

By: Senator(s) Ross

To: Judiciary, Division A

SENATE BILL NO. 2540

1 AN ACT TO AMEND SECTIONS 75-7-102, 75-7-103, 75-7-104,
 2 75-7-105, 75-7-106, 75-7-201, 75-7-202, 75-7-203, 75-7-204,
 3 75-7-206, 75-7-207, 75-7-208, 75-7-209, 75-7-210, 75-7-301,
 4 75-7-302, 75-7-303, 75-7-304, 75-7-305, 75-7-307, 75-7-308,
 5 75-7-309, 75-7-401, 75-7-402, 75-7-403, 75-7-404, 75-7-501,
 6 75-7-502, 75-7-503, 75-7-504, 75-7-507, 75-7-601 AND 75-7-701,
 7 MISSISSIPPI CODE OF 1972, DEALING WITH DOCUMENTS OF TITLE, TO MAKE
 8 TECHNICAL CORRECTIONS AND REVISE NUMBERING AND LETTERING OF THE
 9 ACT SO AS TO COMPORT WITH THE MODEL ACT AS PROMULGATED BY THE
 10 NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; TO
 11 AMEND SECTIONS 75-1-201 AND 75-9-102, MISSISSIPPI CODE OF 1972, TO
 12 CONFORM; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 75-7-102, Mississippi Code of 1972, is
 15 amended as follows:

16 75-7-102. (a) In this chapter, unless the context otherwise
 17 requires:

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

21 (2) "Carrier" means a person that issues a bill of
 22 lading.

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

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

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



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

34 (7) "Goods" means all things that are treated as
35 movable for the purposes of a contract for storage or
36 transportation.

37 (8) "Issuer" means a bailee that issues a document of
38 title or, in the case of an unaccepted delivery order, the person
39 that orders the possessor of goods to deliver. The term includes
40 a person for which an agent or employee purports to act in issuing
41 a document if the agent or employee has real or apparent authority
42 to issue documents, even if the issuer did not receive any goods,
43 the goods were misdescribed, or in any other respect the agent or
44 employee violated the issuer's instructions.

45 (9) "Person entitled under the document" means the
46 holder, in the case of a negotiable document of title, or the
47 person to which delivery of the goods is to be made by the terms
48 of, or pursuant to instructions in a record under, a nonnegotiable
49 document of title.

50 (10) "Record" means information that is inscribed on a
51 tangible medium or that is stored in an electronic or other medium
52 and is retrievable in perceivable form.

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

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

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

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

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

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

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



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

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

68 (c) In addition, Chapter 1 of this title contains general
69 definitions and principles of construction and interpretation
70 applicable throughout this chapter.

71 **SECTION 2.** Section 75-7-103, Mississippi Code of 1972, is
72 amended as follows:

73 75-7-103. (a) This chapter is subject to any treaty or
74 statute of the United States or regulatory statute of this state
75 to the extent the treaty, statute, or regulatory statute is
76 applicable.

77 (b) This chapter does not repeal or modify any law
78 prescribing the form or contents of a document of title or the
79 services or facilities to be afforded by a bailee, or otherwise
80 regulating a bailee's businesses in respects not specifically
81 treated in this chapter. However, violation of these laws does
82 not affect the status of a document of title that otherwise
83 complies with the definition of a document of title.

84 (c) This chapter modifies, limits, and supersedes the
85 federal Electronic Signatures in Global and National Commerce Act
86 (15 USCS Section 7001 et seq.) but does not modify, limit, or
87 supersede Section 101(c) of that act (15 USCS Section 7001(c)) or
88 authorize electronic delivery of any of the notices described in
89 Section 103(b) of that act (15 USCS Section 7003(b)).

90 (d) To the extent there is a conflict between the Uniform
91 Electronic Transactions Act (Title 75, Chapter 12) and this
92 chapter, this chapter governs.

93 **SECTION 3.** Section 75-7-104, Mississippi Code of 1972, is
94 amended as follows:

95 75-7-104. (a) * * * A document of title is negotiable if by
96 its terms the goods are to be delivered to bearer or to the order
97 of a named person.



98 (b) A document of title other than one described in
99 subsection (a) is nonnegotiable. A bill of lading that states
100 that the goods are consigned to a named person is not made
101 negotiable by a provision that the goods are to be delivered only
102 against an * * * order in a record signed by the same or another
103 named person.

104 (c) A document of title is nonnegotiable if, at the time it
105 is issued, the document has a conspicuous legend, however
106 expressed, that it is nonnegotiable.

107 **SECTION 4.** Section 75-7-105, Mississippi Code of 1972, is
108 amended as follows:

109 75-7-105. (a) Upon request of a person entitled under an
110 electronic document of title, the issuer of the electronic
111 document may issue a tangible document of title as a substitute
112 for the electronic document if:

113 (1) The person entitled under the electronic document
114 surrenders control of the document to the issuer; and

115 (2) The tangible document when issued contains a
116 statement that it is issued in substitution for the electronic
117 document.

118 (b) Upon issuance of a tangible document of title in
119 substitution for an electronic document of title in accordance
120 with subsection (a):

121 (1) The electronic document ceases to have any effect
122 or validity; and

123 (2) The person that procured issuance of the tangible
124 document warrants to all subsequent persons entitled under the
125 tangible document that the warrantor was a person entitled under
126 the electronic document when the warrantor surrendered control of
127 the electronic document to the issuer.

128 (c) Upon request of a person entitled under a tangible
129 document of title, the issuer of the tangible document may issue



130 an electronic document of title as a substitute for the tangible
131 document if:

132 (1) The person entitled under the tangible document
133 surrenders possession of the document to the issuer; and

134 (2) The electronic document when issued contains a
135 statement that it is issued in substitution for the tangible
136 document.

137 (d) Upon issuance of an electronic document of title in
138 substitution for a tangible document of title in accordance with
139 subsection (c):

140 (1) The tangible document ceases to have any effect or
141 validity; and

142 (2) The person that procured issuance of the electronic
143 document warrants to all subsequent persons entitled under the
144 electronic document that the warrantor was a person entitled under
145 the tangible document when the warrantor surrendered possession of
146 the tangible document to the issuer.

147 **SECTION 5.** Section 75-7-106, Mississippi Code of 1972, is
148 amended as follows:

149 75-7-106. (a) A person has control of an electronic
150 document of title if a system employed for evidencing the transfer
151 of interests in the electronic document reliably establishes that
152 person as the person to which the electronic document was issued
153 or transferred.

154 (b) A system satisfies subsection (a), and a person is
155 deemed to have control of an electronic document of title, if the
156 document is created, stored, and assigned in such a manner that:

157 (1) A single authoritative copy of the document exists
158 which is unique, identifiable, and, except as otherwise provided
159 in paragraphs (4), (5), and (6), unalterable;

160 (2) The authoritative copy identifies the person
161 asserting control as:



162 (A) The person to which the document was issued;
163 or

164 (B) If the authoritative copy indicates that the
165 document has been transferred, the person to which the document
166 was most recently transferred;

167 (3) The authoritative copy is communicated to and
168 maintained by the person asserting control or is designated
169 custodian;

170 (4) Copies or amendments that add or change an
171 identified assignee of the authoritative copy can be made only
172 with the consent of the person asserting control;

173 (5) Each copy of the authoritative copy and any copy of
174 a copy is readily identifiable as a copy that is not the
175 authoritative copy; and

176 (6) Any amendment of the authoritative copy is readily
177 identifiable as authorized or unauthorized.

178 **SECTION 6.** Section 75-7-201, Mississippi Code of 1972, is
179 amended as follows:

180 75-7-201. (a) A warehouse receipt may be issued by any
181 warehouse.

182 (b) If goods, including distilled spirits and agricultural
183 commodities, are stored under a statute requiring a bond against
184 withdrawal or a license for the issuance of receipts in the nature
185 of warehouse receipts, a receipt issued for the goods is deemed to
186 be * * * a warehouse receipt even if issued by a person that is
187 the owner of the goods and is not a warehouse.

188 **SECTION 7.** Section 75-7-202, Mississippi Code of 1972, is
189 amended as follows:

190 75-7-202. (a) A warehouse receipt need not be in any
191 particular form.

192 (b) Unless a warehouse receipt provides for each of the
193 following, the warehouse is liable for damages caused to a person
194 injured by its omission:



195 (1) * * * The location of the warehouse facility where
196 the goods are stored;

197 (2) The date of issue of the receipt;

198 (3) The unique identification code of the receipt;

199 (4) A statement whether the goods received will be
200 delivered to the bearer, to a named person, or to a named person
201 or its order;

202 (5) The rate of storage and handling charges, but if
203 goods are stored under a field warehousing arrangement, * * * a
204 statement of that fact is sufficient on a nonnegotiable receipt;

205 (6) A description of the goods or * * * the packages
206 containing them;

207 (7) The signature of the warehouse or its agent;

208 (8) If the receipt is issued for goods that the
209 warehouse owns, either solely, jointly, or in common with
210 others, * * * the fact of that ownership; and

211 (9) A statement of the amount of advances made and of
212 liabilities incurred for which the warehouse claims a lien or
213 security interest, but if the precise amount of advances made or
214 of * * * liabilities incurred is, at the time of the issue of the
215 receipt, * * * unknown to the warehouse or to its agent that
216 issued the receipt, * * * a statement of the fact that advances
217 have been made or liabilities incurred and the purpose of the
218 advances or liabilities is sufficient.

219 (c) A warehouse may insert in its receipt any * * * terms
220 that are not contrary to the provisions of the Uniform Commercial
221 Code and do not impair its obligation of delivery under Section
222 75-7-403 or its duty of care under Section 75-7-204. Any contrary
223 provisions are ineffective.

224 **SECTION 8.** Section 75-7-203, Mississippi Code of 1972, is
225 amended as follows:

226 75-7-203. A party to or purchaser for value in good faith of
227 a document of title, other than a bill of lading, that relies upon



228 the description of the goods in the document may recover from the
229 issuer damages caused by the nonreceipt or misdescription of the
230 goods, except to the extent that:

231 (1) The document conspicuously indicates that the
232 issuer does not know whether all or part of the goods in fact were
233 received or conform to the description, such as a case in which
234 the description is in terms of marks or labels or kind, quantity,
235 or condition, or the receipt or description is qualified by
236 "contents, condition, and quality unknown," "said to contain," or
237 words of similar import, if the indication is true; or

238 (2) The party or purchaser otherwise has notice of the
239 nonreceipt or misdescription.

240 **SECTION 9.** Section 75-7-204, Mississippi Code of 1972, is
241 amended as follows:

242 75-7-204. (a) A warehouse is liable for damages for loss of
243 or injury to the goods caused by its failure to exercise care with
244 regard to the goods that a reasonably careful person would
245 exercise under similar circumstances. However, unless otherwise
246 agreed, the warehouse is not liable for damages that could not
247 have been avoided by the exercise of that care.

