of any such instrument.

6590 (8) In the event the answer to an inquiry states that the  
6591 record owner of the property is any person other than the person  
6592 who was in possession of it when it was seized, or states that any  
6593 person holds any lien, security interest or other interest in the  
6594 nature of a security interest which affects the property, the  
6595 agent or agency shall cause any record owner and also any  
6596 lienholder, secured party or other person who holds an interest in  
6597 the property in the nature of a security interest which affects  
6598 the property to be named in the petition of forfeiture and to be  
6599 served with process in the same manner as in civil cases.

6600 (9) If the owner of the property cannot be found and served  
6601 with a copy of the petition of forfeiture, or if no person was in  
6602 possession of the property subject to forfeiture at the time that  
6603 it was seized and the owner of the property is unknown, the agent  
6604 or agency shall file with the clerk of the court in which the



6605 proceeding is pending an affidavit to such effect, whereupon the  
6606 clerk of the court shall publish notice of the hearing addressed  
6607 to "the Unknown Owner of \_\_\_\_\_," filling in the blank  
6608 space with a reasonably detailed description of the property  
6609 subject to forfeiture. Service by publication shall be made in  
6610 accordance with the Mississippi Rules of Civil Procedure.

6611 (10) No proceedings instituted pursuant to the provisions of  
6612 this chapter shall proceed to hearing unless the judge conducting  
6613 the hearing is satisfied that this section has been complied with.

6614 Any answer received from an inquiry required by subsections (3)  
6615 through (7) of this section shall be introduced into evidence at  
6616 the hearing.

6617 SECTION 29. Section 97-17-4, Mississippi Code of 1972, is  
6618 amended as follows:[MS25]

6619 97-17-4. (1) All property, real or personal, including  
6620 money, used in the course of, intended for use in the course of,  
6621 derived from, or realized through, conduct in violation of a  
6622 provision of Section 97-17-1 or 97-17-3 is subject to civil  
6623 forfeiture to the state pursuant to the provisions of this  
6624 section; provided, however, that a forfeiture of personal property  
6625 encumbered by a bona fide security interest or real property  
6626 encumbered by a bona fide mortgage, deed of trust, lien or  
6627 encumbrance of record shall be subject to the interest of the  
6628 secured party or subject to the interest of the holder of the  
6629 mortgage deed of trust, lien of encumbrance of record if such  
6630 secured party or holder neither had knowledge of or consented to  
6631 the act or omission.

6632 (2) Property subject to forfeiture may be seized by law  
6633 enforcement officers upon process issued by any appropriate court  
6634 having jurisdiction over the property. Seizure without process  
6635 may be made if:

6636 (a) The seizure is incident to an arrest or a search  
6637 under a search warrant or an inspection under a lawful

6638 administrative inspection;

6639 (b) The property subject to seizure has been the  
6640 subject of a prior judgment in favor of the state in a criminal  
6641 injunction or forfeiture proceeding based upon this section.

6642 (3) When any property is seized pursuant to this section,  
6643 proceedings under this section shall be instituted promptly.

6644 (4) (a) A petition for forfeiture shall be filed promptly  
6645 in the name of the State of Mississippi with the clerk of the  
6646 circuit court of the county in which the seizure is made. A copy  
6647 of such petition shall be served upon the following persons by  
6648 service of process in the same manner as in civil cases:

6649 (i) The owner of the property, if address is  
6650 known;

6651 (ii) Any secured party who has registered his lien  
6652 or filed a financing statement as provided by law, if the identity  
6653 of such secured party can be ascertained by the state by making a  
6654 good faith effort to ascertain the identity of such secured party  
6655 as described in paragraphs (b), (c), (d), (e) and (f) of this  
6656 subsection;

6657 (iii) Any other bona fide lienholder or secured  
6658 party or other person holding an interest in the property in the  
6659 nature of a security interest of whom the state has actual  
6660 knowledge;

6661 (iv) A holder of a mortgage, deed of trust, lien  
6662 or encumbrance of record, if the property is real estate by making  
6663 a good faith inquiry as described in paragraph (g) of this  
6664 section; and

6665 (v) Any person in possession of property subject  
6666 to forfeiture at the time that it was seized.

6667 (b) If the property is a motor vehicle susceptible of  
6668 titling under the Mississippi Motor Vehicle Title Law and if there  
6669 is any reasonable cause to believe that the vehicle has been  
6670 titled, the state shall make inquiry of the State Tax Commission

6671 as to what the records of the State Tax Commission show as to who  
6672 is the record owner of the vehicle and who, if anyone, holds any  
6673 lien or security interest which affects the vehicle.

