

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 345

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



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

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

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

81 11-7-18. Except as otherwise provided in Sections 75-2-314,
82 75-2-315, 75-2-315.1 and 75-2-719, there shall be no limitation of
83 remedies or disclaimer of liability as to any implied warranty of
84 merchantability or fitness for a particular purpose in a sale to a
85 consumer, as defined in Section 75-1-201(b)(11), of consumer
86 goods, as defined in Section 75-9-102(a)(23). The provisions of
87 this section may not be waived or varied by agreement.

88 **SECTION 2.** The following shall be codified as Section
89 15-1-81, Mississippi Code of 1972:

90 15-1-81. Actions on nonnegotiable promissory notes. (1) An
91 action to enforce the obligations of a party to pay a
92 nonnegotiable promissory note payable at a definite time must be



commenced within six (6) years after the due date or dates stated in the promissory note, or if a due date is accelerated, within six (6) years after the accelerated date.

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

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

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



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

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

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

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

PART 1.

GENERAL PROVISIONS.

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

PART 2.

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

296 (17) "Fault" means a default, breach, or wrongful act
297 or omission.

298 (18) "Fungible goods" means:

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

301 (B) Goods that by agreement are treated as
302 equivalent.

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

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

307 (21) "Holder" means:

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

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

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

317 (23) "Insolvent" means:



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

321 (B) Being unable to pay debts as they become due;
322 or

323 (C) Being insolvent within the meaning of federal
324 bankruptcy law.

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

330 (25) "Organization" means a person other than an
331 individual.

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

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

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

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



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

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

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

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

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

(34) "Right" includes remedy.

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



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

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

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

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

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

399 (39) "Surety" includes a guarantor or other secondary
400 obligor.

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

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

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

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

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

413 (1) Has actual knowledge of it;

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



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

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

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

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

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

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

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

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

Section 75-1-203. Lease distinguished from security interest. (a) Whether a transaction in the form of a lease



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

Section 75-1-205. Reasonable time; seasonableness. (a)

Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

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

Section 75-1-206. Presumptions. Whenever the Uniform

Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

PART 3.

TERRITORIAL APPLICABILITY AND GENERAL RULES.

Section 75-1-301. Territorial applicability; parties' power to choose applicable law. (a) If one (1) of the parties to a

transaction is a consumer, an agreement by the parties that any or all of their rights and obligations are to be governed by the laws of another state or nation is not effective unless the transaction bears a reasonable relation to the designated state or nation.

(b) If neither party to a transaction is a consumer, the following rules apply:

(1) If the transaction does not bear a reasonable relation to a nation other than the United States, an agreement by the parties that any or all of their rights and obligations are to be determined by the law of this state or another state is effective, whether or not the transaction bears a reasonable relation to the designated state; and



545 (2) If the transaction bears a reasonable relation to a
546 nation other than the United States, an agreement by the parties
547 that any or all of their rights and obligations are to be
548 determined by the law of this state or another state or nation is
549 effective, whether or not the transaction bears a reasonable
550 relation to the designated state or nation.

551 (c) In the absence of an agreement effective under
552 subsection (a) or (b), and except as provided in subsection (e),
553 this chapter applies to transactions bearing an appropriate
554 relation to this state.

555 (d) Application of the law of a state determined pursuant to
556 subsection (a) or (c) may not deprive a consumer of the protection
557 of any statute of the state in which the consumer principally
558 resides at the time that the transaction became enforceable, which
559 statute is both protective of consumers and may not be varied by
560 agreement.

561 (e) If one (1) of the following provisions of this chapter
562 specifies the applicable law, that provision governs and a
563 contrary agreement is effective only to the extent permitted by
564 the law so specified.

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

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



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

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

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

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

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

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

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



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

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

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

619 (2) Course of performance prevails over course of
620 dealing and usage of trade; and

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

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

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

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

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

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

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



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

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

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

660 (b) Subsection (a) does not apply to an accord and
661 satisfaction.

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

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



675 person obligated or another creditor of the person obligated.
676 Subordination does not create a security interest as against
677 either the common debtor or a subordinated creditor.

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

680 **75-2-103.** (1) In this chapter unless the context otherwise
681 requires:

682 (a) "Buyer" means a person that buys or contracts to
683 buy goods.

684 (b) [Reserved]

685 (c) "Receipt" of goods means taking physical possession
686 of them.

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

689 (2) Other definitions applying to this chapter or to
690 specified parts thereof, and the sections in which they appear
691 are:

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

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

717 (3) The following definitions in other chapters apply to
718 this chapter:

719	"Check"	Section 75-3-104
720	"Consignee"	Section 75-7-102
721	"Consignor"	Section 75-7-102
722	"Consumer goods"	Section 75-9-102
723	"Control"	Section 75-7-106
724	"Dishonor"	Section 75-3-502
725	"Draft"	Section 75-3-104

726 (4) In addition Chapter 1 contains general definitions and
727 principles of construction and interpretation applicable
728 throughout this chapter.

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

731 75-2-107. (1) A contract for the sale of minerals or the
732 like (including oil and gas) or a structure or its materials to be
733 removed from realty is a contract for the sale of goods within
734 this chapter if they are to be severed by the seller but until
735 severance a purported present sale thereof which is not effective
736 as a transfer of an interest in land is effective only as a
737 contract to sell.

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

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

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

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

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

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

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

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

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



774 However, the seller may recover from the manufacturer any damages
775 resulting from breach of the implied warranty of merchantability
776 or fitness for a particular purpose.

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

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

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

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

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

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

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

797 (iii) Any exclusion or modification of either
798 warranty shall be separately acknowledged by the signature of the
799 buyer.

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



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

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

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

822 75-2A-103. (1) In this chapter unless the context otherwise
823 requires:

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

980 (3) The following definitions in other chapters apply to
981 this chapter:

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

990 * * *

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

1000 (4) In addition, Chapter 1 contains general definitions and
1001 principles of construction and interpretation applicable
1002 throughout this chapter.

1003 **SECTION 9.** Section 75-2A-501, Mississippi Code of 1972, is
1004 amended as follows:

1005 75-2A-501. (1) Whether the lessor or the lessee is in
1006 default under a lease contract is determined by the lease
1007 agreement and this chapter.

1008 (2) If the lessor or the lessee is in default under the
1009 lease contract, the party seeking enforcement has rights and
1010 remedies as provided in this chapter and, except as limited by
1011 this chapter, as provided in the lease agreement.

1012 (3) If the lessor or the lessee is in default under the
1013 lease contract, the party seeking enforcement may reduce the
1014 party's claim to judgment, or otherwise enforce the lease contract
1015 by self-help or any available judicial procedure or nonjudicial
1016 procedure, including administrative proceeding, arbitration, or
1017 the like, in accordance with this chapter.

1018 (4) Except as otherwise provided in Section 75-1-305(a) or
1019 this chapter or the lease agreement, the rights and remedies
1020 referred to in subsections (2) and (3) are cumulative.

1021 (5) If the lease agreement covers both real property and
1022 goods, the party seeking enforcement may proceed under this part
1023 as to the goods, or under other applicable law as to both the real
1024 property and the goods in accordance with that party's rights and
1025 remedies in respect of the real property, in which case this part
1026 does not apply.

1027 **SECTION 10.** Section 75-2A-518, Mississippi Code of 1972, is
1028 amended as follows:

1029 75-2A-518. (1) After a default by a lessor under the lease
1030 contract of the type described in Section 75-2A-508(1), or, if
1031 agreed, after other default by the lessor, the lessee may cover by



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

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

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

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

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



1065 value, as of the date of the default, of the then market rent
1066 minus the present value as of the same date of the original rent,
1067 computed for the remaining lease term of the original lease
1068 agreement, together with incidental and consequential damages,
1069 less expenses saved in consequence of the lessor's default.

1070 (2) Market rent is to be determined as of the place for
1071 tender or, in cases of rejection after arrival or revocation of
1072 acceptance, as of the place of arrival.

1073 (3) Except as otherwise agreed, if the lessee has accepted
1074 goods and given notification (Section 75-2A-516(3)), the measure
1075 of damages for nonconforming tender or delivery or other default
1076 by a lessor is the loss resulting in the ordinary course of events
1077 from the lessor's default as determined in any manner that is
1078 reasonable together with incidental and consequential damages,
1079 less expenses saved in consequence of the lessor's default.

1080 (4) Except as otherwise agreed, the measure of damages for
1081 breach of warranty is the present value at the time and place of
1082 acceptance of the difference between the value of the use of the
1083 goods accepted and the value if they had been as warranted for the
1084 lease term, unless special circumstances show proximate damages of
1085 a different amount, together with incidental and consequential
1086 damages, less expenses saved in consequence of the lessor's
1087 default or breach of warranty.

1088 **SECTION 12.** Section 75-2A-527, Mississippi Code of 1972, is
1089 amended as follows:

1090 75-2A-527. (1) After a default by a lessee under the lease
1091 contract of the type described in Section 75-2A-523(1) or
1092 75-2A-523(3)(a) or after the lessor refuses to deliver or takes
1093 possession of goods (Section 75-2A-525 or 75-2A-526), or, if
1094 agreed, after other default by a lessee, the lessor may dispose of
1095 the goods concerned or the undelivered balance thereof by lease,
1096 sale or otherwise.



1097 (2) Except as otherwise provided with respect to damages
1098 liquidated in the lease agreement (Section 75-2A-504) or otherwise
1099 determined pursuant to agreement of the parties (Sections 75-1-302
1100 and 75-2A-503), if the disposition is by lease agreement
1101 substantially similar to the original lease agreement and the new
1102 lease agreement is made in good faith and in a commercially
1103 reasonable manner, the lessor may recover from the lessee as
1104 damages (i) accrued and unpaid rent as of the date of the
1105 commencement of the term of the new lease agreement, (ii) the
1106 present value, as of the same date, of the total rent for the then
1107 remaining lease term of the original lease agreement minus the
1108 present value, as of the same date, of the rent under the new
1109 lease agreement applicable to that period of the new lease term
1110 which is comparable to the then remaining term of the original
1111 lease agreement, and (iii) any incidental damages allowed under
1112 Section 75-2A-530, less expenses saved in consequence of the
1113 lessee's default.