248 (b) Damages may be limited by a term in the warehouse
249 receipt or storage agreement limiting the amount of liability in
250 case of loss or damage beyond which the warehouse is not liable.
251 Such a limitation is not effective with respect to the warehouse's
252 liability for conversion to its own use. The warehouse's
253 liability, on request of the bailor in a record at the time of
254 signing such storage agreement or within a reasonable time after
255 receipt of the warehouse receipt, * * * may be increased on part
256 or all of the goods covered by the storage agreement or the
257 warehouse receipt. In this event, increased rates may be charged
258 based on an increased valuation of the goods.



259 (c) Reasonable provisions as to the time and manner of
260 presenting claims and commencing actions based on the bailment may
261 be included in the warehouse receipt or storage agreement.

262 (d) This section does not impair or repeal Title 75, Chapter
263 43, or Title 75, Chapter 44.

264 **SECTION 10.** Section 75-7-206, Mississippi Code of 1972, is
265 amended as follows:

266 75-7-206. (a) A warehouse, by giving notice to the person
267 on whose account the goods are held and any other person known to
268 claim an interest in the goods, may require payment of any charges
269 and removal of the goods from the warehouse at the termination of
270 the period of storage fixed by the document of title or, if a
271 period is not fixed, within a stated period not less than thirty
272 (30) days after the warehouse gives notice. If the goods are not
273 removed before the date specified in the notice, the warehouse may
274 sell them pursuant to Section 75-7-210.

275 (b) If a warehouse in good faith believes that * * * goods
276 are about to deteriorate or decline in value to less than the
277 amount of its lien within the time provided in subsection (a) and
278 Section 75-7-210, the warehouse may specify in the notice given
279 under subsection (a) any reasonable shorter time for removal of
280 the goods and, if the goods are not removed, may sell them at
281 public sale held not less than one (1) week after a single
282 advertisement or posting.

283 (c) If, as a result of a quality or condition of the goods
284 of which the warehouse did not have notice at the time of deposit,
285 the goods are a hazard to other property, the warehouse
286 facilities, or other persons, the warehouse may sell the goods at
287 public or private sale without advertisement or posting on
288 reasonable notification to all persons known to claim an interest
289 in the goods. If the warehouse, after a reasonable effort, is
290 unable to sell the goods, it may dispose of them in any lawful
291 manner and does not incur liability by reason of that disposition.



292 (d) A warehouse shall deliver the goods to any person
293 entitled to them under this chapter upon due demand made at any
294 time before sale or other disposition under this section.

295 (e) A warehouse may satisfy its lien from the proceeds of
296 any sale or disposition under this section but shall hold the
297 balance for delivery on the demand of any person to which the
298 warehouse would have been bound to deliver the goods.

299 **SECTION 11.** Section 75-7-207, Mississippi Code of 1972, is
300 amended as follows:

301 75-7-207. (a) Unless the warehouse receipt provides
302 otherwise * * *, a warehouse shall keep separate the goods covered
303 by each receipt so as to permit at all times identification and
304 delivery of those goods. However, different lots of fungible
305 goods may be commingled.

306 (b) If different lots of fungible goods are commingled, the
307 goods are owned in common by the persons entitled thereto and the
308 warehouse is severally liable to each owner for that owner's
309 share. If, because of overissue, a mass of fungible goods is
310 insufficient to meet all the receipts the warehouse has issued
311 against it, the persons entitled include all holders to which
312 overissued receipts have been duly negotiated.

313 **SECTION 12.** Section 75-7-208, Mississippi Code of 1972, is
314 amended as follows:

315 75-7-208. If a blank in a negotiable tangible warehouse
316 receipt has been filled in without authority, a good faith
317 purchaser for value and without notice of the lack of authority
318 may treat the insertion as authorized. Any other unauthorized
319 alteration leaves any tangible or electronic warehouse receipt
320 enforceable against the issuer according to its original tenor.

321 **SECTION 13.** Section 75-7-209, Mississippi Code of 1972, is
322 amended as follows:

323 75-7-209. (a) A warehouse has a lien against the bailor on
324 the goods covered by a warehouse receipt or storage agreement or



325 on the proceeds thereof in its possession for charges for storage
326 or transportation, including demurrage and terminal charges,
327 insurance, labor, or other charges, present or future, in relation
328 to the goods, and for expenses necessary for preservation of the
329 goods or reasonably incurred in their sale pursuant to law. If
330 the person on whose account the goods are held is liable for
331 similar charges or expenses in relation to other goods whenever
332 deposited and it is stated in the warehouse receipt or storage
333 agreement that a lien is claimed for charges and expenses in
334 relation to other goods, the warehouse also has a lien against the
335 goods covered by the warehouse receipt or storage agreement or on
336 the proceeds thereof in its possession for those charges and
337 expenses, whether or not the other goods have been delivered by
338 the warehouse. However, as against a person to which a negotiable
339 warehouse receipt is duly negotiated, a warehouse's lien is
340 limited to charges in an amount or at a rate specified in the
341 warehouse receipt or, if no charges are so specified, to a
342 reasonable charge for storage of the specific goods covered by the
343 receipt subsequent to the date of the receipt.

344 (b) The warehouse may also reserve a security interest under
345 Title 75, Chapter 9, against the bailor for the maximum amount
346 specified on the receipt for charges other than those specified in
347 subsection (a), such as for money advanced and interest. A
348 security interest is governed by the chapter on Secured
349 Transactions (Title 75, Chapter 9).

350 (c) A warehouse's lien for charges and expenses under
351 subsection (a) or a security interest under subsection (b) is also
352 effective against any person that so entrusted the bailor with
353 possession of the goods that a pledge of them by the bailor to a
354 good faith purchaser for value would have been valid. However,
355 the lien or security interest is not effective against a person
356 that before issuance of a document of title had a legal interest
357 or a perfected security interest in the goods and that did not:



358 (1) Deliver or entrust the goods or any document * * *
359 covering the goods to the bailor or the bailor's nominee
360 with * * * actual or apparent authority to ship, store, or sell;
361 or with * * * power to obtain delivery under Section 75-7-403; or
362 with * * * power of disposition under Section 75-2-403,
363 75-2A-304(2), 75-2A-305(2) or 75-9-320 or other statute or rule of
364 law; or

365 (2) Acquiesce in the procurement by the bailor or its
366 nominee of any document.

367 (d) A warehouse's lien on household goods for charges and
368 expenses in relation to the goods under subsection (a) is also
369 effective against all persons if the depositor was the legal
370 possessor of the goods at the time of deposit. In this
371 subsection, "household goods" means furniture, furnishings, or
372 personal effects used by the depositor in a dwelling.

373 (e) A warehouse loses its lien on any goods that it
374 voluntarily delivers or unjustifiably refuses to deliver.

375 **SECTION 14.** Section 75-7-210, Mississippi Code of 1972, is
376 amended as follows:

377 75-7-210. (a) Except as otherwise provided in subsection
378 (b), a warehouse's lien may be enforced by public or private sale
379 of the goods, in bulk or in packages, at any time or place and on
380 any terms that are commercially reasonable, after notifying all
381 persons known to claim an interest in the goods. The notification
382 must include a statement of the amount due, the nature of the
383 proposed sale, and the time and place of any public sale. The
384 fact that a better price could have been obtained by a sale at a
385 different time or in a different method from that selected by the
386 warehouse is not of itself sufficient to establish that the sale
387 was not made in a commercially reasonable manner. The warehouse
388 has sold in a commercially reasonable manner if the warehouse
389 sells the goods in the usual manner in any recognized market
390 therefor, sells at the price current in that market at the time of



391 the sale, or has otherwise sold in conformity with commercially
392 reasonable practices among dealers in the type of goods sold. A
393 sale of more goods than apparently necessary to be offered to
394 insure satisfaction of the obligation is not commercially
395 reasonable, except in cases covered by the preceding sentence.

396 (b) A warehouse's * * * lien on goods, other than goods
397 stored by a merchant in the course of its business, may be
398 enforced only if the following requirements are satisfied:

399 (1) All persons known to claim an interest in the goods
400 must be notified.

401 (2) The notification must include an itemized statement
402 of the claim, a description of the goods subject to the lien, a
403 demand for payment within a specified time not less than ten (10)
404 days after receipt of the notification, and a conspicuous
405 statement that unless the claim is paid within that time the goods
406 will be advertised for sale and sold by auction at a specified
407 time and place.

408 (3) The sale must conform to the terms of the
409 notification.

410 (4) The sale must be held at the nearest suitable place
411 to * * * where the goods are held or stored.

412 (5) After the expiration of the time given in the
413 notification, an advertisement of the sale must be published once
414 a week for two (2) weeks consecutively in a newspaper of general
415 circulation where the sale is to be held. The advertisement must
416 include a description of the goods, the name of the person on
417 whose account the goods are being held, and the time and place of
418 the sale. The sale must take place at least fifteen (15) days
419 after the first publication. If there is no newspaper of general
420 circulation in the county where the sale is to be held, the
421 advertisement must be posted at least ten (10) days before the
422 sale in not less than six (6) conspicuous places in the
423 neighborhood of the proposed sale.



424 (c) Before any sale pursuant to this section, any person
425 claiming a right in the goods may pay the amount necessary to
426 satisfy the lien and the reasonable expenses incurred in complying
427 with this section. In that event, the goods may not be sold but
428 must be retained by the warehouse subject to the terms of the
429 receipt and this chapter.

430 (d) A warehouse may buy at any public sale held pursuant to
431 this section.

432 (e) A purchaser in good faith of goods sold to enforce a
433 warehouse's lien takes the goods free of any rights of persons
434 against which the lien was valid, despite the warehouse's
435 noncompliance with this section.

436 (f) A warehouse may satisfy its lien from the proceeds of
437 any sale pursuant to this section but must hold the balance, if
438 any, for delivery on demand to any person to which the warehouse
439 would have been bound to deliver the goods.

440 (g) The rights provided by this section are in addition to
441 all other rights allowed by law to a creditor against a debtor.

442 (h) If a lien is on goods stored by a merchant in the course
443 of its business, the lien may be enforced in accordance with * * *
444 subsection (a) or (b).

445 (i) A warehouse is liable for damages caused by failure to
446 comply with the requirements for sale under this section and, in
447 case of willful violation, is liable for conversion.

448 **SECTION 15.** Section 75-7-301, Mississippi Code of 1972, is
449 amended as follows:

450 75-7-301. (a) A consignee of a nonnegotiable bill of lading
451 which has given value in good faith, or a holder to which a
452 negotiable bill has been duly negotiated, relying upon the
453 description of the goods in the bill or upon the date shown in the
454 bill, may recover from the issuer damages caused by the misdating
455 of the bill or the nonreceipt or misdescription of the goods,
456 except to the extent that the document of title indicates that the



457 issuer does not know whether any part or all of the goods in fact
458 were received or conform to the description, such as in a case in
459 which the description is in terms of marks or labels or kind,
460 quantity, or condition or the receipt or description is qualified
461 by "contents or condition of contents of packages unknown," "said
462 to contain," "shipper's weight, load and count," or words of
463 similar import, if that indication is true.