6674 (c) If the property is a motor vehicle and is not  
6675 titled in the State of Mississippi, then the state shall attempt  
6676 to ascertain the name and address of the person in whose name the  
6677 vehicle is licensed, and if the vehicle is licensed in a state  
6678 which has in effect a certificate of title law, the state shall  
6679 make inquiry of the appropriate agency of that state as to what  
6680 the records of the agency show as to who is the record owner of  
6681 the vehicle and who, if anyone, holds any lien, security interest,  
6682 or other instrument in the nature of a security device which  
6683 affects the vehicle.

6684 (d) If the property is of a nature that a financing  
6685 statement is required by the laws of this state to be filed to  
6686 perfect a security interest affecting the property and if there is  
6687 any reasonable cause to believe that a financing statement  
6688 covering the security interest has been filed under the laws of  
6689 this state, the state shall make inquiry of the appropriate office  
6690 designated in Section 75-9-501 as to what the records show as to  
6691 who is the record owner of the property and who, if anyone, has  
6692 filed a financing statement affecting the property.

6693 (e) If the property is an aircraft or part thereof and  
6694 if there is any reasonable cause to believe that an instrument in  
6695 the nature of a security device affects the property, then the  
6696 state shall make inquiry of the administrator of the Federal  
6697 Aviation Administration as to what the records of the  
6698 administrator show as to who is the record owner of the property  
6699 and who, if anyone, holds an instrument in the nature of a  
6700 security device which affects the property.

6701 (f) In the case of all other personal property subject  
6702 to forfeiture, if there is any reasonable cause to believe that an  
6703 instrument in the nature of a security device affects the

6704 property, then the state shall make a good faith inquiry to  
6705 identify the holder of any such instrument.

6706 (g) If the property is real estate, the state shall  
6707 make inquiry at the appropriate places to determine who is the  
6708 owner of record and who, if anyone is a holder of a bona fide  
6709 mortgage, deed of trust, lien or encumbrance.

6710 (h) In the event the answer to an inquiry states that  
6711 the record owner of the property is any person other than the  
6712 person who was in possession of it when it was seized, or states  
6713 that any person holds any lien, encumbrance, security interest,  
6714 other interest in the nature of a security interest, mortgage or  
6715 deed of trust which affects the property, the state shall cause  
6716 any record owner and also any lienholder, secured party, other  
6717 person who holds an interest in the property in the nature of a  
6718 security interest, or holder of an encumbrance, mortgage or deed  
6719 of trust which affects the property to be named in the petition of  
6720 forfeiture and to be served with process in the same manner as in  
6721 civil cases.

6722 (i) If the owner of the property cannot be found and  
6723 served with a copy of the petition of forfeiture, or if no person  
6724 was in possession of the property subject to forfeiture at the  
6725 time that it was seized and the owner of the property is unknown,  
6726 the state shall file with the clerk of the court in which the  
6727 proceeding is pending an affidavit to such effect, whereupon the  
6728 clerk of the court shall publish notice of the hearing addressed  
6729 to "the Unknown Owner of \_\_\_\_\_," filling in the blank  
6730 space with a reasonably detailed description of the property  
6731 subject to forfeiture. Service by publication shall contain the  
6732 other requisites prescribed in Section 11-33-41, and shall be  
6733 served as provided in Section 11-33-37 for publication of notice  
6734 for attachments at law.

6735 (j) No proceedings instituted pursuant to the  
6736 provisions of this article shall proceed to hearing unless the

6737 judge conducting the hearing is satisfied that this section has  
6738 been complied with. Any answer received from an inquiry required  
6739 by paragraphs (b) through (g) of this section shall be introduced  
6740 into evidence at the hearing.

6741 (5) (a) An owner of property that has been seized shall  
6742 file a verified answer within twenty (20) days after the  
6743 completion of service of process. If no answer is filed, the  
6744 court shall hear evidence that the property is subject to  
6745 forfeiture and forfeit the property to the state. If an answer is  
6746 filed, a time for hearing on forfeiture shall be set within thirty  
6747 (30) days of filing the answer or at the succeeding term of court  
6748 if court would not be in progress within thirty (30) days after  
6749 filing the answer. Provided, however, that upon request by the  
6750 state or the owner of the property, the court may postpone said  
6751 forfeiture hearing to a date past the time any criminal action is  
6752 pending against said owner.

6753 (b) If the owner of the property has filed a verified  
6754 answer denying that the property is subject to forfeiture, then  
6755 the burden is on the state to prove that the property is subject  
6756 to forfeiture. The burden of proof placed upon the state shall be  
6757 clear and convincing proof. However, if no answer has been filed  
6758 by the owner of the property, the petition for forfeiture may be  
6759 introduced into evidence and is prima facie evidence that the  
6760 property is subject to forfeiture.