1114 (3) If the lessor's disposition is by lease agreement that
1115 for any reason does not qualify for treatment under subsection
1116 (2), or is by sale or otherwise, the lessor may recover from the
1117 lessee as if the lessor had elected not to dispose of the goods
1118 and Section 75-2A-528 governs.

1119 (4) A subsequent buyer or lessee who buys or leases from the
1120 lessor in good faith for value as a result of a disposition under
1121 this section takes the goods free of the original lease contract
1122 and any rights of the original lessee even though the lessor fails
1123 to comply with one or more of the requirements of this chapter.

1124 (5) The lessor is not accountable to the lessee for any
1125 profit made on any disposition. A lessee who has rightfully
1126 rejected or justifiably revoked acceptance shall account to the
1127 lessor for any excess over the amount of the lessee's security
1128 interest (Section 75-2A-508(5)).



1129 **SECTION 13.** Section 75-2A-528, Mississippi Code of 1972, is
1130 amended as follows:

1131 75-2A-528. (1) Except as otherwise provided with respect to
1132 damages liquidated in the lease agreement (Section 75-2A-504) or
1133 otherwise determined pursuant to agreement of the parties
1134 (Sections 75-1-302 and 75-2A-503), if a lessor elects to retain
1135 the goods or a lessor elects to dispose of the goods and the
1136 disposition is by lease agreement that for any reason does not
1137 qualify for treatment under Section 75-2A-527(2), or is by sale or
1138 otherwise, the lessor may recover from the lessee as damages for a
1139 default of the type described in Section 75-2A-523(1) or
1140 75-2A-523(3)(a), or, if agreed, for other default of the lessee,
1141 (i) accrued and unpaid rent as of the date of default if the
1142 lessee has never taken possession of the goods, or, if the lessee
1143 has taken possession of the goods, as of the date the lessor
1144 repossesses the goods or an earlier date on which the lessee makes
1145 a tender of the goods to the lessor, (ii) the present value as of
1146 the date determined under clause (i) of the total rent for the
1147 then remaining lease term of the original lease agreement minus
1148 the present value as of the same date of the market rent at the
1149 place where the goods are located computed for the same lease
1150 term, and (iii) any incidental damages allowed under Section
1151 75-2A-530, less expenses saved in consequence of the lessee's
1152 default.

1153 (2) If the measure of damages provided in subsection (1) is
1154 inadequate to put a lessor in as good a position as performance
1155 would have, the measure of damages is the present value of the
1156 profit, including reasonable overhead, the lessor would have made
1157 from full performance by the lessee, together with any incidental
1158 damages allowed under Section 75-2A-530, due allowance for costs
1159 reasonably incurred and due credit for payments or proceeds of
1160 disposition.



1161 **SECTION 14.** Section 75-3-103, Mississippi Code of 1972, is
1162 amended as follows:

1163 75-3-103. (a) In this chapter:

1164 (1) "Acceptor" means a drawee who has accepted a draft.

1165 (2) "Consumer account" means an account established by
1166 an individual primarily for personal, family, or household
1167 purposes.

1168 (3) "Consumer transaction" means a transaction in which
1169 an individual incurs an obligation primarily for personal, family,
1170 or household purposes.

1171 (4) "Drawee" means a person ordered in a draft to make
1172 payment.

1173 (5) "Drawer" means a person who signs or is identified
1174 in a draft as a person ordering payment.

1175 (6) [Reserved].

1176 (7) "Maker" means a person who signs or is identified
1177 in a note as a person undertaking to pay.

1178 (8) "Order" means a written instruction to pay money
1179 signed by the person giving the instruction. The instruction may
1180 be addressed to any person, including the person giving the
1181 instruction, or to one or more persons jointly or in the
1182 alternative but not in succession. An authorization to pay is not
1183 an order unless the person authorized to pay is also instructed to
1184 pay.

1185 (9) "Ordinary care" in the case of a person engaged in
1186 business means observance of reasonable commercial standards,
1187 prevailing in the area in which the person is located, with
1188 respect to the business in which the person is engaged. In the
1189 case of a bank that takes an instrument for processing for
1190 collection or payment by automated means, reasonable commercial
1191 standards do not require the bank to examine the instrument if the
1192 failure to examine does not violate the bank's prescribed
1193 procedures and the bank's procedures do not vary unreasonably from



1194 general banking usage not disapproved by this chapter or Chapter
1195 4.

1196 (10) "Party" means a party to an instrument.

1197 (11) "Principal obligor," with respect to an
1198 instrument, means the accommodated party or any other party to the
1199 instrument against whom a secondary obligor has recourse under
1200 this article.

1201 (12) "Promise" means a written undertaking to pay money
1202 signed by the person undertaking to pay. An acknowledgment of an
1203 obligation by the obligor is not a promise unless the obligor also
1204 undertakes to pay the obligation.

1205 (13) "Prove" with respect to a fact means to meet the
1206 burden of establishing the fact (Section 75-1-201(8), Mississippi
1207 Code of 1972).

1208 (14) [Reserved]

1209 (15) "Remitter" means a person who purchases an
1210 instrument from its issuer if the instrument is payable to an
1211 identified person other than the purchaser.

1212 (16) "Remotely created check" means a check that is not
1213 created by the paying bank and that does not bear a signature
1214 applied, or purported to be applied, by the person on whose
1215 account the check is drawn.

1216 (17) "Secondary obligor," with respect to an
1217 instrument, means (i) an indorser or an accommodation party, (ii)
1218 a drawer having the obligation described in Section 75-3-414(d),
1219 or (iii) any other party to the instrument that has recourse
1220 against another party to the instrument pursuant to Section
1221 75-3-116(b).

1222 (b) Other definitions applying to this chapter and the
1223 sections in which they appear are:

1224 "Acceptance"	Section 75-3-409
1225 "Accommodated party"	Section 75-3-419
1226 "Accommodation party"	Section 75-3-419



1227	<u>"Account"</u>	<u>Section 75-4-104</u>
1228	"Alteration"	Section 75-3-407
1229	"Anomalous indorsement"	Section 75-3-205
1230	"Blank indorsement"	Section 75-3-205
1231	"Cashier's check"	Section 75-3-104
1232	"Certificate of deposit"	Section 75-3-104
1233	"Certified check"	Section 75-3-409
1234	"Check"	Section 75-3-104
1235	"Consideration"	Section 75-3-303
1236	"Draft"	Section 75-3-104
1237	"Holder in due course"	Section 75-3-302
1238	"Incomplete instrument"	Section 75-3-115
1239	"Indorsement"	Section 75-3-204
1240	"Indorser"	Section 75-3-204
1241	"Instrument"	Section 75-3-104
1242	"Issue"	Section 75-3-105
1243	"Issuer"	Section 75-3-105
1244	"Negotiable instrument"	Section 75-3-104
1245	"Negotiation"	Section 75-3-201
1246	"Note"	Section 75-3-104
1247	"Payable at a definite time"	Section 75-3-108
1248	"Payable on demand"	Section 75-3-108
1249	"Payable to bearer"	Section 75-3-109
1250	"Payable to order"	Section 75-3-109
1251	"Payment"	Section 75-3-602
1252	"Person entitled to enforce"	Section 75-3-301
1253	"Presentment"	Section 75-3-501
1254	"Reacquisition"	Section 75-3-207
1255	"Special indorsement"	Section 75-3-205
1256	"Teller's check"	Section 75-3-104
1257	"Transfer of instrument"	Section 75-3-203
1258	"Traveler's check"	Section 75-3-104
1259	"Value"	Section 75-3-303



1260 (c) The following definitions in other chapters apply to
1261 this chapter:

1262 * * *

1263	"Banking day"	Section 75-4-104
1264	"Clearinghouse"	Section 75-4-104
1265	"Collecting bank"	Section 75-4-105
1266	"Depository bank"	Section 75-4-105
1267	"Documentary draft"	Section 75-4-104
1268	"Intermediary bank"	Section 75-4-105
1269	"Item"	Section 75-4-104
1270	"Payor bank"	Section 75-4-105
1271	"Suspends payments"	Section 75-4-104

1272 (d) In addition, Chapter 1 contains general definitions and
1273 principles of construction and interpretation applicable
1274 throughout this chapter.

1275 **SECTION 15.** Section 75-3-106, Mississippi Code of 1972, is
1276 amended as follows:

1277 75-3-106. (a) Except as provided in this section, for the
1278 purposes of Section 75-3-104(a), a promise or order is
1279 unconditional unless it states (i) an express condition to
1280 payment, (ii) that the promise or order is subject to or governed
1281 by another record, or (iii) that rights or obligations with
1282 respect to the promise or order are stated in another record. A
1283 reference to another record does not of itself make the promise or
1284 order conditional.

1285 (b) A promise or order is not made conditional (i) by a
1286 reference to another record for a statement of rights with respect
1287 to collateral, prepayment, or acceleration, or (ii) because
1288 payment is limited to resort to a particular fund or source.

1289 (c) If a promise or order requires, as a condition to
1290 payment, a countersignature by a person whose specimen signature
1291 appears on the promise or order, the condition does not make the
1292 promise or order conditional for the purposes of Section



1293 75-3-104(a). If the person whose specimen signature appears on an
1294 instrument fails to countersign the instrument, the failure to
1295 countersign is a defense to the obligation of the issuer, but the
1296 failure does not prevent a transferee of the instrument from
1297 becoming a holder of the instrument.

1298 (d) If a promise or order at the time it is issued or first
1299 comes into possession of a holder contains a statement, required
1300 by applicable statutory or administrative law, to the effect that
1301 the rights of a holder or transferee are subject to claims or
1302 defenses that the issuer could assert against the original payee,
1303 the promise or order is not thereby made conditional for the
1304 purposes of Section 75-3-104(a); but if the promise or order is an
1305 instrument, there cannot be a holder in due course of the
1306 instrument.

1307 **SECTION 16.** Section 75-3-116, Mississippi Code of 1972, is
1308 amended as follows:

1309 75-3-116. (a) Except as otherwise provided in the
1310 instrument, two (2) or more persons who have the same liability on
1311 an instrument as makers, drawers, acceptors, indorsers who indorse
1312 as joint payees, or anomalous indorsers are jointly and severally
1313 liable in the capacity in which they sign.