464 (b) If goods are loaded by the issuer of the bill of
465 lading, * * * the issuer shall count the packages of goods if
466 shipped in packages and ascertain the kind and quantity if shipped
467 in bulk and * * * words such as "shipper's weight, load and
468 count," or words of similar import indicating that the description
469 was made by the shipper are ineffective except as to goods
470 concealed by packages.

471 (c) If bulk goods are loaded by a shipper that makes
472 available to the issuer of the bill of lading adequate facilities
473 for weighing those goods, the issuer shall ascertain the kind and
474 quantity within a reasonable time after receiving the shipper's
475 request in a record to do so. In that case, "shipper's weight" or
476 other words of similar import are ineffective.

477 (d) The issuer * * *, by including in the bill of lading the
478 words "shipper's weight, load and count," or * * * words of
479 similar import, may indicate that the goods were loaded by the
480 shipper, and, if that statement is true, the issuer is not liable
481 for damages caused by the improper loading. However, * * *
482 omission of such words does not imply liability for damages caused
483 by improper loading.

484 (e) A shipper guarantees to the issuer the accuracy at the
485 time of shipment of the description, marks, labels, number, kind,
486 quantity, condition, and weight, as furnished by the shipper, and
487 the shipper shall indemnify the issuer against damage caused by
488 inaccuracies in those particulars. This right of the issuer to
489 that indemnity does not limit its responsibility or liability



490 under the contract of carriage to any person other than the
491 shipper.

492 **SECTION 16.** Section 75-7-302, Mississippi Code of 1972, is
493 amended as follows:

494 75-7-302. (a) The issuer of a through bill of lading or
495 other document of title embodying an undertaking to be performed
496 in part by a person acting as its agent or by a performing carrier
497 is liable to any person entitled to recover on the * * * document
498 for any breach by the other person or the performing carrier of
499 its obligation under the * * * document. However, to the extent
500 that the bill * * * covers an undertaking to be performed overseas
501 or in territory not contiguous to the continental United States or
502 an undertaking including matters other than transportation, this
503 liability for breach by the other person or the performing carrier
504 may be varied by agreement of the parties.

505 (b) If goods covered by a through bill of lading or other
506 document of title embodying an undertaking to be performed in part
507 by a person other than the issuer are received by that person, the
508 person is subject, with respect to its own performance while the
509 goods are in its possession, to the obligation of the issuer. The
510 person's obligation is discharged by delivery of the goods to
511 another * * * person pursuant to the * * * document and does not
512 include liability for breach by any other person or by the issuer.

513 (c) The issuer of a through bill of lading or other document
514 of title described in subsection (a) is entitled to recover from
515 the performing carrier, or other person in possession of the goods
516 when the breach of the obligation under the * * * document
517 occurred:

518 (1) The amount it may be required to pay to any person
519 entitled to recover on the * * * document for the breach, as may
520 be evidenced by any receipt, judgment, or transcript of judgment;
521 and



522 (2) The amount of any expense reasonably incurred by
523 the issuer in defending any action commenced by any person
524 entitled to recover on the * * * document for the breach.

525 **SECTION 17.** Section 75-7-303, Mississippi Code of 1972, is
526 amended as follows:

527 75-7-303. (a) Unless the bill of lading otherwise provides,
528 a carrier may deliver the goods to a person or destination other
529 than that stated in the bill or may otherwise dispose of the
530 goods, without liability for misdelivery, on instructions from:

531 (1) The holder of a negotiable bill; * * *

532 (2) The consignor on a nonnegotiable bill even if the
533 consignee has given contrary instruction; * * *

534 (3) The consignee on a nonnegotiable bill in the
535 absence of contrary instructions from the consignor, if the goods
536 have arrived at the billed destination or if the consignee is in
537 possession of the tangible bill or in control of the electronic
538 bill; or

539 (4) The consignee on a nonnegotiable bill, if the
540 consignee is entitled as against the consignor to dispose of the
541 goods.

542 (b) Unless instructions described in subsection (a) are
543 included in a negotiable bill of lading, a person to which the
544 bill is duly negotiated may hold the bailee according to the
545 original terms.

546 **SECTION 18.** Section 75-7-304, Mississippi Code of 1972, is
547 amended as follows:

548 75-7-304. (a) Except as customary in international
549 transportation, a tangible bill of lading may not be issued in a
550 set of parts. The issuer is liable for damages caused by
551 violation of this subsection.

552 (b) If a tangible bill of lading is lawfully issued in a set
553 of parts, each of which contains an identification code and is
554 expressed to be valid only if the goods have not been delivered



555 against any other part, the whole of the parts constitute one (1)
556 bill.

557 (c) If a tangible negotiable bill of lading is lawfully
558 issued in a set of parts and different parts are negotiated to
559 different persons, the title of the holder to which the first due
560 negotiation is made prevails as to both the document of title and
561 the goods even if any later holder may have received the goods
562 from the carrier in good faith and discharged the carrier's
563 obligation by surrender of its part.

564 (d) A person that negotiates or transfers a single part of a
565 tangible bill of lading issued in a set is liable to holders of
566 that part as if it were the whole set.

567 (e) The bailee is obliged to deliver in accordance with Part
568 4 of this chapter against the first presented part of a tangible
569 bill of lading lawfully issued in a set. Delivery in this manner
570 discharges the bailee's obligation on the whole bill.

571 **SECTION 19.** Section 75-7-305, Mississippi Code of 1972, is
572 amended as follows:

573 75-7-305. (a) Instead of issuing a bill of lading to the
574 consignor at the place of shipment, a carrier, at the request of
575 the consignor, may procure the bill to be issued at destination or
576 at any other place designated in the request.

577 (b) Upon request of any person entitled as against a carrier
578 to control the goods while in transit and on surrender of
579 possession or control of any outstanding bill of lading or other
580 receipt covering the goods, the issuer, subject to Section
581 75-7-105, may procure a substitute bill to be issued at any place
582 designated in the request.

583 **SECTION 20.** Section 75-7-307, Mississippi Code of 1972, is
584 amended as follows:

585 75-7-307. (a) A carrier has a lien on the goods covered by
586 a bill of lading or on the proceeds thereof in its possession for
587 charges after the date of the carrier's receipt of the goods for



588 storage or transportation, including demurrage and terminal
589 charges, and for expenses necessary for preservation of the goods
590 incident to their transportation or reasonably incurred in their
591 sale pursuant to law. However, against a purchaser for value of a
592 negotiable bill of lading, a carrier's lien is limited to charges
593 stated in the bill or the applicable tariffs or, if no charges are
594 stated, a reasonable charge.

595 (b) A lien for charges and expenses under subsection (a) on
596 goods that the carrier was required by law to receive for
597 transportation is effective against the consignor or any person
598 entitled to the goods unless the carrier had notice that the
599 consignor lacked authority to subject the goods to those charges
600 and expenses. Any other lien under subsection (a) is effective
601 against the consignor and any person that permitted the bailor to
602 have control or possession of the goods unless the carrier had
603 notice that the bailor lacked authority.

604 (c) A carrier loses its lien on any goods that it
605 voluntarily delivers or unjustifiably refuses to deliver.

606 **SECTION 21.** Section 75-7-308, Mississippi Code of 1972, is
607 amended as follows:

608 75-7-308. (a) A carrier's lien on goods may be enforced by
609 public or private sale of the goods, in bulk or in packages, at
610 any time or place and on any terms that are commercially
611 reasonable, after notifying all persons known to claim an interest
612 in the goods. The notification must include a statement of the
613 amount due, the nature of the proposed sale, and the time and
614 place of any public sale. The fact that a better price could have
615 been obtained by a sale at a different time or in a different
616 method from that selected by the carrier is not of itself
617 sufficient to establish that the sale was not made in a
618 commercially reasonable manner. The carrier has sold * * * goods
619 in a commercially reasonable manner if the carrier sells the goods
620 in the usual manner in any recognized market therefor, sells at



621 the price current in that market at the time of the sale, or has
622 otherwise sold in conformity with commercially reasonable
623 practices among dealers in the type of goods sold. A sale of more
624 goods than apparently necessary to be offered to ensure
625 satisfaction of the obligation is not commercially reasonable,
626 except in cases covered by the preceding sentence.

627 (b) Before any sale pursuant to this section, any person
628 claiming a right in the goods may pay the amount necessary to
629 satisfy the lien and the reasonable expenses incurred in complying
630 with this section. In that event, the goods may not be sold but
631 must be retained by the carrier, subject to the terms of the bill
632 of lading and this chapter.

633 (c) A carrier may buy at any public sale pursuant to this
634 section.

635 (d) A purchaser in good faith of goods sold to enforce a
636 carrier's lien takes the goods free of any rights of persons
637 against which the lien was valid, despite the carrier's
638 noncompliance with this section.

639 (e) A carrier may satisfy its lien from the proceeds of any
640 sale pursuant to this section but shall hold the balance, if any,
641 for delivery on demand to any person to which the carrier would
642 have been bound to deliver the goods.

643 (f) The rights provided by this section are in addition to
644 all other rights allowed by law to a creditor against a debtor.

645 (g) A carrier's lien may be enforced pursuant to either
646 subsection (a) or the procedure set forth in Section 75-7-210(b).

647 (h) A carrier is liable for damages caused by failure to
648 comply with the requirements for sale under this section and, in
649 case of willful violation, is liable for conversion.

650 **SECTION 22.** Section 75-7-309, Mississippi Code of 1972, is
651 amended as follows:

652 75-7-309. (a) A carrier that issues a bill of lading,
653 whether negotiable or nonnegotiable, shall exercise the degree of



654 care in relation to the goods which a reasonably careful person
655 would exercise under similar circumstances. This subsection does
656 not affect any statute, regulation, or rule of law that imposes
657 liability upon a common carrier for damages not caused by its
658 negligence.

659 (b) Damages may be limited by a term in the bill of lading
660 or in a transportation agreement that the carrier's liability may
661 not exceed a value stated in the bill or transportation agreement
662 if the carrier's rates are dependent upon value and the consignor
663 is afforded an opportunity to declare a higher value and the
664 consignor is advised of the opportunity. However, such a
665 limitation is not effective with respect to the carrier's
666 liability for conversion to its own use.

667 (c) Reasonable provisions as to the time and manner of
668 presenting claims and commencing actions based on the shipment may
669 be included in a bill of lading or a transportation agreement.

670 **SECTION 23.** Section 75-7-401, Mississippi Code of 1972, is
671 amended as follows:

672 75-7-401. The obligations imposed by this chapter on an
673 issuer apply to a document of title even if:

674 (1) The document does not comply with the requirements
675 of this chapter or of any other statute, rule, or regulation
676 regarding its issue, form, or content; * * *

677 (2) The issuer violated laws regulating the conduct of
678 its business; * * *

679 (3) The goods covered by the document were owned by the
680 bailee when the document was issued; or

681 (4) The person issuing the document is not a warehouse
682 but the document purports to be a warehouse receipt.