6761 (c) At the hearing any claimant of any right, title, or  
6762 interest in the property may prove his lien, encumbrance, security  
6763 interest, other interest in the nature of a security interest,  
6764 mortgage or deed of trust to be bona fide and created without  
6765 knowledge or consent that the property was to be used so as to  
6766 cause the property to be subject to forfeiture.

6767 (d) If it is found that the property is subject to  
6768 forfeiture, then the judge shall forfeit the property to the  
6769 state. However, if proof at the hearing discloses that the

6770 interest of any bona fide lienholder, secured party, other person  
6771 holding an interest in the property in the nature of a security  
6772 interest or any holder of a bona fide encumbrance, mortgage or  
6773 deed of trust is greater than or equal to the present value of the  
6774 property, the court shall order the property released to him. If  
6775 such interest is less than the present value of the property and  
6776 if the proof shows that the property is subject to forfeiture, the  
6777 court shall order the property forfeited to the state.

6778 (6) (a) All personal property, including money, which is  
6779 forfeited to the state and is not capable of being sold at public  
6780 auction shall be liquidated and the proceeds, after deduction of  
6781 all storage and court costs, shall be forwarded to the State  
6782 Treasurer and deposited in the General Fund of the state.

6783 (b) All real estate which is forfeited to the state  
6784 shall be sold to the highest bidder at a public auction to be  
6785 conducted by the state at such place, on such notice and in  
6786 accordance with the same procedure, as far as practicable, as is  
6787 required in the case of sales of land under execution of law. The  
6788 proceeds of such sale shall first be applied to the cost and  
6789 expense in administering and conducting such sale, then to the  
6790 satisfaction of all mortgages, deeds of trusts, liens and  
6791 encumbrances of record on such property. All proceeds in excess  
6792 of the amount necessary for the cost of the sale of such land and  
6793 the satisfaction of any liens thereon shall be deposited in the  
6794 General Fund of the State Treasury.

6795 (c) All other property that has been seized by the  
6796 state and that has been forfeited shall, except as otherwise  
6797 provided, be sold at a public auction for cash by the state to the  
6798 highest and best bidder after advertising the sale for at least  
6799 once each week for three (3) consecutive weeks, the last notice to  
6800 appear not more than ten (10) days nor less than five (5) days  
6801 prior to such sale, in a newspaper having a general circulation  
6802 throughout the State of Mississippi. Such notices shall contain a

6803 description of the property to be sold and a statement of the time  
6804 and place of sale. It shall not be necessary to the validity of  
6805 such sale either to have the property present at the place of sale  
6806 or to have the name of the owner thereof stated in such notice.  
6807 The proceeds of the sale shall be delivered to the circuit clerk  
6808 and shall be disposed of as follows:

6809 (i) To any bona fide lienholder, secured party, or  
6810 other party holding an interest in the property in the nature of a  
6811 security interest, to the extent of his interest; and

6812 (ii) The balance, if any, after deduction of all  
6813 storage and court costs, shall be forwarded to the State Treasurer  
6814 and deposited with and used as general funds of the state.

6815 (d) The State Tax Commission shall issue a certificate  
6816 of title to any person who purchases property under the provisions  
6817 of this section when a certificate of title is required under the  
6818 laws of this state.

6819 SECTION 30. Section 97-43-11, Mississippi Code of 1972, is  
6820 amended as follows:[MS26]

6821 97-43-11. (1) When any property is seized pursuant to  
6822 Section 97-43-9, proceedings under this section shall be  
6823 instituted promptly.

6824 (2) (a) A petition for forfeiture shall be filed promptly  
6825 in the name of the State of Mississippi with the clerk of the  
6826 circuit court of the county in which the seizure is made. A copy  
6827 of such petition shall be served upon the following persons by  
6828 service of process in the same manner as in civil cases:

6829 (i) The owner of the property, if address is  
6830 known;

6831 (ii) Any secured party who has registered his lien  
6832 or filed a financing statement as provided by law, if the identity  
6833 of such secured party can be ascertained by the state by making a  
6834 good faith effort to ascertain the identity of such secured party  
6835 as described in paragraphs (b), (c), (d), (e) and (f) of this

6836 subsection;

6837                   (iii) Any other bona fide lienholder or secured  
6838 party or other person holding an interest in the property in the  
6839 nature of a security interest of whom the state has actual  
6840 knowledge;

6841                   (iv) A holder of a mortgage, deed of trust, lien  
6842 or encumbrance of record, if the property is real estate by making  
6843 a good faith inquiry as described in paragraph (g) of this  
6844 section; and

6845                   (v) Any person in possession of property subject  
6846 to forfeiture at the time that it was seized.