1314 (b) Except as provided in Section 75-3-419(f) or by
1315 agreement of the affected parties, a party having joint and
1316 several liability who pays the instrument is entitled to receive
1317 from any party having the same joint and several liability
1318 contribution in accordance with applicable law.

1319 * * *

1320 **SECTION 17.** Section 75-3-119, Mississippi Code of 1972, is
1321 amended as follows:

1322 75-3-119. In an action for breach of an obligation for which
1323 a third person is answerable over pursuant to this chapter or
1324 Chapter 4, the defendant may give the third person * * * notice of
1325 the litigation in a record, and the person notified may then give



1326 similar notice to any other person who is answerable over. If the
1327 notice states (i) that the person notified may come in and defend
1328 and (ii) that failure to do so will bind the person notified in an
1329 action later brought by the person giving the notice as to any
1330 determination of fact common to the two (2) litigations, the
1331 person notified is so bound unless after seasonable receipt of the
1332 notice the person notified does come in and defend.

1333 **SECTION 18.** Section 75-3-305, Mississippi Code of 1972, is
1334 amended as follows:

1335 75-3-305. (a) Except as otherwise provided in this section,
1336 the right to enforce the obligation of a party to pay an
1337 instrument is subject to the following:

1338 (1) A defense of the obligor based on (i) infancy of
1339 the obligor to the extent it is a defense to a simple contract,
1340 (ii) duress, lack of legal capacity, or illegality of the
1341 transaction which, under other law, nullifies the obligation of
1342 the obligor, (iii) fraud that induced the obligor to sign the
1343 instrument with neither knowledge nor reasonable opportunity to
1344 learn of its character or its essential terms, or (iv) discharge
1345 of the obligor in insolvency proceedings;

1346 (2) A defense of the obligor stated in another section
1347 of this chapter or a defense of the obligor that would be
1348 available if the person entitled to enforce the instrument were
1349 enforcing a right to payment under a simple contract; and

1350 (3) A claim in recoupment of the obligor against the
1351 original payee of the instrument if the claim arose from the
1352 transaction that gave rise to the instrument; but the claim of the
1353 obligor may be asserted against a transferee of the instrument
1354 only to reduce the amount owing on the instrument at the time the
1355 action is brought.

1356 (b) The right of a holder in due course to enforce the
1357 obligation of a party to pay the instrument is subject to defenses
1358 of the obligor stated in subsection (a)(1), but is not subject to



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

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

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

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

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

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



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

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

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

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

(1) The person seeking to enforce the instrument:

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

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

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

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

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



1423 **SECTION 20.** Section 75-3-312, Mississippi Code of 1972, is
1424 amended as follows:

1425 75-3-312. (a) In this section:

1426 (1) "Check" means a cashier's check, teller's check, or
1427 certified check.

1428 (2) "Claimant" means a person who claims the right to
1429 receive the amount of a cashier's check, teller's check, or
1430 certified check that was lost, destroyed, or stolen.

1431 (3) "Declaration of loss" means a * * * statement, made
1432 in a record under penalty of perjury, to the effect that (i) the
1433 declarer lost possession of a check, (ii) the declarer is the
1434 drawer or payee of the check, in the case of a certified check, or
1435 the remitter or payee of the check, in the case of a cashier's
1436 check or teller's check, (iii) the loss of possession was not the
1437 result of a transfer by the declarer or a lawful seizure, and (iv)
1438 the declarer cannot reasonably obtain possession of the check
1439 because the check was destroyed, its whereabouts cannot be
1440 determined, or it is in the wrongful possession of an unknown
1441 person or a person that cannot be found or is not amenable to
1442 service of process.

1443 (4) "Obligated bank" means the issuer of a cashier's
1444 check or teller's check or the acceptor of a certified check.

1445 (b) A claimant may assert a claim to the amount of a check
1446 by a communication to the obligated bank describing the check with
1447 reasonable certainty and requesting payment of the amount of the
1448 check, if (i) the claimant is the drawer or payee of a certified
1449 check or the remitter or payee of a cashier's check or teller's
1450 check, (ii) the communication contains or is accompanied by a
1451 declaration of loss of the claimant with respect to the check,
1452 (iii) the communication is received at a time and in a manner
1453 affording the bank a reasonable time to act on it before the check
1454 is paid, and (iv) the claimant provides reasonable identification
1455 if requested by the obligated bank. Delivery of a declaration of



1456 loss is a warranty of the truth of the statements made in the
1457 declaration. If a claim is asserted in compliance with this
1458 subsection, the following rules apply:

1459 (1) The claim becomes enforceable at the later of (i)
1460 the time the claim is asserted, or (ii) the ninetieth day
1461 following the date of the check, in the case of a cashier's check
1462 or teller's check, or the ninetieth day following the date of
1463 acceptance, in the case of a certified check.

1464 (2) Until the claim becomes enforceable, it has no
1465 legal effect and the obligated bank may pay the check or, in the
1466 case of a teller's check, may permit the drawee to pay the check.
1467 Payment to a person entitled to enforce the check discharges all
1468 liability of the obligated bank with respect to the check.

1469 (3) If the claim becomes enforceable before the check
1470 is presented for payment, the obligated bank is not obliged to pay
1471 the check.

1472 (4) When the claim becomes enforceable, the obligated
1473 bank becomes obliged to pay the amount of the check to the
1474 claimant if payment of the check has not been made to a person
1475 entitled to enforce the check. Subject to Section 75-4-302(a)(1),
1476 payment to the claimant discharges all liability of the obligated
1477 bank with respect to the check.

1478 (c) If the obligated bank pays the amount of a check to a
1479 claimant under subsection (b)(4) and the check is presented for
1480 payment by a person having rights of a holder in due course, the
1481 claimant is obliged to (i) refund the payment to the obligated
1482 bank if the check is paid, or (ii) pay the amount of the check to
1483 the person having rights of a holder in due course if the check is
1484 dishonored.

1485 (d) If a claimant has the right to assert a claim under
1486 subsection (b) and is also a person entitled to enforce a
1487 cashier's check, teller's check, or certified check which is lost,



1488 destroyed, or stolen, the claimant may assert rights with respect
1489 to the check either under this section or Section 75-3-309.

1490 **SECTION 21.** Section 75-3-415, Mississippi Code of 1972, is
1491 amended as follows:

1492 75-3-415. (a) Subject to subsections (b), (c), and (d) and
1493 to Section 75-3-419(d), if an instrument is dishonored, an
1494 indorser is obliged to pay the amount due on the instrument (i)
1495 according to the terms of the instrument at the time it was
1496 indorsed, or (ii) if the indorser indorsed an incomplete
1497 instrument, according to its terms when completed, to the extent
1498 stated in Sections 75-3-115 and 75-3-407. The obligation of the
1499 indorser is owed to a person entitled to enforce the instrument or
1500 to a subsequent indorser who paid the instrument under this
1501 section.

1502 (b) If an indorsement states that it is made "without
1503 recourse" or otherwise disclaims liability of the indorser, the
1504 indorser is not liable under subsection (a) to pay the instrument.

1505 (c) If notice of dishonor of an instrument is required by
1506 Section 75-3-503 and notice of dishonor complying with that
1507 section is not given to an indorser, the liability of the indorser
1508 under subsection (a) is discharged.

1509 (d) If a draft is accepted by a bank after an indorsement is
1510 made, the liability of the indorser under subsection (a) is
1511 discharged.

1512 * * *

1513 **SECTION 22.** Section 75-3-416, Mississippi Code of 1972, is
1514 amended as follows:

1515 75-3-416. (a) A person who transfers an instrument for
1516 consideration warrants to the transferee and, if the transfer is
1517 by indorsement, to any subsequent transferee that:

1518 (1) The warrantor is a person entitled to enforce the
1519 instrument;



1520 (2) All signatures on the instrument are authentic and
1521 authorized;

1522 (3) The instrument has not been altered;

1523 (4) The instrument is not subject to a defense or claim
1524 in recoupment of any party which can be asserted against the
1525 warrantor; * * *

1526 (5) The warrantor has no knowledge of any insolvency
1527 proceeding commenced with respect to the maker or acceptor or, in
1528 the case of an unaccepted draft, the drawer; and

1529 (6) With respect to a remotely created check, that the
1530 person on whose account the remotely created check is drawn
1531 authorized the issuance of the check in the amount stated on the
1532 check and to the payee stated on the check.

1533 (b) A person to whom the warranties under subsection (a) are
1534 made and who took the instrument in good faith may recover from
1535 the warrantor as damages for breach of warranty an amount equal to
1536 the loss suffered as a result of the breach, but not more than the
1537 amount of the instrument plus expenses and loss of interest
1538 incurred as a result of the breach.

1539 (c) The warranties stated in subsection (a) cannot be
1540 disclaimed with respect to checks. Unless notice of a claim for
1541 breach of warranty is given to the warrantor within thirty (30)
1542 days after the claimant has reason to know of the breach and the
1543 identity of the warrantor, the liability of the warrantor under
1544 subsection (b) is discharged to the extent of any loss caused by
1545 the delay in giving notice of the claim.

1546 (d) A cause of action for breach of warranty under this
1547 section accrues when the claimant has reason to know of the
1548 breach.

1549 **SECTION 23.** Section 75-3-417, Mississippi Code of 1972, is
1550 amended as follows:

1551 75-3-417. (a) If an unaccepted draft is presented to the
1552 drawee for payment or acceptance and the drawee pays or accepts



1553 the draft, (i) the person obtaining payment or acceptance, at the
1554 time of presentment, and (ii) a previous transferor of the draft,
1555 at the time of transfer, warrant to the drawee making payment or
1556 accepting the draft in good faith that:

1557 (1) The warrantor is, or was, at the time the warrantor
1558 transferred the draft, a person entitled to enforce the draft or
1559 authorized to obtain payment or acceptance of the draft on behalf
1560 of a person entitled to enforce the draft;

1561 (2) The draft has not been altered; * * *

1562 (3) The warrantor has no knowledge that the signature
1563 of the drawer of the draft is unauthorized; and

1564 (4) With respect to a remotely created check, that the
1565 person on whose account the remotely created check is drawn
1566 authorized the issuance of the check in the amount stated on the
1567 check and to the payee stated on the check.