683 **SECTION 24.** Section 75-7-402, Mississippi Code of 1972, is
684 amended as follows:

685 75-7-402. A duplicate or any other document of title
686 purporting to cover goods already represented by an outstanding



687 document of the same issuer does not confer any right in the
688 goods, except as provided in the case of tangible bills of lading
689 in a set of parts, overissue of documents for fungible goods,
690 substitutes for lost, stolen, or destroyed documents, or
691 substitute documents issued pursuant to Section 75-7-105. The
692 issuer is liable for damages caused by its overissue or failure to
693 identify a duplicate document by a conspicuous notation * * *.

694 **SECTION 25.** Section 75-7-403, Mississippi Code of 1972, is
695 amended as follows:

696 75-7-403. (a) A bailee shall deliver the goods to a person
697 entitled under a document of title if the person complies with
698 subsections (b) and (c), unless and to the extent that the bailee
699 establishes any of the following:

700 (1) Delivery of the goods to a person whose receipt was
701 rightful as against the claimant;

702 (2) Damage to or delay, loss, or destruction of the
703 goods for which the bailee is not liable;

704 (3) Previous sale or other disposition of the goods in
705 lawful enforcement of a lien or on warehouse's lawful termination
706 of storage;

707 (4) The exercise by a seller of its right to stop
708 delivery pursuant to Section 75-2-705 or by a lessor of its right
709 to stop delivery pursuant to Section 75-2A-526; * * *

710 (5) A diversion, reconsignment, or other disposition
711 pursuant to Section 75-7-303;

712 (6) Release, satisfaction, or any other fact according
713 a personal defense against the claimant; or

714 (7) Any other lawful excuse.

715 (b) A person claiming goods covered by a document of title
716 shall satisfy the bailee's lien if the bailee so requests or * * *
717 the bailee is prohibited by law from delivering the goods until
718 the charges are paid.



719 (c) Unless a person claiming the goods is one against which
720 the document of title does not confer a right under Section
721 75-7-503(a):

722 (1) The person claiming under a document shall
723 surrender possession or control of any outstanding negotiable
724 document covering the goods for cancellation or indication of
725 partial deliveries; and

726 (2) The bailee shall cancel the document or
727 conspicuously indicate in the document the partial delivery
728 or * * * be liable to any person to which the document is duly
729 negotiated.

730 **SECTION 26.** Section 75-7-404, Mississippi Code of 1972, is
731 amended as follows:

732 75-7-404. A bailee that in good faith has received goods and
733 delivered or otherwise disposed of the goods according to the
734 terms of the document of title or pursuant to this chapter is not
735 liable for the goods even if:

736 (1) The person from which the bailee received the goods
737 did not have authority to procure the document or to dispose of
738 the goods; or

739 (2) The person to which the bailee delivered the goods
740 did not have authority to receive the goods.

741 **SECTION 27.** Section 75-7-501, Mississippi Code of 1972, is
742 amended as follows:

743 75-7-501. (a) The following rules apply to a negotiable
744 tangible document of title:

745 (1) If the document's original terms run to the order
746 of a named person, the document is negotiated by the named
747 person's indorsement and delivery. After the named person's
748 indorsement in blank or to bearer, any person may negotiate the
749 document by delivery alone.

750 (2) If the document's original terms run to bearer, it
751 is negotiated by delivery alone.



752 (3) If the document's original terms run to the order
753 of a named person and it is delivered to the named person, the
754 effect is the same as if the document had been negotiated.

755 (4) Negotiation of the document after it has been
756 indorsed to a named person requires indorsement by the named
757 person as well as delivery.

758 (5) A document is duly negotiated if it is negotiated
759 in the manner stated in this subsection to a holder that purchases
760 it in good faith, without notice of any defense against or claim
761 to it on the part of any person, and for value, unless it is
762 established that the negotiation is not in the regular course of
763 business or financing or involves receiving the document in
764 settlement or payment of a monetary obligation.

765 (b) The following rules apply to a negotiable electronic
766 document of title:

767 (1) If the document's original terms run to the order
768 of a named person or to bearer, the document is negotiated by
769 delivery of the document to another person. Indorsement by the
770 named person is not required to negotiate the document.

771 (2) If the document's original terms run to the order
772 of a named person and the named person has control of the
773 document, the effect is the same as if the document had been
774 negotiated.

775 (3) A document is duly negotiated if it is negotiated
776 in the manner stated in this subsection to a holder that purchases
777 it in good faith, without notice of any defense against or claim
778 to it on the part of any person, and for value, unless it is
779 established that the negotiation is not in the regular course of
780 business or financing or involves taking delivery of the document
781 in settlement or payment of a monetary obligation.

782 (c) Indorsement of a nonnegotiable document of title neither
783 makes it negotiable nor adds to the transferee's rights.



784 (d) The naming in a negotiable bill of lading of a person to
785 be notified of the arrival of the goods does not limit the
786 negotiability of the bill or constitute notice to a purchaser of
787 the bill of any interest of that person in the goods.

788 **SECTION 28.** Section 75-7-502, Mississippi Code of 1972, is
789 amended as follows:

790 75-7-502. (a) Subject to Sections 75-7-205 and 75-7-503, a
791 holder to which a negotiable document of title has been duly
792 negotiated acquires thereby:

793 (1) Title to the document;

794 (2) Title to the goods;

795 (3) All rights accruing under the law of agency or
796 estoppel, including rights to goods delivered to the bailee after
797 the document was issued; and

798 (4) The direct obligation of the issuer to hold or
799 deliver the goods according to the terms of the document free of
800 any defense or claim by the issuer except those arising under the
801 terms of the document or under this chapter * * *. In the case of
802 a delivery order, the bailee's obligation accrues only upon the
803 bailee's acceptance of the delivery order and the obligation
804 acquired by the holder is that the issuer and any indorser will
805 procure the acceptance of the bailee.

806 (b) Subject to Section 75-7-503, title and rights acquired
807 by due negotiation are not defeated by any stoppage of the goods
808 represented by the document of title or by surrender of the goods
809 by the bailee and are not impaired even if:

810 (1) The due negotiation or any prior negotiation
811 constituted a breach of duty;

812 (2) Any person has been deprived of possession of a
813 negotiable tangible document or control of a negotiable electronic
814 document by misrepresentation, fraud, accident, mistake, duress,
815 loss, theft, or conversion; or



816 (3) A previous sale or other transfer of the goods or
817 document has been made to a third person.

818 **SECTION 29.** Section 75-7-503, Mississippi Code of 1972, is
819 amended as follows:

820 75-7-503. (a) A document of title confers no right in goods
821 against a person that before issuance of the document had a legal
822 interest or a perfected security interest in the goods and that
823 did not:

824 (1) Deliver or entrust the goods or any document * * *
825 covering the goods to the bailor or the bailor's nominee
826 with * * * actual or apparent authority to ship, store, or sell;
827 with * * * power to obtain delivery under Section 75-7-403; or
828 with * * * power of disposition under Section 75-2-403,
829 75-2A-304(2), 75-2A-305(2), or * * * 75-9-320 or other statute or
830 rule of law; or

831 (2) Acquiesce in the procurement by the bailor or its
832 nominee of any document.

833 (b) Title to goods based upon an unaccepted delivery order
834 is subject to the rights of any person to which a negotiable
835 warehouse receipt or bill of lading covering the goods has been
836 duly negotiated. That title may be defeated under Section
837 75-7-504 to the same extent as the rights of the issuer or a
838 transferee from the issuer.

839 (c) Title to goods based upon a bill of lading issued to a
840 freight forwarder is subject to the rights of any person to which
841 a bill issued by the freight forwarder is duly negotiated.
842 However, delivery by the carrier in accordance with Part 4 of this
843 chapter pursuant to its own bill of lading discharges the
844 carrier's obligation to deliver.

845 **SECTION 30.** Section 75-7-504, Mississippi Code of 1972, is
846 amended as follows:

847 75-7-504. (a) A transferee of a document of title, whether
848 negotiable or nonnegotiable, to which the document has been



849 delivered but not duly negotiated, acquires the title and rights
850 that its transferor had or had actual authority to convey.

851 (b) In the case of a nonnegotiable document of title, until
852 but not after the bailee receives notice of the transfer, the
853 rights of the transferee may be defeated:

854 (1) By those creditors of the transferor that could
855 treat the transfer as void under Section 75-2-402 or
856 75-2A-308; * * *

857 (2) By a buyer from the transferor in ordinary course
858 of business if the bailee has delivered the goods to the buyer or
859 received notification of the buyer's rights; * * *

860 (3) By a lessee from the transferor in * * * ordinary
861 course of business if the bailee has delivered the goods to the
862 lessee or received notification of the lessee's rights; or

863 (4) As against the bailee, by good faith dealings of
864 the bailee with the transferor.

865 (c) A diversion or other change of shipping instructions by
866 the consignor in a nonnegotiable bill of lading which causes the
867 bailee not to deliver the goods to the consignee defeats the
868 consignee's title to the goods if the goods have been delivered to
869 a buyer in ordinary course of business or a lessee in ordinary
870 course of business and in any event defeats the consignee's rights
871 against the bailee.

872 (d) Delivery of the goods pursuant to a nonnegotiable
873 document of title may be stopped by a seller under Section
874 75-2-705 or a lessor under Section 75-2A-526, subject to the
875 requirements of due notification in those sections. A bailee
876 honoring the seller's or lessor's instructions is entitled to be
877 indemnified by the seller or lessor against any resulting loss or
878 expense.

879 **SECTION 31.** Section 75-7-507, Mississippi Code of 1972, is
880 amended as follows:



881 75-7-507. If a person negotiates or delivers a document of
882 title for value, otherwise than as a mere intermediary under
883 Section 75-7-508, unless otherwise agreed, the transferor warrants
884 to its immediate purchaser only in addition to any warranty made
885 in selling or leasing the goods * * * that:

886 (1) The document is genuine; * * *

887 (2) The transferor does not have knowledge of any fact
888 that would impair the document's validity or worth; and

889 (3) The negotiation or delivery is rightful and fully
890 effective with respect to the title to the document and the goods
891 it represents.

892 **SECTION 32.** Section 75-7-601, Mississippi Code of 1972, is
893 amended as follows:

894 75-7-601. (a) If a document of title is lost, stolen, or
895 destroyed, a court may order delivery of the goods or issuance of
896 a substitute document and the bailee may without liability to any
897 person comply with the order. If the document was negotiable, a
898 court may not order delivery of the goods or issuance of a
899 substitute document without the claimant's posting security unless
900 it finds that any person that may suffer loss as a result of
901 nonsurrender of possession or control of the document is
902 adequately protected against the loss. If the document was
903 nonnegotiable, the court may require security. The court may also
904 order payment of the bailee's reasonable costs and attorney's fees
905 in any action under this subsection.

906 (b) A bailee that without court order delivers goods to a
907 person claiming under a missing negotiable document of title is
908 liable to any person injured thereby. If the delivery is not in
909 good faith, the bailee is liable for conversion. Delivery in good
910 faith is not conversion if the claimant posts security with the
911 bailee in an amount at least double the value of the goods at the
912 time of posting to indemnify any person injured by the delivery



913 which files a notice of claim within one (1) year after the
914 delivery.