6847                   (b) If the property is a motor vehicle susceptible of  
6848 titling under the Mississippi Motor Vehicle Title Law and if there  
6849 is any reasonable cause to believe that the vehicle has been  
6850 titled, the state shall make inquiry of the State Tax Commission  
6851 as to what the records of the State Tax Commission show as to who  
6852 is the record owner of the vehicle and who, if anyone, holds any  
6853 lien or security interest which affects the vehicle.

6854                   (c) If the property is a motor vehicle and is not  
6855 titled in the State of Mississippi, then the state shall attempt  
6856 to ascertain the name and address of the person in whose name the  
6857 vehicle is licensed, and if the vehicle is licensed in a state  
6858 which has in effect a certificate of title law, the state shall  
6859 make inquiry of the appropriate agency of that state as to what  
6860 the records of the agency show as to who is the record owner of  
6861 the vehicle and who, if anyone, holds any lien, security interest,  
6862 or other instrument in the nature of a security device which  
6863 affects the vehicle.

6864                   (d) If the property is of a nature that a financing  
6865 statement is required by the laws of this state to be filed to  
6866 perfect a security interest affecting the property and if there is  
6867 any reasonable cause to believe that a financing statement  
6868 covering the security interest has been filed under the laws of



6869 this state, the state shall make inquiry of the appropriate office  
6870 designated in Section 75-9-501 as to what the records show as to  
6871 who is the record owner of the property and who, if anyone, has  
6872 filed a financing statement affecting the property.

6873 (e) If the property is an aircraft or part thereof and  
6874 if there is any reasonable cause to believe that an instrument in  
6875 the nature of a security device affects the property, then the  
6876 state shall make inquiry of the administrator of the Federal  
6877 Aviation Administration as to what the records of the  
6878 administrator show as to who is the record owner of the property  
6879 and who, if anyone, holds an instrument in the nature of a  
6880 security device which affects the property.

6881 (f) In the case of all other personal property subject  
6882 to forfeiture, if there is any reasonable cause to believe that an  
6883 instrument in the nature of a security device affects the  
6884 property, then the state shall make a good faith inquiry to  
6885 identify the holder of any such instrument.

6886 (g) If the property is real estate, the state shall  
6887 make inquiry at the appropriate places to determine who is the  
6888 owner of record and who, if anyone is a holder of a bona fide  
6889 mortgage, deed of trust, lien or encumbrance.

6890 (h) In the event the answer to an inquiry states that  
6891 the record owner of the property is any person other than the  
6892 person who was in possession of it when it was seized, or states  
6893 that any person holds any lien, encumbrance, security interest,  
6894 other interest in the nature of a security interest, mortgage or  
6895 deed of trust which affects the property, the state shall cause  
6896 any record owner and also any lienholder, secured party, other  
6897 person who holds an interest in the property in the nature of a  
6898 security interest, or holder of an encumbrance, mortgage or deed  
6899 of trust which affects the property to be named in the petition of  
6900 forfeiture and to be served with process in the same manner as in  
6901 civil cases.

6902           (i) If the owner of the property cannot be found and  
6903 served with a copy of the petition of forfeiture, or if no person  
6904 was in possession of the property subject to forfeiture at the  
6905 time that it was seized and the owner of the property is unknown,  
6906 the state shall file with the clerk of the court in which the  
6907 proceeding is pending an affidavit to such effect, whereupon the  
6908 clerk of the court shall publish notice of the hearing addressed  
6909 to "the Unknown Owner of \_\_\_\_\_," filling in the blank  
6910 space with a reasonably detailed description of the property  
6911 subject to forfeiture. Service by publication shall contain the  
6912 other requisites prescribed in Section 11-33-41, and shall be  
6913 served as provided in Section 11-33-37 for publication of notice  
6914 for attachments at law.

6915           (j) No proceedings instituted pursuant to the  
6916 provisions of this article shall proceed to hearing unless the  
6917 judge conducting the hearing is satisfied that this section has  
6918 been complied with. Any answer received from an inquiry required  
6919 by paragraphs (b) through (g) of this section shall be introduced  
6920 into evidence at the hearing.

6921           (3) (a) An owner of property that has been seized shall  
6922 file a verified answer within twenty (20) days after the  
6923 completion of service of process. If no answer is filed, the  
6924 court shall hear evidence that the property is subject to  
6925 forfeiture and forfeit the property to the state. If an answer is  
6926 filed, a time for hearing on forfeiture shall be set within thirty  
6927 (30) days of filing the answer or at the succeeding term of court  
6928 if court would not be in progress within thirty (30) days after  
6929 filing the answer. Provided, however, that upon request by the  
6930 state or the owner of the property, the court may postpone said  
6931 forfeiture hearing to a date past the time any criminal action is  
6932 pending against said owner.