1568 (b) A drawee making payment may recover from any warrantor
1569 damages for breach of warranty equal to the amount paid by the
1570 drawee less the amount the drawee received or is entitled to
1571 receive from the drawer because of the payment. In addition, the
1572 drawee is entitled to compensation for expenses and loss of
1573 interest resulting from the breach. The right of the drawee to
1574 recover damages under this subsection is not affected by any
1575 failure of the drawee to exercise ordinary care in making payment.
1576 If the drawee accepts the draft, breach of warranty is a defense
1577 to the obligation of the acceptor. If the acceptor makes payment
1578 with respect to the draft, the acceptor is entitled to recover
1579 from any warrantor for breach of warranty the amounts stated in
1580 this subsection.

1581 (c) If a drawee asserts a claim for breach of warranty under
1582 subsection (a) based on an unauthorized indorsement of the draft
1583 or an alteration of the draft, the warrantor may defend by proving
1584 that the indorsement is effective under Section 75-3-404 or
1585 75-3-405 or the drawer is precluded under Section 75-3-406 or



1586 75-4-406 from asserting against the drawee the unauthorized
1587 indorsement or alteration.

1588 (d) If (i) a dishonored draft is presented for payment to
1589 the drawer or an indorser or (ii) any other instrument is
1590 presented for payment to a party obliged to pay the instrument,
1591 and (iii) payment is received, the following rules apply:

1592 (1) The person obtaining payment and a prior transferor
1593 of the instrument warrant to the person making payment in good
1594 faith that the warrantor is, or was, at the time the warrantor
1595 transferred the instrument, a person entitled to enforce the
1596 instrument or authorized to obtain payment on behalf of a person
1597 entitled to enforce the instrument.

1598 (2) The person making payment may recover from any
1599 warrantor for breach of warranty an amount equal to the amount
1600 paid plus expenses and loss of interest resulting from the breach.

1601 (e) The warranties stated in subsections (a) and (d) cannot
1602 be disclaimed with respect to checks. Unless notice of a claim
1603 for breach of warranty is given to the warrantor within thirty
1604 (30) days after the claimant has reason to know of the breach and
1605 the identity of the warrantor, the liability of the warrantor
1606 under subsection (b) or (d) is discharged to the extent of any
1607 loss caused by the delay in giving notice of the claim.

1608 (f) A cause of action for breach of warranty under this
1609 section accrues when the claimant has reason to know of the
1610 breach.

1611 **SECTION 24.** Section 75-3-419, Mississippi Code of 1972, is
1612 amended as follows:

1613 75-3-419. (a) If an instrument is issued for value given
1614 for the benefit of a party to the instrument ("accommodated
1615 party") and another party to the instrument ("accommodation
1616 party") signs the instrument for the purpose of incurring
1617 liability on the instrument without being a direct beneficiary of



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

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

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

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

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



1651 some other manner that does not unambiguously indicate an
1652 intention to guarantee collection rather than payment, the signer
1653 is obliged to pay the amount due on the instrument to a person
1654 entitled to enforce the instrument in the same circumstances as
1655 the accommodated party would be obliged, without prior resort to
1656 the accommodated party by the person entitled to enforce the
1657 instrument.

1658 (f) An accommodation party who pays the instrument is
1659 entitled to reimbursement from the accommodated party and is
1660 entitled to enforce the instrument against the accommodated party.
1661 In proper circumstances, an accommodation party may obtain relief
1662 that requires the accommodated party to perform its obligations on
1663 the instrument. An accommodated party who pays the instrument has
1664 no right of recourse against, and is not entitled to contribution
1665 from, an accommodation party.

1666 **SECTION 25.** Section 75-3-602, Mississippi Code of 1972, is
1667 amended as follows:

1668 75-3-602. (a) Subject to subsection (e), an instrument is
1669 paid to the extent payment is made * * * by or on behalf of a
1670 party obliged to pay the instrument, and * * * to a person
1671 entitled to enforce the instrument. * * *

1672 (b) Subject to subsection (e), a note is paid to the extent
1673 payment is made by or on behalf of a party obliged to pay the note
1674 to a person that formerly was entitled to enforce the note only if
1675 at the time of the payment the party obliged to pay has not
1676 received adequate notification that the note has been transferred
1677 and that payment is to be made to the transferee. A notification
1678 is adequate only if it is signed by the transferor or the
1679 transferee; reasonably identifies the transferred note; and
1680 provides an address at which payments subsequently are to be made.
1681 Upon request, a transferee shall seasonably furnish reasonable
1682 proof that the note has been transferred. Unless the transferee
1683 complies with the request, a payment to the person that formerly



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

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

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

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

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

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

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



1716 sound, or process with the present intent to adopt or accept the
1717 record.

1718 **SECTION 26.** Section 75-3-604, Mississippi Code of 1972, is
1719 amended as follows:

1720 75-3-604. (a) A person entitled to enforce an instrument,
1721 with or without consideration, may discharge the obligation of a
1722 party to pay the instrument (i) by an intentional voluntary act,
1723 such as surrender of the instrument to the party, destruction,
1724 mutilation, or cancellation of the instrument, cancellation or
1725 striking out of the party's signature, or the addition of words to
1726 the instrument indicating discharge, or (ii) by agreeing not to
1727 sue or otherwise renouncing rights against the party by a signed
1728 record.

1729 (b) Cancellation or striking out of an indorsement pursuant
1730 to subsection (a) does not affect the status and rights of a party
1731 derived from the indorsement.

1732 (c) In this section, "signed," with respect to a record that
1733 is not a writing, includes the attachment to or logical
1734 association with the record of an electronic symbol, sound, or
1735 process with the present intent to adopt or accept the record.

1736 **SECTION 27.** Section 75-3-605, Mississippi Code of 1972, is
1737 amended as follows:

1738 75-3-605. (a) If a person entitled to enforce an instrument
1739 releases the obligation of a principal obligor, in whole or in
1740 part, and another party to the instrument is a secondary obligor
1741 with respect to the obligation of that principal obligor, the
1742 following rules apply:

1743 (1) Any obligations of the principal obligor to the
1744 secondary obligor with respect to any previous payment by the
1745 secondary obligor are not affected. Unless the terms of the
1746 release preserve the secondary obligor's recourse, the principal
1747 obligor is discharged, to the extent of the release, from any
1748 other duties to the secondary obligor under this article.



1749 (2) Unless the terms of the release provide that the
1750 person entitled to enforce the instrument retains the right to
1751 enforce the instrument against the secondary obligor, the
1752 secondary obligor is discharged to the same extent as the
1753 principal obligor from any unperformed portion of its obligation
1754 on the instrument. If the instrument is a check and the
1755 obligation of the secondary obligor is based on an indorsement of
1756 the check, the secondary obligor is discharged without regard to
1757 the language or circumstances of the discharge or other release.

1758 (3) If the secondary obligor is not discharged under
1759 paragraph (2), the secondary obligor is discharged to the extent
1760 of the value of the consideration for the release, and to the
1761 extent that the release would otherwise cause the secondary
1762 obligor a loss.

1763 (b) If a person entitled to enforce an instrument grants a
1764 principal obligor an extension of the time at which one or more
1765 payments are due on the instrument and another party to the
1766 instrument is a secondary obligor with respect to the obligation
1767 of that principal obligor, the following rules apply:

1768 (1) Any obligations of the principal obligor to the
1769 secondary obligor with respect to any previous payment by the
1770 secondary obligor are not affected. Unless the terms of the
1771 extension preserve the secondary obligor's recourse, the extension
1772 correspondingly extends the time for performance of any other
1773 duties owed to the secondary obligor by the principal obligor
1774 under this article.

1775 (2) The secondary obligor is discharged to the extent
1776 that the extension would otherwise cause the secondary obligor a
1777 loss.

1778 (3) To the extent that the secondary obligor is not
1779 discharged under paragraph (2), the secondary obligor may perform
1780 its obligations to a person entitled to enforce the instrument as
1781 if the time for payment had not been extended or, unless the terms



1782 of the extension provide that the person entitled to enforce the
1783 instrument retains the right to enforce the instrument against the
1784 secondary obligor as if the time for payment had not been
1785 extended, treat the time for performance of its obligations as
1786 having been extended correspondingly.

1787 (c) If a person entitled to enforce an instrument agrees,
1788 with or without consideration, to a modification of the obligation
1789 of a principal obligor other than a complete or partial release or
1790 an extension of the due date and another party to the instrument
1791 is a secondary obligor with respect to the obligation of that
1792 principal obligor, the following rules apply:

1793 (1) Any obligations of the principal obligor to the
1794 secondary obligor with respect to any previous payment by the
1795 secondary obligor are not affected. The modification
1796 correspondingly modifies any other duties owed to the secondary
1797 obligor by the principal obligor under this article.

1798 (2) The secondary obligor is discharged from any
1799 unperformed portion of its obligation to the extent that the
1800 modification would otherwise cause the secondary obligor a loss.

1801 (3) To the extent that the secondary obligor is not
1802 discharged under paragraph (2), the secondary obligor may satisfy
1803 its obligation on the instrument as if the modification had not
1804 occurred, or treat its obligation on the instrument as having been
1805 modified correspondingly.

1806 (d) If the obligation of a principal obligor is secured by
1807 an interest in collateral, another party to the instrument is a
1808 secondary obligor with respect to that obligation, and a person
1809 entitled to enforce the instrument impairs the value of the
1810 interest in collateral, the obligation of the secondary obligor is
1811 discharged to the extent of the impairment. The value of an
1812 interest in collateral is impaired to the extent the value of the
1813 interest is reduced to an amount less than the amount of the
1814 recourse of the secondary obligor, or the reduction in value of



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

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

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

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

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



1848 (2) The recourse of the secondary obligor continues as
1849 if the release or extension had not been granted.

1850 (h) Except as otherwise provided in subsection (i), a
1851 secondary obligor asserting discharge under this section has the
1852 burden of persuasion both with respect to the occurrence of the
1853 acts alleged to harm the secondary obligor and loss or prejudice
1854 caused by those acts.

1855 (i) If the secondary obligor demonstrates prejudice caused
1856 by an impairment of its recourse, and the circumstances of the
1857 case indicate that the amount of loss is not reasonably
1858 susceptible of calculation or requires proof of facts that are not
1859 ascertainable, it is presumed that the act impairing recourse
1860 caused a loss or impairment equal to the liability of the
1861 secondary obligor on the instrument. In that event, the burden of
1862 persuasion as to any lesser amount of the loss is on the person
1863 entitled to enforce the instrument.