915 **SECTION 33.** Section 75-7-701, Mississippi Code of 1972, is
916 amended as follows:

917 75-7-701. (a) The amendments to this chapter contained in
918 Chapter 527, Laws of 2006, as amended by Senate Bill No. 2540,
919 2007 Regular Session, apply to a document of title that is issued
920 or a bailment that arises on or after July 1, 2006, but do not
921 apply to: (1) a document of title that is issued or a bailment
922 that arises before July 1, 2006, even if the document of title or
923 bailment would be so subject if the document of title had been
924 issued or bailment had arisen after July 1, 2006, or (2) a right
925 of action that has accrued before July 1, 2006.

926 (b) A document of title issued or a bailment that arises
927 before July 1, 2006, and the rights, obligations, and interests
928 flowing from that document or bailment are governed by any statute
929 amended or repealed by Chapter 527, Laws of 2006, as amended by
930 Senate Bill No. 2540, 2007 Regular Session, as if amendment or
931 repeal had not occurred and may be terminated, completed,
932 consummated, or enforced under that statute as it existed on June
933 30, 2006.

934 **SECTION 34.** Section 75-1-201, Mississippi Code of 1972, is
935 amended as follows:

936 75-1-201. Subject to additional definitions contained in the
937 subsequent chapters of the Uniform Commercial Code which are
938 applicable to specific chapters or Parts thereof, and unless the
939 context otherwise requires, in the Uniform Commercial Code:

940 (1) "Action" in the sense of a judicial proceeding
941 includes recoupment, counterclaim, set-off, suit in equity and any
942 other proceedings in which rights are determined.

943 (2) "Aggrieved party" means a party entitled to resort
944 to a remedy.



945 (3) "Agreement" means the bargain of the parties in
946 fact as found in their language or by implication from other
947 circumstances including course of dealing or usage of trade or
948 course of performance as provided in this code (Sections 75-1-205
949 and 75-2-208). Whether an agreement has legal consequences is
950 determined by the provisions of this code, if applicable;
951 otherwise by the law of contracts (Section 75-1-103). (Compare
952 "Contract.")

953 (4) "Bank" means any person engaged in the business of
954 banking.

955 (5) "Bearer" means a person in control of a negotiable
956 electronic document of title or a person in possession of an
957 instrument, * * * negotiable tangible document of title, or * * *
958 certificated security payable to bearer or indorsed in blank.

959 (6) "Bill of lading" means a document of title
960 evidencing the receipt of goods for shipment issued by a person
961 engaged in the business of directly or indirectly transporting or
962 forwarding goods. The term does not include a warehouse receipt.

963 (7) "Branch" includes a separately incorporated foreign
964 branch of a bank.

965 (8) "Burden of establishing" a fact means the burden of
966 persuading the triers of fact that the existence of the fact is
967 more probable than its nonexistence.

968 (9) "Buyer in ordinary course of business" means a
969 person that buys goods in good faith, without knowledge that the
970 sale violates the rights of another person in the goods, and in
971 the ordinary course from a person, other than a pawnbroker, in the
972 business of selling goods of that kind. A person buys goods in
973 the ordinary course if the sale to the person comports with the
974 usual or customary practices in the kind of business in which the
975 seller is engaged or with the seller's own usual or customary
976 practices. A person that sells oil, gas, or other minerals at the
977 wellhead or minehead is a person in the business of selling goods



978 of that kind. A buyer in the ordinary course of business may buy
979 for cash, by exchange of other property, or on secured or
980 unsecured credit, and may acquire goods or documents of title
981 under a preexisting contract for sale. Only a buyer that takes
982 possession of the goods or has a right to recover the goods from
983 the seller under Title 75, Chapter 2, may be a buyer in ordinary
984 course of business. A person that acquires goods in a transfer in
985 bulk or as security for or in total or partial satisfaction of a
986 money debt is not a buyer in ordinary course of business.

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

992 (A) A heading in capitals equal to or greater in
993 size than the surrounding text, or in contrasting type, font, or
994 color to the surrounding text of the same or lessor size; and

995 (B) Language in the body of a record or display in
996 larger type than the surrounding text, or in contrasting type,
997 font, or color to the surrounding text of the same size, or set
998 off from surrounding text of the same size by symbols or other
999 marks that call attention to the language.

1000 (11) "Contract" means the total legal obligation which
1001 results from the parties' agreement as affected by this code and
1002 any other applicable rules of law. (Compare "Agreement.")

1003 (12) "Creditor" includes a general creditor, a secured
1004 creditor, a lien creditor and any representative of creditors,
1005 including an assignee for the benefit of creditors, a trustee in
1006 bankruptcy, a receiver in equity and an executor or administrator
1007 of an insolvent debtor's or assignor's estate.

1008 (13) "Defendant" includes a person in the position of
1009 defendant in a cross-action or counterclaim.



1010 (14) "Delivery" with respect to an electronic document
1011 of title means voluntary transfer of control and with respect to
1012 instruments, tangible documents of title, chattel paper, or
1013 certificated securities means voluntary transfer of possession.

1014 (15) "Document of title" means a record (i) that in the
1015 regular course of business or financing is treated as adequately
1016 evidencing that the person in possession or control of the
1017 record * * * is entitled to receive, control, hold, and dispose of
1018 the record and the goods the record covers and (ii) that purports
1019 to be issued by or addressed to a bailee and to cover goods in the
1020 bailee's possession which are either identified or are fungible
1021 portions of an identified mass. The term includes a bill of
1022 lading, transport document, dock warrant, dock receipt, warehouse
1023 receipt, and order for delivery of goods. An electronic document
1024 of title is * * * evidenced by a record consisting of information
1025 stored in an electronic medium. A tangible document of title
1026 is * * * evidenced by a record consisting of information that is
1027 inscribed on a tangible medium.

1028 (16) "Fault" means wrongful act, omission or breach.

1029 (17) "Fungible" with respect to goods or securities
1030 means goods or securities of which any unit is, by nature or usage
1031 of trade, the equivalent of any other like unit. Goods which are
1032 not fungible shall be deemed fungible for the purposes of this
1033 code to the extent that under a particular agreement or document
1034 unlike units are treated as equivalents.

1035 (18) "Genuine" means free of forgery or counterfeiting.

1036 (19) "Good faith" means honesty in fact in the conduct
1037 or transaction concerned.

1038 (20) "Holder" means:

1039 (A) The person in possession of a negotiable
1040 instrument that is payable either to bearer or to an identified
1041 person that is the person in possession;



1042 (B) The person in possession of a negotiable
1043 tangible document of title if the goods are deliverable either to
1044 bearer or to the order of the person in possession; or

1045 (C) A person in control of a negotiable electronic
1046 document of title.

1047 (21) To "honor" is to pay or to accept and pay, or
1048 where a credit so engages to purchase or discount a draft
1049 complying with the terms of the credit.

1050 (22) "Insolvency proceedings" includes any assignment
1051 for the benefit of creditors or other proceedings intended to
1052 liquidate or rehabilitate the estate of the person involved.

1053 (23) A person is "insolvent" who either has ceased to
1054 pay his debts in the ordinary course of business or cannot pay his
1055 debts as they become due or is insolvent within the meaning of the
1056 federal bankruptcy law.

1057 (24) "Money" means a medium of exchange authorized or
1058 adopted by a domestic or foreign government and includes a
1059 monetary unit of account established by an intergovernmental
1060 organization or by agreement between two (2) or more nations.

1061 (25) Subject to subsection (27), a person has "notice"
1062 of a fact if the person:

1063 (a) Has actual knowledge of it; * * *

1064 (b) Has received a notice or notification of it;

1065 or

1066 (c) From all the facts and circumstances known to
1067 the person at the time in question, has reason to know that it
1068 exists.

1069 A person "knows" or has "knowledge" of a fact when the person
1070 has actual knowledge of it. "Discover" or "learn" or a word or
1071 phrase of similar import refers to knowledge rather than to reason
1072 to know. The time and circumstances under which a notice or
1073 notification may cease to be effective are not determined by the
1074 Uniform Commercial Code.



1075 (26) A person "notifies" or "gives" a notice or
1076 notification to another person by taking such steps as may be
1077 reasonably required to inform the other person in ordinary course
1078 whether or not the other person actually comes to know of it.
1079 Subject to subsection (27), a person "receives" a notice or
1080 notification when:

1081 (a) It comes to that person's attention; or
1082 (b) It is duly delivered in a form reasonable
1083 under the circumstances at the place of business through which the
1084 contract was made or at another location held out by that person
1085 as the place for receipt of such communications.

1086 (27) Notice, knowledge, or a notice or notification
1087 received by an organization is effective for a particular
1088 transaction from the time when it is brought to the attention of
1089 the individual conducting that transaction, and in any event, from
1090 the time when it would have been brought to the individual's
1091 attention if the organization had exercised due diligence. An
1092 organization exercises due diligence if it maintains reasonable
1093 routines for communicating significant information to the person
1094 conducting the transaction and there is reasonable compliance with
1095 the routines. Due diligence does not require an individual acting
1096 for the organization to communicate information unless such
1097 communication is part of the individual's regular duties or the
1098 individual has reason to know of the transaction and that the
1099 transaction would be materially affected by the information.

1100 (28) "Organization" includes a corporation, government
1101 or governmental subdivision or agency, business trust, estate,
1102 trust, partnership or association, two (2) or more persons having
1103 a joint or common interest, or any other legal or commercial
1104 entity.

1105 (29) "Party," as distinct from "third party," means a
1106 person who has engaged in a transaction or made an agreement
1107 within this code.



1108 (30) "Person" includes an individual or an organization
1109 (see Section 75-1-102).

1110 (31) "Presumption" or "presumed" means that the trier
1111 of fact must find the existence of the fact presumed unless and
1112 until evidence is introduced which would support a finding of its
1113 nonexistence.

1114 (32) "Purchase" includes taking by sale, discount,
1115 negotiation, mortgage, pledge, lien, security interest, issue or
1116 reissue, gift or any other voluntary transaction creating an
1117 interest in property.

1118 (33) "Purchaser" means a person who takes by purchase.

1119 (34) "Remedy" means any remedial right to which an
1120 aggrieved party is entitled with or without resort to a tribunal.

1121 (35) "Representative" includes an agent, an officer of
1122 a corporation or association, and a trustee, executor or
1123 administrator of an estate, or any other person empowered to act
1124 for another.

1125 (36) "Rights" includes remedies.

1126 (37) "Security interest" means an interest in personal
1127 property or fixtures which secures payment or performance of an
1128 obligation.

1129 (a) The term also includes any interest of a
1130 consignor and a buyer of accounts, chattel paper, a payment
1131 intangible, or a promissory note in a transaction that is subject
1132 to Article 9. The special property interest of a buyer of goods
1133 on identification of such goods to a contract for sale under
1134 Section 75-2-401 is not a "security interest," but a buyer may
1135 also acquire "security interest" by complying with Article 9.
1136 Except as otherwise provided in Section 75-2-505, the right of a
1137 seller or lessor of goods under Article 2 or 2A to retain or
1138 acquire possession of the goods is not a "security interest," but
1139 a seller or lessor may also acquire a "security interest" by
1140 complying with Article 9. The retention or reservation of title



1141 by a seller of goods notwithstanding shipment or delivery to the
1142 buyer (Section 75-2-401) is limited in effect to a reservation of
1143 a security interest.