6933           (b) If the owner of the property has filed a verified  
6934 answer denying that the property is subject to forfeiture, then

6935 the burden is on the state to prove that the property is subject  
6936 to forfeiture. The burden of proof placed upon the state shall be  
6937 clear and convincing proof. However, if no answer has been filed  
6938 by the owner of the property, the petition for forfeiture may be  
6939 introduced into evidence and is prima facie evidence that the  
6940 property is subject to forfeiture.

6941 (c) At the hearing any claimant of any right, title, or  
6942 interest in the property may prove his lien, encumbrance, security  
6943 interest, other interest in the nature of a security interest,  
6944 mortgage or deed of trust to be bona fide and created without  
6945 knowledge or consent that the property was to be used so as to  
6946 cause the property to be subject to forfeiture.

6947 (d) If it is found that the property is subject to  
6948 forfeiture, then the judge shall forfeit the property to the  
6949 state. However, if proof at the hearing discloses that the  
6950 interest of any bona fide lienholder, secured party, other person  
6951 holding an interest in the property in the nature of a security  
6952 interest or any holder of a bona fide encumbrance, mortgage or  
6953 deed of trust is greater than or equal to the present value of the  
6954 property, the court shall order the property released to him. If  
6955 such interest is less than the present value of the property and  
6956 if the proof shows that the property is subject to forfeiture, the  
6957 court shall order the property forfeited to the state.

6958 (4) (a) All personal property, including money, which is  
6959 forfeited to the state and is not capable of being sold at public  
6960 auction shall be liquidated and the proceeds, after deduction of  
6961 all storage and court costs, shall be forwarded to the State  
6962 Treasurer and deposited in the General Fund of the state.

6963 (b) All real estate which is forfeited to the state  
6964 shall be sold to the highest bidder at a public auction to be  
6965 conducted by the state at such place, on such notice and in  
6966 accordance with the same procedure, as far as practicable, as is  
6967 required in the case of sales of land under execution of law. The

6968 proceeds of such sale shall first be applied to the cost and  
6969 expense in administering and conducting such sale, then to the  
6970 satisfaction of all mortgages, deeds of trusts, liens and  
6971 encumbrances of record on such property. All proceeds in excess  
6972 of the amount necessary for the cost of the sale of such land and  
6973 the satisfaction of any liens thereon shall be deposited in the  
6974 General Fund of the State Treasury.

6975 (c) All other property that has been seized by the  
6976 state and that has been forfeited shall, except as otherwise  
6977 provided, be sold at a public auction for cash by the state to the  
6978 highest and best bidder after advertising the sale for at least  
6979 once each week for three (3) consecutive weeks, the last notice to  
6980 appear not more than ten (10) days nor less than five (5) days  
6981 prior to such sale, in a newspaper having a general circulation  
6982 throughout the State of Mississippi. Such notices shall contain a  
6983 description of the property to be sold and a statement of the time  
6984 and place of sale. It shall not be necessary to the validity of  
6985 such sale either to have the property present at the place of sale  
6986 or to have the name of the owner thereof stated in such notice.  
6987 The proceeds of the sale shall be delivered to the circuit clerk  
6988 and shall be disposed of as follows:

6989 (i) To any bona fide lienholder, secured party, or  
6990 other party holding an interest in the property in the nature of a  
6991 security interest, to the extent of his interest; and

6992 (ii) The balance, if any, after deduction of all  
6993 storage and court costs, shall be forwarded to the State Treasurer  
6994 and deposited with and used as general funds of the state.

6995 (d) The State Tax Commission shall issue a certificate  
6996 of title to any person who purchases property under the provisions  
6997 of this section when a certificate of title is required under the  
6998 laws of this state.

6999 SECTION 31. Section 53-3-41, Mississippi Code of 1972, is  
7000 amended as follows:[MS27]

7001           53-3-41. (1) For the purposes of this section, the  
7002 following terms shall have the meanings ascribed herein:

7003           (a) "Oil and gas production" means any oil, natural  
7004 gas, condensate of either, natural gas liquids, other gaseous,  
7005 liquid or dissolved hydrocarbons, sulfur or helium, or other  
7006 substance produced as a by-product or adjunct to their production,  
7007 or any combination of these, which is severed, extracted or  
7008 produced from the ground, the seabed or other submerged lands  
7009 within the jurisdiction of the State of Mississippi. Any such  
7010 substance, including recoverable or recovered natural gas liquids,  
7011 which is transported to or in a natural gas pipeline or natural  
7012 gas gathering system, or otherwise transported or sold for use as  
7013 natural gas, or is transported or sold for the extraction of  
7014 helium or natural gas liquids is gas production. Any such  
7015 substance which is transported or sold to persons and for purposes  
7016 not included in the foregoing natural gas definition is oil  
7017 production.