1864 **SECTION 28.** Section 75-4-104, Mississippi Code of 1972, is
1865 amended as follows:

1866 75-4-104. (a) In this chapter, unless the context otherwise
1867 requires:

1868 (1) "Account" means any deposit or credit account with
1869 a bank, including a demand, time, savings, passbook, share draft,
1870 or like account, other than an account evidenced by a certificate
1871 of deposit.

1872 (2) "Afternoon" means the period of a day between noon
1873 and midnight.

1874 (3) "Banking day" means the part of a day on which a
1875 bank is open to the public for carrying on substantially all of
1876 its banking functions.

1877 (4) "Clearinghouse" means an association of banks or
1878 other payors regularly clearing items.



1879 (5) "Customer" means a person having an account with a
1880 bank or for whom a bank has agreed to collect items, including a
1881 bank that maintains an account at another bank.

1882 (6) "Documentary draft" means a draft to be presented
1883 for acceptance or payment if specified documents, certificated
1884 securities (Section 75-8-102) or instructions for uncertificated
1885 securities (Section 75-8-102), or other certificates, statements,
1886 or the like are to be received by the drawee or other payor before
1887 acceptance or payment of the draft.

1888 (7) "Draft" means a draft as defined in Section
1889 75-3-104 or an item, other than an instrument, that is an order.

1890 (8) "Drawee" means a person ordered in a draft to make
1891 payment.

1892 (9) "Item" means an instrument or a promise or order to
1893 pay money handled by a bank for collection or payment. The term
1894 does not include a payment order governed by Chapter 4A or a
1895 credit or debit card slip.

1896 (10) "Midnight deadline" with respect to a bank is
1897 midnight on its next banking day following the banking day on
1898 which it receives the relevant item or notice or from which the
1899 time for taking action commences to run, whichever is later.

1900 (11) "Settle" means to pay in cash, by clearinghouse
1901 settlement, in a charge or credit or by remittance, or otherwise
1902 as agreed. A settlement may be either provisional or final.

1903 (12) "Suspends payments" with respect to a bank means
1904 that it has been closed by order of the supervisory authorities,
1905 that a public officer has been appointed to take it over, or that
1906 it ceases or refuses to make payments in the ordinary course of
1907 business.

1908 (b) Other definitions applying to this chapter and the
1909 sections in which they appear are:

1910 "Agreement for electronic

1911 presentment"

Section 75-4-110



1912 * * *

1913 "Collecting bank" Section 75-4-105

1914 "Depository bank" Section 75-4-105

1915 "Intermediary bank" Section 75-4-105

1916 "Payor bank" Section 75-4-105

1917 "Presenting bank" Section 75-4-105

1918 "Presentment notice" Section 75-4-110

1919 (c) The following definitions in other chapters apply to

1920 this chapter:

1921 "Acceptance" Section 75-3-409

1922 "Alteration" Section 75-3-407

1923 "Cashier's check" Section 75-3-104

1924 "Certificate of deposit" Section 75-3-104

1925 "Certified check" Section 75-3-409

1926 "Check" Section 75-3-104

1927 "Control" Section 75-7-106

1928 * * *

1929 "Holder in due course" Section 75-3-302

1930 "Instrument" Section 75-3-104

1931 "Notice of dishonor" Section 75-3-503

1932 "Order" Section 75-3-103

1933 "Ordinary care" Section 75-3-103

1934 "Person entitled to enforce" Section 75-3-301

1935 "Presentment" Section 75-3-501

1936 "Promise" Section 75-3-103

1937 "Prove" Section 75-3-103

1938 "Remotely created check" Section 75-3-103

1939 "Teller's check" Section 75-3-104

1940 "Unauthorized signature" Section 75-3-403

1941 (d) In addition, Chapter 1 contains general definitions and

1942 principles of construction and interpretation applicable

1943 throughout this chapter.



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

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

(1) [Reserved]

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

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

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

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

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

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

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

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

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

(3) The item has not been altered;

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



2042 that the indorsement is effective under Section 75-3-404 or
2043 75-3-405 or the drawer is precluded under Section 75-3-406 or
2044 75-4-406 from asserting against the drawee the unauthorized
2045 indorsement or alteration.

2046 (d) If (i) a dishonored draft is presented for payment to
2047 the drawer or an indorser or (ii) any other item is presented for
2048 payment to a party obliged to pay the item, and the item is paid,
2049 the person obtaining payment and a prior transferor of the item
2050 warrant to the person making payment in good faith that the
2051 warrantor is, or was, at the time the warrantor transferred the
2052 item, a person entitled to enforce the item or authorized to
2053 obtain payment on behalf of a person entitled to enforce the item.
2054 The person making payment may recover from any warrantor for
2055 breach of warranty an amount equal to the amount paid plus
2056 expenses and loss of interest resulting from the breach.

2057 (e) The warranties stated in subsections (a) and (d) cannot
2058 be disclaimed with respect to checks. Unless notice of a claim
2059 for breach of warranty is given to the warrantor within thirty
2060 (30) days after the claimant has reason to know of the breach and
2061 the identity of the warrantor, the warrantor is discharged to the
2062 extent of any loss caused by the delay in giving notice of the
2063 claim.

2064 (f) A cause of action for breach of warranty under this
2065 section accrues when the claimant has reason to know of the
2066 breach.

2067 **SECTION 32.** Section 75-4-212, Mississippi Code of 1972, is
2068 amended as follows:

2069 75-4-212. (a) Unless otherwise instructed, a collecting
2070 bank may present an item not payable by, through, or at a bank by
2071 sending to the party to accept or pay a record providing notice
2072 that the bank holds the item for acceptance or payment. The
2073 notice must be sent in time to be received on or before the day
2074 when presentment is due and the bank must meet any requirement of



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

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

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

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

(1) Returns the item; * * *

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

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

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

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

(d) An item is returned:



2108 (1) As to an item presented through a clearinghouse,
2109 when it is delivered to the presenting or last collecting bank or
2110 to the clearinghouse or is sent or delivered in accordance with
2111 clearinghouse rules; or

2112 (2) In all other cases, when it is sent or delivered to
2113 the bank's customer or transferor or pursuant to instructions.

2114 **SECTION 34.** Section 75-4-403, Mississippi Code of 1972, is
2115 amended as follows:

2116 75-4-403. (a) A customer or any person authorized to draw
2117 on the account if there is more than one person may stop payment
2118 of any item drawn on the customer's account or close the account
2119 by an order to the bank describing the item or account with
2120 reasonable certainty received at a time and in a manner that
2121 affords the bank a reasonable opportunity to act on it before any
2122 action by the bank with respect to the item described in Section
2123 75-4-303. If the signature of more than one person is required to
2124 draw on an account, any of these persons may stop payment or close
2125 the account.

2126 (b) A stop-payment order is effective for six (6) months,
2127 but it lapses after fourteen (14) calendar days if the original
2128 order was oral and was not confirmed in writing within that
2129 period. A stop-payment order may be renewed for additional
2130 six-month periods by a record given to the bank within a period
2131 during which the stop-payment order is effective.

2132 (c) The burden of establishing the fact and amount of loss
2133 resulting from the payment of an item contrary to a stop-payment
2134 order or order to close an account is on the customer. The loss
2135 from payment of an item contrary to a stop-payment order may
2136 include damages for dishonor of subsequent items under Section
2137 75-4-402.

2138 **SECTION 35.** Section 75-4A-105, Mississippi Code of 1972, is
2139 amended as follows:

2140 75-4A-105. (a) In this chapter:



2141 (1) "Authorized account" means a deposit account of a
2142 customer in a bank designated by the customer as a source of
2143 payment of payment orders issued by the customer to the bank. If
2144 a customer does not so designate an account, any account of the
2145 customer is an authorized account if payment of a payment order
2146 from that account is not inconsistent with a restriction on the
2147 use of that account.

2148 (2) "Bank" means a person engaged in the business of
2149 banking and includes a savings bank, savings and loan association,
2150 credit union, and trust company. A branch or separate office of a
2151 bank is a separate bank for purposes of this chapter.

2152 (3) "Customer" means a person, including a bank, having
2153 an account with a bank or from whom a bank has agreed to receive
2154 payment orders.

2155 (4) "Funds-transfer business day" of a receiving bank
2156 means the part of a day during which the receiving bank is open
2157 for the receipt, processing, and transmittal of payment orders and
2158 cancellations and amendments of payment orders.

2159 (5) "Funds-transfer system" means a wire transfer
2160 network, automated clearinghouse, or other communication system of
2161 a clearinghouse or other association of banks through which a
2162 payment order by a bank may be transmitted to the bank to which
2163 the order is addressed.

2164 (6) [Reserved]

2165 (7) "Prove" with respect to a fact means to meet the
2166 burden of establishing the fact (Section 75-1-201(b)(8)).

2167 (b) Other definitions applying to this chapter and the
2168 sections in which they appear are:

2169	"Acceptance"	Section 75-4A-209
2170	"Beneficiary"	Section 75-4A-103
2171	"Beneficiary's bank"	Section 75-4A-103
2172	"Executed"	Section 75-4A-301
2173	"Execution date"	Section 75-4A-301



2174	"Funds transfer"	Section 75-4A-104
2175	"Funds-transfer system rule"	Section 75-4A-501
2176	"Intermediary bank"	Section 75-4A-104
2177	"Originator"	Section 75-4A-104
2178	"Originator's bank"	Section 75-4A-104
2179	"Payment by beneficiary's	
2180	bank to beneficiary"	Section 75-4A-405
2181	"Payment by originator to	
2182	beneficiary"	Section 75-4A-406
2183	"Payment by sender to	
2184	receiving bank"	Section 75-4A-403
2185	"Payment date"	Section 75-4A-401
2186	"Payment order"	Section 75-4A-103
2187	"Receiving bank"	Section 75-4A-103
2188	"Security procedure"	Section 75-4A-201
2189	"Sender"	Section 75-4A-103
2190	(c) The following definitions in Title 75, Chapter 4, apply	
2191	to this chapter:	
2192	"Clearinghouse"	Section 75-4-104
2193	"Item"	Section 75-4-104
2194	"Suspends payments"	Section 75-4-104
2195	(d) In addition Title 75, Chapter 1, contains general	
2196	definitions and principles of construction and interpretation	
2197	applicable throughout this chapter.	
2198	SECTION 36. Section 75-4A-106, Mississippi Code of 1972, is	
2199	amended as follows:	
2200	75-4A-106. (a) The time of receipt of a payment order or	
2201	communication cancelling or amending a payment order is determined	
2202	by the rules applicable to receipt of a notice stated in Section	
2203	<u>75-1-202</u> . A receiving bank may fix a cut-off time or times on a	
2204	funds-transfer business day for the receipt and processing of	
2205	payment orders and communications cancelling or amending payment	
2206	orders. Different cut-off times may apply to payment orders,	



2207 cancellations, or amendments, or to different categories of
2208 payment orders, cancellations, or amendments. A cut-off time may
2209 apply to senders generally or different cut-off times may apply to
2210 different senders or categories of payment orders. If a payment
2211 order or communication cancelling or amending a payment order is
2212 received after the close of a funds-transfer business day or after
2213 the appropriate cut-off time on a funds-transfer business day, the
2214 receiving bank may treat the payment order or communication as
2215 received at the opening of the next funds-transfer business day.