1144 (b) Whether a transaction creates a lease or
1145 security interest is determined by the facts of each case;
1146 however, a transaction creates a security interest if the
1147 consideration the lessee is to pay the lessor for the right to
1148 possession and use of the goods is an obligation for the term of
1149 the lease not subject to termination by the lessee, and

1150 (i) The original term of the lease is equal
1151 to or greater than the remaining economic life of the goods,

1152 (ii) The lessee is bound to renew the lease
1153 for the remaining economic life of the goods or is bound to become
1154 the owner of the goods,

1155 (iii) The lessee has an option to renew the
1156 lease for the remaining economic life of the goods for no
1157 additional consideration or nominal additional consideration upon
1158 compliance with the lease agreement, or

1159 (iv) The lessee has an option to become the
1160 owner of the goods for no additional consideration or nominal
1161 additional consideration upon compliance with the lease agreement.

1162 (c) A transaction does not create a security
1163 interest merely because it provides that:

1164 (i) The present value of the consideration
1165 the lessee is obligated to pay the lessor for the right to
1166 possession and use of the goods is substantially equal to or is
1167 greater than the fair market value of the goods at the time the
1168 lease is entered into,

1169 (ii) The lessee assumes risk of loss of the
1170 goods, or agrees to pay taxes, insurance, filing, recording, or
1171 registration fees, or service or maintenance costs with respect to
1172 the goods,



1173 (iii) The lessee has an option to renew the
1174 lease or to become the owner of the goods,

1175 (iv) The lessee has an option to renew the
1176 lease for a fixed rent that is equal to or greater than the
1177 reasonably predictable fair market rent for the use of the goods
1178 for the term of the renewal at the time the option is to be
1179 performed, or

1180 (v) The lessee has an option to become the
1181 owner of the goods for a fixed price that is equal to or greater
1182 than the reasonably predictable fair market value of the goods at
1183 the time the option is to be performed.

1184 (d) For purposes of this subsection (37):

1185 (i) Additional consideration is not nominal
1186 if:

1187 1. When the option to renew the lease is
1188 granted to the lessee the rent is stated to be the fair market
1189 rent for the use of the goods for the term of the renewal
1190 determined at the time the option is to be performed, or

1191 2. When the option to become the owner
1192 of the goods is granted to the lessee the price is stated to be
1193 the fair market value of the goods determined at the time the
1194 option is to be performed. Additional consideration is nominal if
1195 it is less than the lessee's reasonably predictable cost of
1196 performing under the lease agreement if the option is not
1197 exercised;

1198 (ii) "Reasonably predictable" and "remaining
1199 economic life of the goods" are to be determined with reference to
1200 the fact and circumstances at the time the transaction is entered
1201 into; and

1202 (iii) "Present value" means the amount as of
1203 a date certain of one or more sums payable in the future,
1204 discounted to the date certain. The discount is determined by the
1205 interest rate specified by the parties if the rate is not



1206 manifestly unreasonable at the time the transaction is entered
1207 into; otherwise, the discount is determined by a commercially
1208 reasonable rate that takes into account the facts and
1209 circumstances of each case at the time the transaction was entered
1210 into.

1211 (38) "Send" in connection with a writing, record, or
1212 notice means:

1213 (A) To deposit in the mail or deliver for
1214 transmission by any other usual means of communication with
1215 postage or cost of transmission provided for and properly
1216 addressed and, in the case of an instrument, to an address
1217 specified thereon or otherwise agreed, or if there be none to any
1218 address * * * reasonable under the circumstances; or

1219 (B) In any other way to cause to be received any
1220 record or notice within the time it would have arrived if properly
1221 sent.

1222 (39) "Signed" includes any symbol executed or adopted
1223 by a party with present intention to authenticate a writing.

1224 (40) "Surety" includes guarantor.

1225 (41) "Telegram" includes a message transmitted by
1226 radio, teletype, cable, any mechanical method of transmission, or
1227 the like.

1228 (42) "Term" means that portion of an agreement which
1229 relates to a particular matter.

1230 (43) "Unauthorized" signature means one made without
1231 actual, implied or apparent authority and includes a forgery.

1232 (44) "Value," except as otherwise provided with respect
1233 to negotiable instruments and bank collections (Sections 75-3-303,
1234 75-4-208 and 75-4-209), a person gives "value" for rights if he
1235 acquires them:

1236 (a) In return for a binding commitment to extend
1237 credit or for the extension of immediately available credit



1238 whether or not drawn upon and whether or not a charge-back is
1239 provided for in the event of difficulties in collection; or

1240 (b) As security for or in total or partial
1241 satisfaction of a preexisting claim; or

1242 (c) By accepting delivery pursuant to a
1243 preexisting contract for purchase; or

1244 (d) Generally, in return for any consideration
1245 sufficient to support a simple contract.

1246 (45) "Warehouse receipt" means a document of title
1247 issued by a person engaged in the business of storing goods for
1248 hire.

1249 (46) "Written" or "writing" includes printing,
1250 typewriting, or any other intentional reduction to tangible form.

1251 **SECTION 35.** Section 75-9-102, Mississippi Code of 1972, is
1252 amended as follows:

1253 75-9-102. (a) In this article:

1254 (1) "Accession" means goods that are physically united
1255 with other goods in such a manner that the identity of the
1256 original goods is not lost.

1257 (2) "Account," except as used in "account for," means a
1258 right to payment of a monetary obligation, whether or not earned
1259 by performance, (i) for property that has been or is to be sold,
1260 leased, licensed, assigned, or otherwise disposed of, (ii) for
1261 services rendered or to be rendered, (iii) for a policy of
1262 insurance issued or to be issued, (iv) for a secondary obligation
1263 incurred or to be incurred, (v) for energy provided or to be
1264 provided, (vi) for the use or hire of a vessel under a charter or
1265 other contract, (vii) arising out of the use of a credit or charge
1266 card or information contained on or for use with the card, or
1267 (viii) as winnings in a lottery or other game of chance operated
1268 or sponsored by a state, governmental unit of a state, or person
1269 licensed or authorized to operate the game by a state or
1270 governmental unit of a state. The term includes



1271 health-care-insurance receivables. The term does not include (i)
1272 rights to payment evidenced by chattel paper or an instrument,
1273 (ii) commercial tort claims, (iii) deposit accounts, (iv)
1274 investment property, (v) letter-of-credit rights or letters of
1275 credit, or (vi) rights to payment for money or funds advanced or
1276 sold, other than rights arising out of the use of a credit or
1277 charge card or information contained on or for use with the card.

1278 (3) "Account debtor" means a person obligated on an
1279 account, chattel paper, or general intangible. The term does not
1280 include persons obligated to pay a negotiable instrument, even if
1281 the instrument constitutes part of chattel paper.

1282 (4) "Accounting," except as used in "accounting for,"
1283 means a record:

1284 (A) Authenticated by a secured party;

1285 (B) Indicating the aggregate unpaid secured
1286 obligations as of a date not more than thirty-five (35) days
1287 earlier or thirty-five (35) days later than the date of the
1288 record; and

1289 (C) Identifying the components of the obligations
1290 in reasonable detail.

1291 (5) "Agricultural lien" means an interest in farm
1292 products:

1293 (A) Which secures payment or performance of an
1294 obligation for:

1295 (i) Goods or services furnished in connection
1296 with a debtor's farming operation; or

1297 (ii) Rent on real property leased by a debtor
1298 in connection with its farming operation;

1299 (B) Which is created by statute in favor of a
1300 person that:

1301 (i) In the ordinary course of its business
1302 furnished goods or services to a debtor in connection with a
1303 debtor's farming operation; or



1304 (ii) Leased real property to a debtor in
1305 connection with the debtor's farming operation; and

1306 (C) Whose effectiveness does not depend on the
1307 person's possession of the personal property.

1308 (6) "As-extracted collateral" means:

1309 (A) Oil, gas, or other minerals that are subject
1310 to a security interest that:

1311 (i) Is created by a debtor having an interest
1312 in the minerals before extraction; and

1313 (ii) Attaches to the minerals as extracted;

1314 or

1315 (B) Accounts arising out of the sale at the
1316 wellhead or minehead of oil, gas, or other minerals in which the
1317 debtor had an interest before extraction.

1318 (7) "Authenticate" means:

1319 (A) To sign; or

1320 (B) To execute or otherwise adopt a symbol, or
1321 encrypt or similarly process a record in whole or in part, with
1322 the present intent of the authenticating person to identify the
1323 person and adopt or accept a record.

1324 (8) "Bank" means an organization that is engaged in the
1325 business of banking. The term includes savings banks, savings and
1326 loan associations, credit unions, and trust companies.

1327 (9) "Cash proceeds" means proceeds that are money,
1328 checks, deposit accounts, or the like.

1329 (10) "Certificate of title" means a certificate of
1330 title with respect to which a statute provides for the security
1331 interest in question to be indicated on the certificate as a
1332 condition or result of the security interest's obtaining priority
1333 over the rights of a lien creditor with respect to the collateral.

1334 (11) "Chattel paper" means a record or records that
1335 evidence both a monetary obligation and a security interest in
1336 specific goods, a security interest in specific goods and software



1337 used in the goods, a security interest in specific goods and
1338 license of software used in the goods, a lease of specific goods,
1339 or a lease of specific goods and license of software used in the
1340 goods. In this paragraph, "monetary obligation" means a monetary
1341 obligation secured by the goods or owed under a lease of the goods
1342 and includes a monetary obligation with respect to software used
1343 in the goods. The term does not include (i) charters or other
1344 contracts involving the use or hire of a vessel or (ii) records
1345 that evidence a right to payment arising out of the use of a
1346 credit or charge card or information contained on or for use with
1347 the card. If a transaction is evidenced by records that include
1348 an instrument or series of instruments, the group of records taken
1349 together constitutes chattel paper.

1350 (12) "Collateral" means the property subject to a
1351 security interest or agricultural lien. The term includes:

1352 (A) Proceeds to which a security interest
1353 attaches;

1354 (B) Accounts, chattel paper, payment intangibles,
1355 and promissory notes that have been sold; and

1356 (C) Goods that are the subject of a consignment.

1357 (13) "Commercial tort claim" means a claim arising in
1358 tort with respect to which:

1359 (A) The claimant is an organization; or

1360 (B) The claimant is an individual and the claim:

1361 (i) Arose in the course of the claimant's
1362 business or profession; and

1363 (ii) Does not include damages arising out of
1364 personal injury to or the death of an individual.

1365 (14) "Commodity account" means an account maintained by
1366 a commodity intermediary in which a commodity contract is carried
1367 for a commodity customer.