7018           (b) "Interest owner" means a person owning an entire or  
7019 fractional interest of any kind or nature in oil or gas production  
7020 at the time of severance, or a person who has an express, implied  
7021 or constructive right to receive a monetary payment determined by  
7022 the value of oil or gas production or by the amount of production.

7023           (c) "Royalty owner" means any person who possesses an  
7024 interest in the production, but who is not an owner as defined in  
7025 Section 53-1-3(g).

7026           (d) "Disbursing agent" shall mean that person who,  
7027 pursuant to an oil and gas lease, operating agreement, purchase  
7028 contract, or otherwise, assumes the responsibility of paying  
7029 royalty proceeds derived from a well's oil and gas production to  
7030 the royalty owner or owners legally entitled thereto. A first  
7031 purchaser shall not be deemed to be the disbursing agent unless  
7032 the first purchaser expressly assumes such responsibility in the  
7033 purchase contract.

7034           (e) "First purchaser" means the first person who  
7035 purchases oil or gas production from the interest owners after the  
7036 production is severed and may include the operator if the operator  
7037 acts as a purchaser of production attributable to other interest  
7038 owners.

7039           (f) An "operator" is a person engaged in the business  
7040 of severing oil or gas production from the ground, whether for  
7041 himself alone, for other persons alone or for himself and others.

7042           (2) Whenever a disbursing agent has not disbursed the  
7043 royalty proceeds derived from the well's production to the royalty  
7044 owner within one hundred twenty (120) days following the date of  
7045 first sale of oil or gas in the event the disbursing agent is a  
7046 first purchaser of oil or gas, or within one hundred twenty (120)  
7047 days following the date the disbursing agent receives the proceeds  
7048 from such production if the disbursing agent is not the first  
7049 purchaser, such royalty owner shall have a lien to secure the  
7050 payment of the royalty proceeds. The lien shall attach to the  
7051 proceeds from such production received by the disbursing agent  
7052 attributable to the royalty owner's interest.

7053           (3) The lien provided by this section shall be effective  
7054 against a third party only from the time a financing statement  
7055 evidencing such lien is filed in the same manner as financing  
7056 statements evidencing security interests in minerals are filed in  
7057 accordance with the provisions of Section 75-9-501.

7058           (4) The lien provided by this section shall expire one (1)  
7059 year after it becomes effective against a third party, unless  
7060 judicial proceedings have been commenced to assert it or unless  
7061 insolvency proceedings have been commenced by or against the  
7062 disbursing agent, in which event the lien shall remain effective  
7063 until termination of the insolvency proceedings or until  
7064 expiration of the one-year period, whichever occurs later.

7065           (5) Whenever there is a conflict between a lien under this  
7066 section and a security interest under Title 75, Chapter 9, the

7067 lien or security interest first to be filed has priority. Liens  
7068 provided for in this section shall have priorities among  
7069 themselves according to priority in time of filing of such liens.

7070 (6) The filing required by this section shall be a financing  
7071 statement as provided for in Section 75-9-310 and shall be subject  
7072 to the provisions of Part 5 of Article 9 of the Uniform Commercial  
7073 Code, except that in order for the filing to be sufficient, it  
7074 shall not be necessary for the debtor to sign the financing  
7075 statement, and the filing shall be effective for a period of only  
7076 one (1) year from the date of filing.

7077 (7) This section does not impair an operator's right to set  
7078 off or withhold funds from other interest owners as security for  
7079 or in satisfaction of any debt or security interest. This section  
7080 does not impair a disbursing agent's right to withhold funds in  
7081 the event a question is raised concerning the title or ownership  
7082 of, or right to sell, the oil or gas production. In case of a  
7083 dispute between interest owners, a good-faith tender by the  
7084 disbursing agent of funds to the person the interest owners shall  
7085 agree on, or to a court of competent jurisdiction in the event of  
7086 litigation or bankruptcy, shall operate as a tender of the funds  
7087 to both.

7088 (8) Nothing in this section shall be construed to enlarge or  
7089 diminish the rights and obligations provided to or imposed on  
7090 interest owners, royalty owners, disbursing agents, first  
7091 purchasers, or operators by contract or otherwise by law. The  
7092 sole purpose of this section is to provide royalty owners a lien  
7093 under the conditions provided herein.