2216 (b) If this chapter refers to an execution date or payment
2217 date or states a day on which a receiving bank is required to take
2218 action, and the date or day does not fall on a funds-transfer
2219 business day, the next day that is a funds-transfer business day
2220 is treated as the date or day stated, unless the contrary is
2221 stated in this chapter.

2222 **SECTION 37.** Section 75-4A-204, Mississippi Code of 1972, is
2223 amended as follows:

2224 75-4A-204. (a) If a receiving bank accepts a payment order
2225 issued in the name of its customer as sender which is (i) not
2226 authorized and not effective as the order of the customer under
2227 Section 75-4A-202, or (ii) not enforceable, in whole or in part,
2228 against the customer under Section 75-4A-203, the bank shall
2229 refund any payment of the payment order received from the customer
2230 to the extent the bank is not entitled to enforce payment and
2231 shall pay interest on the refundable amount calculated from the
2232 date the bank received payment to the date of the refund.

2233 However, the customer is not entitled to interest from the bank on
2234 the amount to be refunded if the customer fails to exercise
2235 ordinary care to determine that the order was not authorized by
2236 the customer and to notify the bank of the relevant facts within a
2237 reasonable time not exceeding ninety (90) days after the date the
2238 customer received notification from the bank that the order was
2239 accepted or that the customer's account was debited with respect



2240 to the order. The bank is not entitled to any recovery from the
2241 customer on account of a failure by the customer to give
2242 notification as stated in this section.

2243 (b) Reasonable time under subsection (a) may be fixed by
2244 agreement as stated in Section 75-1-302(b), but the obligation of
2245 a receiving bank to refund payment as stated in subsection (a) may
2246 not otherwise be varied by agreement.

2247 **SECTION 38.** Section 75-5-103, Mississippi Code of 1972, is
2248 amended as follows:

2249 75-5-103. (a) This chapter applies to letters of credit and
2250 to certain rights and obligations arising out of transactions
2251 involving letters of credit.

2252 (b) The statement of a rule in this chapter does not by
2253 itself require, imply, or negate application of the same or a
2254 different rule to a situation not provided for, or to a person not
2255 specified, in this chapter.

2256 (c) With the exception of this subsection, subsections (a)
2257 and (d), Sections 75-5-102(a)(9) and (10), 75-5-106(d), and
2258 75-5-114(d), and except to the extent prohibited in Sections
2259 75-1-302 and 75-5-117(d), the effect of this chapter may be varied
2260 by agreement or by a provision stated or incorporated by reference
2261 in an undertaking. A term in an agreement or undertaking
2262 generally excusing liability or generally limiting remedies for
2263 failure to perform obligations is not sufficient to vary
2264 obligations prescribed by this chapter.

2265 (d) Rights and obligations of an issuer to a beneficiary or
2266 a nominated person under a letter of credit are independent of the
2267 existence, performance or nonperformance of a contract or
2268 arrangement out of which the letter of credit arises or which
2269 underlies it, including contracts or arrangements between the
2270 issuer and the applicant and between the applicant and the
2271 beneficiary.



2272 **SECTION 39.** Section 75-7-102, Mississippi Code of 1972, is
2273 amended as follows:

2274 75-7-102. (a) In this chapter, unless the context otherwise
2275 requires:

2276 (1) "Bailee" means a person that by a warehouse
2277 receipt, bill of lading, or other document of title acknowledges
2278 possession of goods and contracts to deliver them.

2279 (2) "Carrier" means a person that issues a bill of
2280 lading.

2281 (3) "Consignee" means a person named in a bill of
2282 lading to which or to whose order the bill promises delivery.

2283 (4) "Consignor" means a person named in a bill of
2284 lading as the person from which the goods have been received for
2285 shipment.

2286 (5) "Delivery order" means a record that contains an
2287 order to deliver goods directed to a warehouse, carrier, or other
2288 person that in the ordinary course of business issues warehouse
2289 receipts or bills of lading.

2290 (6) [Reserved]

2291 (7) "Goods" means all things that are treated as
2292 movable for the purposes of a contract for storage or
2293 transportation.

2294 (8) "Issuer" means a bailee that issues a document of
2295 title or, in the case of an unaccepted delivery order, the person
2296 that orders the possessor of goods to deliver. The term includes
2297 a person for which an agent or employee purports to act in issuing
2298 a document if the agent or employee has real or apparent authority
2299 to issue documents, even if the issuer did not receive any goods,
2300 the goods were misdescribed, or in any other respect the agent or
2301 employee violated the issuer's instructions.

2302 (9) "Person entitled under the document" means the
2303 holder, in the case of a negotiable document of title, or the
2304 person to which delivery of the goods is to be made by the terms



2305 of, or pursuant to instructions in a record under, a nonnegotiable
2306 document of title.

2307 (10) [Reserved]

2308 (11) "Sign" means, with present intent to authenticate
2309 or adopt a record:

2310 (A) To execute or adopt a tangible symbol; or

2311 (B) To attach to or logically associate with the
2312 record an electronic sound, symbol, or process.

2313 (12) "Shipper" means a person that enters into a
2314 contract of transportation with a carrier.

2315 (13) "Warehouse" means a person engaged in the business
2316 of storing goods for hire.

2317 (b) Definitions in other chapters applying to this chapter
2318 and the sections in which they appear are:

2319 (1) "Contract for sale," Section 75-2-106.

2320 (2) "Lessee in the ordinary course of business,"
2321 Section 75-2A-103.

2322 (3) "'Receipt' of goods," Section 75-2-103.

2323 (c) In addition, Chapter 1 of this title contains general
2324 definitions and principles of construction and interpretation
2325 applicable throughout this chapter.

2326 **SECTION 40.** Section 75-8-102, Mississippi Code of 1972, is
2327 amended as follows:

2328 75-8-102. (a) In this chapter:

2329 (1) "Adverse claim" means a claim that a claimant has a
2330 property interest in a financial asset and that it is a violation
2331 of the rights of the claimant for another person to hold,
2332 transfer, or deal with the financial asset.

2333 (2) "Bearer form," as applied to a certificated
2334 security, means a form in which the security is payable to the
2335 bearer of the security certificate according to its terms but not
2336 by reason of an indorsement.



2337 (3) "Broker" means a person defined as a broker or
2338 dealer under the federal securities laws, but without excluding a
2339 bank acting in that capacity.

2340 (4) "Certificated security" means a security that is
2341 represented by a certificate.

2342 (5) "Clearing corporation" means:

2343 (i) A person that is registered as a "clearing
2344 agency" under the federal securities laws;

2345 (ii) A federal reserve bank; or

2346 (iii) Any other person that provides clearance or
2347 settlement services with respect to financial assets that would
2348 require it to register as a clearing agency under the federal
2349 securities laws but for an exclusion or exemption from the
2350 registration requirement, if its activities as a clearing
2351 corporation, including promulgation of rules, are subject to
2352 regulation by a federal or state governmental authority.

2353 (6) "Communicate" means to:

2354 (i) Send a signed writing; or

2355 (ii) Transmit information by any mechanism agreed
2356 upon by the persons transmitting and receiving the information.

2357 (7) "Entitlement holder" means a person identified in
2358 the records of a securities intermediary as the person having a
2359 security entitlement against the securities intermediary. If a
2360 person acquires a security entitlement by virtue of Section
2361 75-8-501(b) (2) or (3), that person is the entitlement holder.

2362 (8) "Entitlement order" means a notification
2363 communicated to a securities intermediary directing transfer or
2364 redemption of a financial asset to which the entitlement holder
2365 has a security entitlement.

2366 (9) "Financial asset," except as otherwise provided in
2367 Section 75-8-103, means:

2368 (i) A security;



2369 (ii) An obligation of a person or a share,
2370 participation, or other interest in a person or in property or an
2371 enterprise of a person, which is, or is of a type, dealt in or
2372 traded on financial markets, or which is recognized in any area in
2373 which it is issued or dealt in as a medium for investment; or

2374 (iii) Any property that is held by a securities
2375 intermediary for another person in a securities account if the
2376 securities intermediary has expressly agreed with the other person
2377 that the property is to be treated as a financial asset under this
2378 chapter. As context requires, the term means either the interest
2379 itself or the means by which a person's claim to it is evidenced,
2380 including a certificated or uncertificated security, a security
2381 certificate, or a security entitlement.

2382 (10) [Reserved]

2383 (11) "Indorsement" means a signature that alone or
2384 accompanied by other words is made on a security certificate in
2385 registered form or on a separate document for the purpose of
2386 assigning, transferring, or redeeming the security or granting a
2387 power to assign, transfer, or redeem it.

2388 (12) "Instruction" means a notification communicated to
2389 the issuer of an uncertificated security which directs that the
2390 transfer of the security be registered or that the security be
2391 redeemed.

2392 (13) "Registered form," as applied to a certificated
2393 security, means a form in which:

2394 (i) The security certificate specifies a person
2395 entitled to the security; and

2396 (ii) A transfer of the security may be registered
2397 upon books maintained for that purpose by or on behalf of the
2398 issuer, or the security certificate so states.