1368 (15) "Commodity contract" means a commodity futures
1369 contract, an option on a commodity futures contract, a commodity
1370 option, or another contract if the contract or option is:

1371 (A) Traded on or subject to the rules of a board
1372 of trade that has been designated as a contract market for such a
1373 contract pursuant to federal commodities laws; or

1374 (B) Traded on a foreign commodity board of trade,
1375 exchange, or market, and is carried on the books of a commodity
1376 intermediary for a commodity customer.

1377 (16) "Commodity customer" means a person for which a
1378 commodity intermediary carries a commodity contract on its books.

1379 (17) "Commodity intermediary" means a person that:

1380 (A) Is registered as a futures commission merchant
1381 under federal commodities law; or

1382 (B) In the ordinary course of its business
1383 provides clearance or settlement services for a board of trade
1384 that has been designated as a contract market pursuant to federal
1385 commodities law.

1386 (18) "Communicate" means:

1387 (A) To send a written or other tangible record;

1388 (B) To transmit a record by any means agreed upon
1389 by the persons sending and receiving the record; or

1390 (C) In the case of transmission of a record to or
1391 by a filing office, to transmit a record by any means prescribed
1392 by filing-office rule.

1393 (19) "Consignee" means a merchant to which goods are
1394 delivered in a consignment.

1395 (20) "Consignment" means a transaction, regardless of
1396 its form, in which a person delivers goods to a merchant for the
1397 purpose of sale and:

1398 (A) The merchant:

1399 (i) Deals in goods of that kind under a name
1400 other than the name of the person making delivery;



1401 (ii) Is not an auctioneer; and
1402 (iii) Is not generally known by its creditors
1403 to be substantially engaged in selling the goods of others;
1404 (B) With respect to each delivery, the aggregate
1405 value of the goods is One Thousand Dollars (\$1,000.00) or more at
1406 the time of delivery;
1407 (C) The goods are not consumer goods immediately
1408 before delivery; and
1409 (D) The transaction does not create a security
1410 interest that secures an obligation.
1411 (21) "Consignor" means a person that delivers goods to
1412 a consignee in a consignment.
1413 (22) "Consumer debtor" means a debtor in a consumer
1414 transaction.
1415 (23) "Consumer goods" means goods that are used or
1416 bought for use primarily for personal, family, or household
1417 purposes.
1418 (24) "Consumer-goods transaction" means a consumer
1419 transaction in which:
1420 (A) An individual incurs an obligation primarily
1421 for personal, family, or household purposes; and
1422 (B) A security interest in consumer goods secures
1423 the obligation.
1424 (25) "Consumer obligor" means an obligor who is an
1425 individual and who incurred the obligation as part of a
1426 transaction entered into primarily for personal, family, or
1427 household purposes.
1428 (26) "Consumer transaction" means a transaction in
1429 which (i) an individual incurs an obligation primarily for
1430 personal, family, or household purposes, (ii) a security interest
1431 secures the obligation, and (iii) the collateral is held or
1432 acquired primarily for personal, family, or household purposes.
1433 The term includes consumer-goods transactions.



1434 (27) "Continuation statement" means an amendment of a
1435 financing statement which:

1436 (A) Identifies, by its file number, the initial
1437 financing statement to which it relates; and

1438 (B) Indicates that it is a continuation statement
1439 for, or that it is filed to continue the effectiveness of, the
1440 identified financing statement.

1441 (28) "Debtor" means:

1442 (A) A person having an interest, other than a
1443 security interest or other lien, in the collateral, whether or not
1444 the person is an obligor;

1445 (B) A seller of accounts, chattel paper, payment
1446 intangibles, or promissory notes; or

1447 (C) A consignee.

1448 (29) "Deposit account" means a demand, time, savings,
1449 passbook, or similar account maintained with a bank. The term
1450 does not include investment property or accounts evidenced by an
1451 instrument.

1452 (30) "Document" means a document of title or a receipt
1453 of the type described in Section 75-7-201**(b)**.

1454 (31) "Electronic chattel paper" means chattel paper
1455 evidenced by a record or records consisting of information stored
1456 in an electronic medium.

1457 (32) "Encumbrance" means a right, other than an
1458 ownership interest, in real property. The term includes mortgages
1459 and other liens on real property.

1460 (33) "Equipment" means goods other than inventory, farm
1461 products, or consumer goods.

1462 (34) "Farm products" means goods, other than standing
1463 timber, with respect to which the debtor is engaged in a farming
1464 operation and which are:

1465 (A) Crops grown, growing, or to be grown,
1466 including:



1467 (i) Crops produced on trees, vines, and
1468 bushes; and

1469 (ii) Aquatic goods produced in aquacultural
1470 operations;

1471 (B) Livestock, born or unborn, including aquatic
1472 goods produced in aquacultural operations;

1473 (C) Supplies used or produced in a farming
1474 operation; or

1475 (D) Products of crops or livestock in their
1476 unmanufactured states.

1477 (35) "Farming operation" means raising, cultivating,
1478 propagating, fattening, grazing, or any other farming, livestock
1479 or aquacultural operation.

1480 (36) "File number" means the number assigned to an
1481 initial financing statement pursuant to Section 75-9-519(a).

1482 (37) "Filing office" means an office designated in
1483 Section 75-9-501 as the place to file a financing statement.

1484 (38) "Filing-office rule" means a rule adopted pursuant
1485 to Section 75-9-526.

1486 (39) "Financing statement" means a record or records
1487 composed of an initial financing statement and any filed record
1488 relating to the initial financing statement.

1489 (40) "Fixture filing" means the filing of a financing
1490 statement covering goods that are or are to become fixtures and
1491 satisfying Section 75-9-502(a) and (b). The term includes the
1492 filing of a financing statement covering goods of a transmitting
1493 utility which are or are to become fixtures.

1494 (41) "Fixtures" means goods that have become so related
1495 to particular real property that an interest in them arises under
1496 real property law.

1497 (42) "General intangible" means any personal property,
1498 including things in action, other than accounts, chattel paper,
1499 commercial tort claims, deposit accounts, documents, goods,



1500 instruments, investment property, letter-of-credit rights, letters
1501 of credit, money, and oil, gas, or other minerals before
1502 extraction. The term includes payment intangibles and software.

1503 (43) "Good faith" means honesty in fact and the
1504 observance of reasonable commercial standards of fair dealing.

1505 (44) "Goods" means all things that are movable when a
1506 security interest attaches. The term includes (i) fixtures, (ii)
1507 standing timber that is to be cut and removed under a conveyance
1508 or contract for sale, (iii) the unborn young of animals, (iv)
1509 crops grown, growing, or to be grown, even if the crops are
1510 produced on trees, vines, or bushes, (v) farm-raised fish produced
1511 in fresh water according to the usual and customary techniques of
1512 commercial agriculture, (vi) manufactured homes, and (vii) marine
1513 vessels (herein defined as every type of watercraft used, or
1514 capable of being used, as a means of transportation on water)
1515 including both marine vessels under construction, including
1516 engines and all items of equipment installed or to be installed
1517 therein, whether such vessels are being constructed by the
1518 shipbuilder for his own use or for sale (said vessels under
1519 construction being classified as inventory within the meaning of
1520 Section 75-9-102(48)), and marine vessels after completion of
1521 construction so long as such vessels have not become "vessels of
1522 the United States" within the meaning of the Ship Mortgage Act of
1523 1920, 46 USCS, Section 911(4), as same is now written or may
1524 hereafter be amended (said completed vessels being classified as
1525 equipment within the meaning of Section 75-9-102(33)). The term
1526 also includes a computer program embedded in goods and any
1527 supporting information provided in connection with a transaction
1528 relating to the program if (i) the program is associated with the
1529 goods in such a manner that it customarily is considered part of
1530 the goods, or (ii) by becoming the owner of the goods, a person
1531 acquires a right to use the program in connection with the goods.
1532 The term does not include a computer program embedded in goods



1533 that consist solely of the medium in which the program is
1534 embedded. The term also does not include accounts, chattel paper,
1535 commercial tort claims, deposit accounts, documents, general
1536 intangibles, instruments, investment property, letter-of-credit
1537 rights, letters of credit, money, or oil, gas, or other minerals
1538 before extraction.

1539 (45) "Governmental unit" means a subdivision, agency,
1540 department, county, parish, municipality or other unit of the
1541 government of the United States, a state, or a foreign country.
1542 The term includes an organization having a separate corporate
1543 existence if the organization is eligible to issue debt on which
1544 interest is exempt from income taxation under the laws of the
1545 United States.

1546 (46) "Health-care-insurance receivable" means an
1547 interest in or claim under a policy of insurance which is a right
1548 to payment of a monetary obligation for health-care goods or
1549 services provided or to be provided.

1550 (47) "Instrument" means a negotiable instrument or any
1551 other writing that evidences a right to the payment of a monetary
1552 obligation, is not itself a security agreement or lease, and is of
1553 a type that in ordinary course of business is transferred by
1554 delivery with any necessary endorsement or assignment. The term
1555 does not include (i) investment property, (ii) letters of credit,
1556 or (iii) writings that evidence a right to payment arising out of
1557 the use of a credit or charge card or information contained on or
1558 for use with the card.

1559 (48) "Inventory" means goods, other than farm products,
1560 which:

1561 (A) Are leased by a person as lessor;

1562 (B) Are held by a person for sale or lease or to
1563 be furnished under a contract of service;

1564 (C) Are furnished by a person under a contract of
1565 service; or



1566 (D) Consist of raw materials, work in process or
1567 materials used or consumed in a business.

1568 (49) "Investment property" means a security, whether
1569 certificated or uncertificated, security entitlement, securities
1570 account, commodity contract or commodity account.

1571 (50) "Jurisdiction of organization," with respect to a
1572 registered organization, means the jurisdiction under whose law
1573 the organization is organized.

1574 (51) "Letter-of-credit right" means a right to payment
1575 or performance under a letter of credit, whether or not the
1576 beneficiary has demanded or is at the time entitled to demand
1577 payment or performance. The term does not include the right of a
1578 beneficiary to demand payment or performance under a letter of
1579 credit.

1580 (52) "Lien creditor" means:

1581 (A) A creditor that has acquired a lien on the
1582 property involved by attachment, levy, or the like;

1583 (B) An assignee for benefit of creditors from the
1584 time of assignment;

1585 (C) A trustee in bankruptcy from the date of the
1586 filing of the petition; or

1587 (D) A receiver in equity from the time of
1588 appointment.

1589 (53) "Manufactured home" means a structure,
1590 transportable in one or more sections, which, in the traveling
1591 mode, is eight (8) body feet or more in width or forty (40) body
1592 feet or more in length, or, when erected on site, is three hundred
1593 twenty (320) or more square feet, and which is built on a
1594 permanent chassis and designed to be used as a dwelling with or
1595 without a permanent foundation when connected to the required
1596 utilities, and includes the plumbing, heating, air-conditioning,
1597 and electrical systems contained therein. The term includes any
1598 structure that meets all of the requirements of this paragraph



1599 except the size requirements and with respect to which the
1600 manufacturer voluntarily files a certification required by the
1601 United States Secretary of Housing and Urban Development and
1602 complies with the standards established under Title 42 of the
1603 United States Code.