7094 SECTION 32. Section 75-11-106, Mississippi Code of 1972, is  
7095 amended as follows:[MS28]

7096 75-11-106. (1) If a security interest is perfected or has  
7097 priority on April 1, 1978 as to all persons or as to certain  
7098 persons without any filing or recording, and if the filing of a  
7099 financing statement would be required for the perfection or

7100 priority of the security interest against those persons under the  
7101 revised U.C.C., the perfection and priority rights of the security  
7102 interest shall continue until three (3) years after April 1, 1978.

7103 The perfection will then lapse unless a financing statement is  
7104 filed as provided in Section 75-11-104 or unless the security  
7105 interests is perfected otherwise than by filing.

7106 (2) A financing statement may be filed within six (6) months  
7107 before the perfection of a security interest would otherwise  
7108 lapse. Any such financing statement may be signed by either the  
7109 debtor or the secured party. It must identify the security  
7110 agreement, statement or notice (however denominated in any statute  
7111 or other law repealed or modified by Chapter 452, Laws of 1977),  
7112 state the office where and the date when the last filing, refiling  
7113 or recording, if any, was made with respect thereto, and the  
7114 filing number, if any, or book and page, if any, of recording and  
7115 further state that the security agreement, statement or notice,  
7116 however denominated, in another filing office under the old U.C.C.  
7117 or under any statute or other law repealed or modified by Chapter  
7118 452, Laws of 1977), is still effective. Section 75-9-501 \* \* \*  
7119 determines the proper place to file such a financing statement.  
7120 Except as specified in this subsection, the provisions of Section  
7121 75-9-510 for continuation statements apply to such a financing  
7122 statement.

7123 SECTION 33. Section 85-8-9, Mississippi Code of 1972, is  
7124 amended as follows:[MS29]

7125 85-8-9. (1) If a notice of federal lien, a refiling of a  
7126 notice of federal lien, or a notice of revocation of any  
7127 certificate described in subsection (2) of this section is  
7128 presented to the filing officer who is:

7129 (a) The Secretary of State, he shall cause the notice  
7130 to be marked, held and indexed in accordance with the provisions  
7131 of subsection (4) of Section 75-9-501, Mississippi Code of 1972,  
7132 of the Uniform Commercial Code as if the notice were a financing



7133 statement within the meaning of that code; or

7134           (b) Chancery clerk, he shall endorse thereon his  
7135 identification and the date and time of receipt and forthwith file  
7136 it alphabetically or enter it in an alphabetical index showing the  
7137 name and address of the person named in the notice, the date and  
7138 time of receipt, the title and address of the official party  
7139 certifying the lien, and the total amount appearing on the notice  
7140 of lien.

7141           (2) If a certificate of release, non-attachment, discharge  
7142 or subordination of any lien is presented to the Secretary of  
7143 State for filing he shall:

7144           (a) Cause a certificate of release or non-attachment to  
7145 be marked, held and indexed as if the certificate were a  
7146 termination statement within the meaning of the Uniform Commercial  
7147 Code, but the notice of lien to which the certificate relates may  
7148 not be removed from the files; and

7149           (b) Cause a certificate of discharge or subordination  
7150 to be held, marked and indexed as if the certificate were a  
7151 release of collateral within the meaning of the Uniform Commercial  
7152 Code.

7153           (3) If a refiled notice of federal lien referred to in  
7154 subsection (1) of this section or any of the certificates or  
7155 notices referred to in subsection (2) of this section is presented  
7156 for filing with the chancery clerk, he shall permanently attach  
7157 the refiled notice or the certificate to the original notice of  
7158 lien and enter the refiled notice of the certificate with the date  
7159 of filing in any alphabetical lien index on the line where the  
7160 original notice of lien is entered.

7161           (4) Upon request of any person, the filing officer shall  
7162 issue his certificate showing whether there is on file, on the  
7163 date and hour stated therein, any notice of lien or certificate or  
7164 notice affecting any lien, filed under this act, naming a  
7165 particular person, and if a notice or certificate is on file,

7166 giving the date and hour of its filing. The fee for a certificate  
7167 is Five Dollars (\$5.00). Upon request the filing officer shall  
7168 furnish a copy of any notice of federal lien or notice or  
7169 certificate affecting a federal lien for a fee of Two Dollars  
7170 (\$2.00) per page.

7171 SECTION 34. Section 99-41-23, Mississippi Code of 1972, is  
7172 amended as follows:[CSQ30]

7173 99-41-23. (1) Compensation for work loss and dependent's  
7174 economic loss may not exceed Four Hundred Fifty Dollars (\$450.00)  
7175 per week, not to exceed fifty-two (52) weeks; provided, however,  
7176 if there is more than one (1) dependent per victim, the amount of  
7177 compensation awarded shall be prorated among the dependents, and  
7178 the total amount of the award may not exceed the aggregate  
7179 limitation of this section.