2399 (14) "Securities intermediary" means:

2400 (i) A clearing corporation; or



2401 (ii) A person, including a bank or broker, that in
2402 the ordinary course of its business maintains securities accounts
2403 for others and is acting in that capacity.

2404 (15) "Security," except as otherwise provided in
2405 Section 75-8-103, means an obligation of an issuer or a share,
2406 participation, or other interest in an issuer or in property or an
2407 enterprise of an issuer:

2408 (i) Which is represented by a security certificate
2409 in bearer or registered form, or the transfer of which may be
2410 registered upon books maintained for that purpose by or on behalf
2411 of the issuer;

2412 (ii) Which is one of a class or series or by its
2413 terms is divisible into a class or series of shares,
2414 participations, interests, or obligations; and

2415 (iii) Which:

2416 (A) Is, or is of a type, dealt in or traded
2417 on securities exchanges or securities markets; or

2418 (B) Is a medium for investment and by its
2419 terms expressly provides that it is a security governed by this
2420 chapter.

2421 (16) "Security certificate" means a certificate
2422 representing a security.

2423 (17) "Security entitlement" means the rights and
2424 property interest of an entitlement holder with respect to a
2425 financial asset specified in Part 5 of this chapter.

2426 (18) "Uncertificated security" means a security that is
2427 not represented by a certificate.

2428 (b) Other definitions applying to this chapter and the
2429 sections in which they appear are:

2430	Appropriate person	Section 75-8-107
2431	Control	Section 75-8-106
2432	Delivery	Section 75-8-301
2433	Investment company security	Section 75-8-103



2434 Issuer Section 75-8-201

2435 Overissue Section 75-8-210

2436 Protected purchaser Section 75-8-303

2437 Securities account Section 75-8-501

2438 (c) In addition, Chapter 1 contains general definitions and
2439 principles of construction and interpretation applicable
2440 throughout this chapter.

2441 (d) The characterization of a person, business, or
2442 transaction for purposes of this chapter does not determine the
2443 characterization of the person, business, or transaction for
2444 purposes of any other law, regulation, or rule.

2445 **SECTION 41.** Section 75-9-102, Mississippi Code of 1972, is
2446 amended as follows:

2447 75-9-102. (a) In this article:

2448 (1) "Accession" means goods that are physically united
2449 with other goods in such a manner that the identity of the
2450 original goods is not lost.

2451 (2) "Account," except as used in "account for," means a
2452 right to payment of a monetary obligation, whether or not earned
2453 by performance, (i) for property that has been or is to be sold,
2454 leased, licensed, assigned, or otherwise disposed of, (ii) for
2455 services rendered or to be rendered, (iii) for a policy of
2456 insurance issued or to be issued, (iv) for a secondary obligation
2457 incurred or to be incurred, (v) for energy provided or to be
2458 provided, (vi) for the use or hire of a vessel under a charter or
2459 other contract, (vii) arising out of the use of a credit or charge
2460 card or information contained on or for use with the card, or
2461 (viii) as winnings in a lottery or other game of chance operated
2462 or sponsored by a state, governmental unit of a state, or person
2463 licensed or authorized to operate the game by a state or
2464 governmental unit of a state. The term includes
2465 health-care-insurance receivables. The term does not include (i)
2466 rights to payment evidenced by chattel paper or an instrument,



2467 (ii) commercial tort claims, (iii) deposit accounts, (iv)
2468 investment property, (v) letter-of-credit rights or letters of
2469 credit, or (vi) rights to payment for money or funds advanced or
2470 sold, other than rights arising out of the use of a credit or
2471 charge card or information contained on or for use with the card.

2472 (3) "Account debtor" means a person obligated on an
2473 account, chattel paper, or general intangible. The term does not
2474 include persons obligated to pay a negotiable instrument, even if
2475 the instrument constitutes part of chattel paper.

2476 (4) "Accounting," except as used in "accounting for,"
2477 means a record:

2478 (A) Authenticated by a secured party;

2479 (B) Indicating the aggregate unpaid secured
2480 obligations as of a date not more than thirty-five (35) days
2481 earlier or thirty-five (35) days later than the date of the
2482 record; and

2483 (C) Identifying the components of the obligations
2484 in reasonable detail.

2485 (5) "Agricultural lien" means an interest in farm
2486 products:

2487 (A) Which secures payment or performance of an
2488 obligation for:

2489 (i) Goods or services furnished in connection
2490 with a debtor's farming operation; or

2491 (ii) Rent on real property leased by a debtor
2492 in connection with its farming operation;

2493 (B) Which is created by statute in favor of a
2494 person that:

2495 (i) In the ordinary course of its business
2496 furnished goods or services to a debtor in connection with a
2497 debtor's farming operation; or

2498 (ii) Leased real property to a debtor in
2499 connection with the debtor's farming operation; and



2500 (C) Whose effectiveness does not depend on the
2501 person's possession of the personal property.

2502 (6) "As-extracted collateral" means:

2503 (A) Oil, gas, or other minerals that are subject
2504 to a security interest that:

2505 (i) Is created by a debtor having an interest
2506 in the minerals before extraction; and

2507 (ii) Attaches to the minerals as extracted;
2508 or

2509 (B) Accounts arising out of the sale at the
2510 wellhead or minehead of oil, gas, or other minerals in which the
2511 debtor had an interest before extraction.

2512 (7) "Authenticate" means:

2513 (A) To sign; or

2514 (B) To execute or otherwise adopt a symbol, or
2515 encrypt or similarly process a record in whole or in part, with
2516 the present intent of the authenticating person to identify the
2517 person and adopt or accept a record.

2518 (8) "Bank" means an organization that is engaged in the
2519 business of banking. The term includes savings banks, savings and
2520 loan associations, credit unions, and trust companies.

2521 (9) "Cash proceeds" means proceeds that are money,
2522 checks, deposit accounts, or the like.

2523 (10) "Certificate of title" means a certificate of
2524 title with respect to which a statute provides for the security
2525 interest in question to be indicated on the certificate as a
2526 condition or result of the security interest's obtaining priority
2527 over the rights of a lien creditor with respect to the collateral.

2528 (11) "Chattel paper" means a record or records that
2529 evidence both a monetary obligation and a security interest in
2530 specific goods, a security interest in specific goods and software
2531 used in the goods, a security interest in specific goods and
2532 license of software used in the goods, a lease of specific goods,



2533 or a lease of specific goods and license of software used in the
2534 goods. In this paragraph, "monetary obligation" means a monetary
2535 obligation secured by the goods or owed under a lease of the goods
2536 and includes a monetary obligation with respect to software used
2537 in the goods. The term does not include (i) charters or other
2538 contracts involving the use or hire of a vessel or (ii) records
2539 that evidence a right to payment arising out of the use of a
2540 credit or charge card or information contained on or for use with
2541 the card. If a transaction is evidenced by records that include
2542 an instrument or series of instruments, the group of records taken
2543 together constitutes chattel paper.

2544 (12) "Collateral" means the property subject to a
2545 security interest or agricultural lien. The term includes:

2546 (A) Proceeds to which a security interest
2547 attaches;

2548 (B) Accounts, chattel paper, payment intangibles,
2549 and promissory notes that have been sold; and

2550 (C) Goods that are the subject of a consignment.

2551 (13) "Commercial tort claim" means a claim arising in
2552 tort with respect to which:

2553 (A) The claimant is an organization; or

2554 (B) The claimant is an individual and the claim:

2555 (i) Arose in the course of the claimant's
2556 business or profession; and

2557 (ii) Does not include damages arising out of
2558 personal injury to or the death of an individual.

2559 (14) "Commodity account" means an account maintained by
2560 a commodity intermediary in which a commodity contract is carried
2561 for a commodity customer.

2562 (15) "Commodity contract" means a commodity futures
2563 contract, an option on a commodity futures contract, a commodity
2564 option, or another contract if the contract or option is:



2565 (A) Traded on or subject to the rules of a board
2566 of trade that has been designated as a contract market for such a
2567 contract pursuant to federal commodities laws; or

2568 (B) Traded on a foreign commodity board of trade,
2569 exchange, or market, and is carried on the books of a commodity
2570 intermediary for a commodity customer.

2571 (16) "Commodity customer" means a person for which a
2572 commodity intermediary carries a commodity contract on its books.

2573 (17) "Commodity intermediary" means a person that:

2574 (A) Is registered as a futures commission merchant
2575 under federal commodities law; or

2576 (B) In the ordinary course of its business
2577 provides clearance or settlement services for a board of trade
2578 that has been designated as a contract market pursuant to federal
2579 commodities law.

2580 (18) "Communicate" means:

2581 (A) To send a written or other tangible record;

2582 (B) To transmit a record by any means agreed upon
2583 by the persons sending and receiving the record; or

2584 (C) In the case of transmission of a record to or
2585 by a filing office, to transmit a record by any means prescribed
2586 by filing-office rule.

2587 (19) "Consignee" means a merchant to which goods are
2588 delivered in a consignment.

2589 (20) "Consignment" means a transaction, regardless of
2590 its form, in which a person delivers goods to a merchant for the
2591 purpose of sale and:

2592 (A) The merchant:

2593 (i) Deals in goods of that kind under a name
2594 other than the name of the person making delivery;

2595 (ii) Is not an auctioneer; and

2596 (iii) Is not generally known by its creditors
2597 to be substantially engaged in selling the goods of others;



2598 (B) With respect to each delivery, the aggregate
2599 value of the goods is One Thousand Dollars (\$1,000.00) or more at
2600 the time of delivery;

2601 (C) The goods are not consumer goods immediately
2602 before delivery; and

2603 (D) The transaction does not create a security
2604 interest that secures an obligation.

2605 (21) "Consignor" means a person that delivers goods to
2606 a consignee in a consignment.

2607 (22) "Consumer debtor" means a debtor in a consumer
2608 transaction.

2609 (23) "Consumer goods" means goods that are used or
2610 bought for use primarily for personal, family, or household
2611 purposes.

2612 (24) "Consumer-goods transaction" means a consumer
2613 transaction in which:

2614 (A) An individual incurs an obligation primarily
2615 for personal, family, or household purposes; and

2616 (B) A security interest in consumer goods secures
2617 the obligation.