1604 (54) "Manufactured-home transaction" means a secured
1605 transaction:

1606 (A) That creates a purchase-money security
1607 interest in a manufactured home, other than a manufactured home
1608 held as inventory; or

1609 (B) In which a manufactured home, other than a
1610 manufactured home held as inventory, is the primary collateral.

1611 (55) "Mortgage" means a consensual interest in real
1612 property, including fixtures, which secures payment or performance
1613 of an obligation. "Mortgage" shall mean and include a deed of
1614 trust.

1615 (56) "New debtor" means a person that becomes bound as
1616 debtor under Section 75-9-203(d) by a security agreement
1617 previously entered into by another person.

1618 (57) "New value" means (i) money, (ii) money's worth in
1619 property, services, or new credit, or (iii) release by a
1620 transferee of an interest in property previously transferred to
1621 the transferee. The term does not include an obligation
1622 substituted for another obligation.

1623 (58) "Noncash proceeds" means proceeds other than cash
1624 proceeds.

1625 (59) "Obligor" means a person that, with respect to an
1626 obligation secured by a security interest in or an agricultural
1627 lien on the collateral, (i) owes payment or other performance of
1628 the obligation, (ii) has provided property other than the
1629 collateral to secure payment or other performance of the
1630 obligation, or (iii) is otherwise accountable in whole or in part



1631 for payment or other performance of the obligation. The term does
1632 not include issuers or nominated persons under a letter of credit.

1633 (60) "Original debtor," except as used in Section
1634 75-9-310(c), means a person that, as debtor, entered into a
1635 security agreement to which a new debtor has become bound under
1636 Section 75-9-203(d).

1637 (61) "Payment intangible" means a general intangible
1638 under which the account debtor's principal obligation is a
1639 monetary obligation.

1640 (62) "Person related to," with respect to an
1641 individual, means:

1642 (A) The spouse of the individual;

1643 (B) A brother, brother-in-law, sister, or
1644 sister-in-law of the individual;

1645 (C) An ancestor or lineal descendant of the
1646 individual or the individual's spouse; or

1647 (D) Any other relative, by blood or marriage, of
1648 the individual or the individual's spouse who shares the same home
1649 with the individual.

1650 (63) "Person related to," with respect to an
1651 organization, means:

1652 (A) A person directly or indirectly controlling,
1653 controlled by, or under common control with the organization;

1654 (B) An officer or director of, or a person
1655 performing similar functions with respect to, the organization;

1656 (C) An officer or director of, or a person
1657 performing similar functions with respect to, a person described
1658 in subparagraph (A);

1659 (D) The spouse of an individual described in
1660 subparagraph (A), (B), or (C); or

1661 (E) An individual who is related by blood or
1662 marriage to an individual described in subparagraph (A), (B), (C),
1663 or (D) and shares the same home with the individual.



1664 (64) "Proceeds," except as used in Section 75-9-609(b),
1665 means the following property:

1666 (A) Whatever is acquired upon the sale, lease,
1667 license, exchange or other disposition of collateral;

1668 (B) Whatever is collected on, or distributed on
1669 account of, collateral;

1670 (C) Rights arising out of collateral;

1671 (D) To the extent of the value of collateral,
1672 claims arising out of the loss, nonconformity, or interference
1673 with the use of, defects or infringement of rights in, or damage
1674 to, the collateral; or

1675 (E) To the extent of the value of collateral and
1676 to the extent payable to the debtor or the secured party,
1677 insurance payable by reason of the loss or nonconformity of,
1678 defects or infringement of rights in, or damage to, the
1679 collateral.

1680 (64A) "Production-money crops" means crops that secure
1681 a production-money obligation incurred with respect to the
1682 production of those crops.

1683 (64B) "Production-money obligation" means an obligation
1684 of an obligor incurred for new value given to enable the debtor to
1685 produce crops if the value is in fact used for the production of
1686 the crops.

1687 (64C) "Production of crops" includes tilling and
1688 otherwise preparing land for growing, planting, cultivating,
1689 fertilizing, irrigating, harvesting and gathering crops, and
1690 protecting them from damage or disease.

1691 (65) "Promissory note" means an instrument that
1692 evidences a promise to pay a monetary obligation, does not
1693 evidence an order to pay, and does not contain an acknowledgment
1694 by a bank that the bank has received for deposit a sum of money or
1695 funds.



1696 (66) "Proposal" means a record authenticated by a
1697 secured party which includes the terms on which the secured party
1698 is willing to accept collateral in full or partial satisfaction of
1699 the obligation it secures pursuant to Sections 75-9-620, 75-9-621,
1700 and 75-9-622.

1701 (67) "Public-finance transaction" means a secured
1702 transaction in connection with which:

1703 (A) Debt securities are issued;

1704 (B) All or a portion of the securities issued have
1705 an initial stated maturity of at least twenty (20) years; and

1706 (C) The debtor, obligor, secured party, account
1707 debtor or other person obligated on collateral, assignor or
1708 assignee of a secured obligation, or assignor or assignee of a
1709 security interest is a state or a governmental unit of a state.

1710 (68) "Pursuant to commitment," with respect to an
1711 advance made or other value given by a secured party, means
1712 pursuant to the secured party's obligation, whether or not a
1713 subsequent event of default or other event not within the secured
1714 party's control has relieved or may relieve the secured party from
1715 its obligation.

1716 (69) "Record," except as used in "for record," "of
1717 record," "record or legal title," and "record owner," means
1718 information that is inscribed on a tangible medium or which is
1719 stored in an electronic or other medium and is retrievable in
1720 perceivable form.

1721 (70) "Registered organization" means an organization
1722 organized solely under the law of a single state or the United
1723 States and as to which the state or the United States must
1724 maintain a public record showing the organization to have been
1725 organized.

1726 (71) "Secondary obligor" means an obligor to the extent
1727 that:

1728 (A) The obligor's obligation is secondary; or



1729 (B) The obligor has a right of recourse with
1730 respect to an obligation secured by collateral against the debtor,
1731 another obligor, or property of either.

1732 (72) "Secured party" means:

1733 (A) A person in whose favor a security interest is
1734 created or provided for under a security agreement, whether or not
1735 any obligation to be secured is outstanding;

1736 (B) A person that holds an agricultural lien;

1737 (C) A consignor;

1738 (D) A person to which accounts, chattel paper,
1739 payment intangibles, or promissory notes have been sold;

1740 (E) A trustee, indenture trustee, agent,
1741 collateral agent, or other representative in whose favor a
1742 security interest or agricultural lien is created or provided for;
1743 or

1744 (F) A person that holds a security interest
1745 arising under Section 75-2-401, 75-2-505, 75-2-711(3),
1746 75-2A-508(5), 75-4-210, or 75-5-118.

1747 (73) "Security agreement" means an agreement that
1748 creates or provides for a security interest.

1749 (74) "Send," in connection with a record or
1750 notification, means:

1751 (A) To deposit in the mail, deliver for
1752 transmission, or transmit by any other usual means of
1753 communication, with postage or cost of transmission provided for,
1754 addressed to any address reasonable under the circumstances; or

1755 (B) To cause the record or notification to be
1756 received within the time that it would have been received if
1757 properly sent under subparagraph (A).

1758 (75) "Software" means a computer program and any
1759 supporting information provided in connection with a transaction
1760 relating to the program. The term does not include a computer
1761 program that is included in the definition of goods.



1762 (76) "State" means a state of the United States, the
1763 District of Columbia, Puerto Rico, the United States Virgin
1764 Islands, or any territory or insular possession subject to the
1765 jurisdiction of the United States.

1766 (77) "Supporting obligation" means a letter-of-credit
1767 right or secondary obligation that supports the payment or
1768 performance of an account, chattel paper, a document, a general
1769 intangible, an instrument, or investment property.

1770 (78) "Tangible chattel paper" means chattel paper
1771 evidenced by a record or records consisting of information that is
1772 inscribed on a tangible medium.

1773 (79) "Termination statement" means an amendment of a
1774 financing statement which:

1775 (A) Identifies, by its file number, the initial
1776 financing statement to which it relates; and

1777 (B) Indicates either that it is a termination
1778 statement or that the identified financing statement is no longer
1779 effective.

1780 (80) "Transmitting utility" means a person primarily
1781 engaged in the business of:

1782 (A) Operating a railroad, subway, street railway,
1783 or trolley bus;

1784 (B) Transmitting communications electrically,
1785 electromagnetically, or by light;

1786 (C) Transmitting goods by pipeline or sewer; or

1787 (D) Transmitting or producing and transmitting
1788 electricity, steam, gas, or water.

1789 (b) The following definitions in other articles apply to
1790 this article:

1791 "Applicant" Section 75-5-102.

1792 "Beneficiary" Section 75-5-102.

1793 "Broker" Section 75-8-102.

1794 "Certificated security" Section 75-8-102.



1795	"Check"	Section 75-3-104.
1796	"Clearing corporation"	Section 75-8-102.
1797	"Contract for sale"	Section 75-2-106.
1798	"Control"	Section 75-7-106.
1799	"Customer"	Section 75-4-104.
1800	"Entitlement holder"	Section 75-8-102.
1801	"Financial asset"	Section 75-8-102.
1802	"Holder in due course"	Section 75-3-302.
1803	"Issuer" (with respect to	
1804	a letter of credit or	
1805	letter-of-credit right)	Section 75-5-102.
1806	"Issuer" (with respect to a	
1807	security)	Section 75-8-201.
1808	"Issuer" (with respect to	
1809	documents of title)	Section 75-7-102.
1810	"Lease"	Section 75-2A-103.
1811	"Lease agreement"	Section 75-2A-103.
1812	"Lease contract"	Section 75-2A-103.
1813	"Leasehold interest"	Section 75-2A-103.
1814	"Lessee"	Section 75-2A-103.
1815	"Lessee in ordinary course	
1816	of business"	Section 75-2A-103.
1817	"Lessor"	Section 75-2A-103.
1818	"Lessor's residual interest"	Section 75-2A-103.
1819	"Letter of credit"	Section 75-5-102.
1820	"Merchant"	Section 75-2-104.
1821	"Negotiable instrument"	Section 75-3-104.
1822	"Nominated person"	Section 75-5-102.
1823	"Note"	Section 75-3-104.
1824	"Proceeds of a letter of	
1825	credit"	Section 75-5-114.
1826	"Prove"	Section 75-3-103.
1827	"Sale"	Section 75-2-106.



1828 "Securities account" Section 75-8-501.
1829 "Securities intermediary" Section 75-8-102.
1830 "Security" Section 75-8-102.
1831 "Security certificate" Section 75-8-102.
1832 "Security entitlement" Section 75-8-102.
1833 "Uncertificated security" Section 75-8-102.
1834 (c) Article 1 contains general definitions and principles of
1835 construction and interpretation applicable throughout this
1836 article.
1837 **SECTION 36.** This act shall take effect and be in force from
1838 and after its passage.