7180 (2) Compensation payable to a victim and to all other  
7181 claimants sustaining economic loss because of injury to or death  
7182 of that victim may not exceed Ten Thousand Dollars (\$10,000.00) in  
7183 the aggregate.

7184 (3) A determination that compensation shall be awarded may  
7185 provide for payment to a claimant in a lump sum or in  
7186 installments. All medical bills may be paid directly to affected  
7187 health care providers. At the request of the claimant, the  
7188 director may convert future economic loss, other than allowable  
7189 expense, to a lump sum, but only upon a finding of either of the  
7190 following:

7191 (a) That the award in a lump sum will promote the  
7192 interests of the claimant; or

7193 (b) That the present value of all future economic loss,  
7194 other than allowable expense, does not exceed One Thousand Dollars  
7195 (\$1,000.00).

7196 (4) An award payable in installments for future economic  
7197 loss may be made only for a period as to which the future economic  
7198 loss can reasonably be determined. An award payable in

7199 installments for future economic loss may be modified upon  
7200 findings that a material and substantial change of circumstances  
7201 has occurred.

7202 (5) An award shall not be subject to execution, attachment,  
7203 garnishment or other process, except that an award shall not be  
7204 exempt from orders for the withholding of support for minor  
7205 children, and except that an award for allowable expense shall not  
7206 be exempt from a claim of a creditor to the extent that such  
7207 creditor has provided products, services or accommodations, the  
7208 costs of which are included in the award.

7209 (6) An assignment by the claimant to any future award under  
7210 the provisions of this chapter is unenforceable, except:

7211 (a) An assignment of any award for work loss to assure  
7212 payment of court-ordered alimony, maintenance or child support; or

7213 (b) An assignment for any award for allowable expense  
7214 to the extent that the benefits are for the cost of products,  
7215 services or accommodations necessitated by the injury or death on  
7216 which the claim is based and which are provided or are to be  
7217 provided by the assignee.

7218 (7) Subsections (5) and (6) of this section prevail over  
7219 Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform  
7220 Commercial Code to the extent, if any that Sections 75-9-406 and  
7221 75-9-408 may otherwise be applicable.

7222 SECTION 35. Section 25-7-21, Mississippi Code of 1972, is  
7223 brought forward as follows:[MS31]

7224 25-7-21. (1) From and after October 1, 1985, there will be  
7225 no fees for the services of the tax collector, with the exception  
7226 of taxes collected for taxing authorities other than the board of  
7227 supervisors. For collecting taxes for authorities other than the  
7228 board of supervisors, the fee shall be five percent (5%) of the  
7229 taxes collected or an amount authorized by contract between the  
7230 county and the outside taxing authority. A tax collector shall  
7231 keep a complete account of every such fee collected and shall file

7232 an itemized statement thereof monthly, under oath, with the clerk  
7233 of the board of supervisors of the county who shall preserve same  
7234 as a part of the records of the office. The tax collector shall  
7235 make a remittance to the clerk of the board of supervisors of the  
7236 county on or before the twentieth of each month for deposit into  
7237 the general fund of the county of all said fees collected during  
7238 the preceding month.

7239 (2) For the purpose of the limitations set forth in Section  
7240 27-39-321, commissions for levies set by the board of supervisors  
7241 shall be added to base collections of the general county fund for  
7242 the 1984-1985 year only.

7243 (3) Fees of publisher for publication - To the publishers,  
7244 payable by the delinquent taxpayer, and to be collected and paid  
7245 over by the tax collectors; or if the land be sold to the state to  
7246 be paid by the state:

7247 For each separate publication advertising lands for sale for  
7248 taxes, for each separately described subdivision, as described and  
7249 set out in the assessment rolls for the county.....\$1.50

7250 (4) Fees of chancery clerk for collection of delinquent  
7251 taxes:

7252 (a) For abstracting the list of lands sold for taxes,  
7253 for each separately described section or subdivision.....\$1.00

7254 (b) For filing and recording deed to land sold for  
7255 taxes.....\$6.00

7256 (c) For abstracting each deed in the sectional index,  
7257 per section or subdivision.....\$1.00

7258 (d) For recording redemption of each.....\$6.00

7259 (e) For abstracting each redemption in the sectional  
7260 index, per section or subdivision.....\$1.00

7261 (f) And, in addition, one percent (1%) on the amount  
7262 necessary to redeem.

7263 The several officers' fees shall be collected by the tax  
7264 collector or chancery clerk and paid over to those entitled to

7265 same.

7266 SECTION 36. This act shall take effect and be in force from  
7267 and after July 1, 2001.