2618 (25) "Consumer obligor" means an obligor who is an
2619 individual and who incurred the obligation as part of a
2620 transaction entered into primarily for personal, family, or
2621 household purposes.

2622 (26) "Consumer transaction" means a transaction in
2623 which (i) an individual incurs an obligation primarily for
2624 personal, family, or household purposes, (ii) a security interest
2625 secures the obligation, and (iii) the collateral is held or
2626 acquired primarily for personal, family, or household purposes.
2627 The term includes consumer-goods transactions.

2628 (27) "Continuation statement" means an amendment of a
2629 financing statement which:



2630 (A) Identifies, by its file number, the initial
2631 financing statement to which it relates; and
2632 (B) Indicates that it is a continuation statement
2633 for, or that it is filed to continue the effectiveness of, the
2634 identified financing statement.

2635 (28) "Debtor" means:
2636 (A) A person having an interest, other than a
2637 security interest or other lien, in the collateral, whether or not
2638 the person is an obligor;
2639 (B) A seller of accounts, chattel paper, payment
2640 intangibles, or promissory notes; or
2641 (C) A consignee.

2642 (29) "Deposit account" means a demand, time, savings,
2643 passbook, or similar account maintained with a bank. The term
2644 does not include investment property or accounts evidenced by an
2645 instrument.

2646 (30) "Document" means a document of title or a receipt
2647 of the type described in Section 75-7-201(b).

2648 (31) "Electronic chattel paper" means chattel paper
2649 evidenced by a record or records consisting of information stored
2650 in an electronic medium.

2651 (32) "Encumbrance" means a right, other than an
2652 ownership interest, in real property. The term includes mortgages
2653 and other liens on real property.

2654 (33) "Equipment" means goods other than inventory, farm
2655 products, or consumer goods.

2656 (34) "Farm products" means goods, other than standing
2657 timber, with respect to which the debtor is engaged in a farming
2658 operation and which are:
2659 (A) Crops grown, growing, or to be grown,
2660 including:
2661 (i) Crops produced on trees, vines, and
2662 bushes; and



2663 (ii) Aquatic goods produced in aquacultural
2664 operations;

2665 (B) Livestock, born or unborn, including aquatic
2666 goods produced in aquacultural operations;

2667 (C) Supplies used or produced in a farming
2668 operation; or

2669 (D) Products of crops or livestock in their
2670 unmanufactured states.

2671 (35) "Farming operation" means raising, cultivating,
2672 propagating, fattening, grazing, or any other farming, livestock
2673 or aquacultural operation.

2674 (36) "File number" means the number assigned to an
2675 initial financing statement pursuant to Section 75-9-519(a).

2676 (37) "Filing office" means an office designated in
2677 Section 75-9-501 as the place to file a financing statement.

2678 (38) "Filing-office rule" means a rule adopted pursuant
2679 to Section 75-9-526.

2680 (39) "Financing statement" means a record or records
2681 composed of an initial financing statement and any filed record
2682 relating to the initial financing statement.

2683 (40) "Fixture filing" means the filing of a financing
2684 statement covering goods that are or are to become fixtures and
2685 satisfying Section 75-9-502(a) and (b). The term includes the
2686 filing of a financing statement covering goods of a transmitting
2687 utility which are or are to become fixtures.

2688 (41) "Fixtures" means goods that have become so related
2689 to particular real property that an interest in them arises under
2690 real property law.

2691 (42) "General intangible" means any personal property,
2692 including things in action, other than accounts, chattel paper,
2693 commercial tort claims, deposit accounts, documents, goods,
2694 instruments, investment property, letter-of-credit rights, letters



2695 of credit, money, and oil, gas, or other minerals before
2696 extraction. The term includes payment intangibles and software.

2697 (43) [Reserved]

2698 (44) "Goods" means all things that are movable when a
2699 security interest attaches. The term includes (i) fixtures, (ii)
2700 standing timber that is to be cut and removed under a conveyance
2701 or contract for sale, (iii) the unborn young of animals, (iv)
2702 crops grown, growing, or to be grown, even if the crops are
2703 produced on trees, vines, or bushes, (v) farm-raised fish produced
2704 in fresh water according to the usual and customary techniques of
2705 commercial agriculture, (vi) manufactured homes and (vii) marine
2706 vessels (herein defined as every type of watercraft used, or
2707 capable of being used, as a means of transportation on water)
2708 including both marine vessels under construction, including
2709 engines and all items of equipment installed or to be installed
2710 therein, whether such vessels are being constructed by the
2711 shipbuilder for his own use or for sale (said vessels under
2712 construction being classified as inventory within the meaning of
2713 Section 75-9-102(48)), and marine vessels after completion of
2714 construction so long as such vessels have not become "vessels of
2715 the United States" within the meaning of the Ship Mortgage Act of
2716 1920, 46 USCS, Section 911(4), as same is now written or may
2717 hereafter be amended (said completed vessels being classified as
2718 equipment within the meaning of Section 75-9-102(33)). The term
2719 also includes a computer program embedded in goods and any
2720 supporting information provided in connection with a transaction
2721 relating to the program if (i) the program is associated with the
2722 goods in such a manner that it customarily is considered part of
2723 the goods, or (ii) by becoming the owner of the goods, a person
2724 acquires a right to use the program in connection with the goods.
2725 The term does not include a computer program embedded in goods
2726 that consist solely of the medium in which the program is
2727 embedded. The term also does not include accounts, chattel paper,



2728 commercial tort claims, deposit accounts, documents, general
2729 intangibles, instruments, investment property, letter-of-credit
2730 rights, letters of credit, money, or oil, gas, or other minerals
2731 before extraction.

2732 (45) "Governmental unit" means a subdivision, agency,
2733 department, county, parish, municipality or other unit of the
2734 government of the United States, a state, or a foreign country.
2735 The term includes an organization having a separate corporate
2736 existence if the organization is eligible to issue debt on which
2737 interest is exempt from income taxation under the laws of the
2738 United States.

2739 (46) "Health-care-insurance receivable" means an
2740 interest in or claim under a policy of insurance which is a right
2741 to payment of a monetary obligation for health-care goods or
2742 services provided or to be provided.

2743 (47) "Instrument" means a negotiable instrument or any
2744 other writing that evidences a right to the payment of a monetary
2745 obligation, is not itself a security agreement or lease, and is of
2746 a type that in ordinary course of business is transferred by
2747 delivery with any necessary endorsement or assignment. The term
2748 does not include (i) investment property, (ii) letters of credit,
2749 or (iii) writings that evidence a right to payment arising out of
2750 the use of a credit or charge card or information contained on or
2751 for use with the card.

2752 (48) "Inventory" means goods, other than farm products,
2753 which:

2754 (A) Are leased by a person as lessor;

2755 (B) Are held by a person for sale or lease or to
2756 be furnished under a contract of service;

2757 (C) Are furnished by a person under a contract of
2758 service; or

2759 (D) Consist of raw materials, work in process or
2760 materials used or consumed in a business.



2761 (49) "Investment property" means a security, whether
2762 certificated or uncertificated, security entitlement, securities
2763 account, commodity contract, or commodity account.

2764 (50) "Jurisdiction of organization," with respect to a
2765 registered organization, means the jurisdiction under whose law
2766 the organization is organized.

2767 (51) "Letter-of-credit right" means a right to payment
2768 or performance under a letter of credit, whether or not the
2769 beneficiary has demanded or is at the time entitled to demand
2770 payment or performance. The term does not include the right of a
2771 beneficiary to demand payment or performance under a letter of
2772 credit.

2773 (52) "Lien creditor" means:

2774 (A) A creditor that has acquired a lien on the
2775 property involved by attachment, levy, or the like;

2776 (B) An assignee for benefit of creditors from the
2777 time of assignment;

2778 (C) A trustee in bankruptcy from the date of the
2779 filing of the petition; or

2780 (D) A receiver in equity from the time of
2781 appointment.

2782 (53) "Manufactured home" means a structure,
2783 transportable in one or more sections, which, in the traveling
2784 mode, is eight (8) body feet or more in width or forty (40) body
2785 feet or more in length, or, when erected on site, is three hundred
2786 twenty (320) or more square feet, and which is built on a
2787 permanent chassis and designed to be used as a dwelling with or
2788 without a permanent foundation when connected to the required
2789 utilities, and includes the plumbing, heating, air-conditioning,
2790 and electrical systems contained therein. The term includes any
2791 structure that meets all of the requirements of this paragraph
2792 except the size requirements and with respect to which the
2793 manufacturer voluntarily files a certification required by the



2794 United States Secretary of Housing and Urban Development and
2795 complies with the standards established under Title 42 of the
2796 United States Code.

2797 (54) "Manufactured-home transaction" means a secured
2798 transaction:

2799 (A) That creates a purchase-money security
2800 interest in a manufactured home, other than a manufactured home
2801 held as inventory; or

2802 (B) In which a manufactured home, other than a
2803 manufactured home held as inventory, is the primary collateral.

2804 (55) "Mortgage" means a consensual interest in real
2805 property, including fixtures, which secures payment or performance
2806 of an obligation. "Mortgage" shall mean and include a deed of
2807 trust.

2808 (56) "New debtor" means a person that becomes bound as
2809 debtor under Section 75-9-203(d) by a security agreement
2810 previously entered into by another person.

2811 (57) "New value" means (i) money, (ii) money's worth in
2812 property, services, or new credit, or (iii) release by a
2813 transferee of an interest in property previously transferred to
2814 the transferee. The term does not include an obligation
2815 substituted for another obligation.

2816 (58) "Noncash proceeds" means proceeds other than cash
2817 proceeds.

2818 (59) "Obligor" means a person that, with respect to an
2819 obligation secured by a security interest in or an agricultural
2820 lien on the collateral, (i) owes payment or other performance of
2821 the obligation, (ii) has provided property other than the
2822 collateral to secure payment or other performance of the
2823 obligation, or (iii) is otherwise accountable in whole or in part
2824 for payment or other performance of the obligation. The term does
2825 not include issuers or nominated persons under a letter of credit.



2826 (60) "Original debtor," except as used in Section
2827 75-9-310(c), means a person that, as debtor, entered into a
2828 security agreement to which a new debtor has become bound under
2829 Section 75-9-203(d).

2830 (61) "Payment intangible" means a general intangible
2831 under which the account debtor's principal obligation is a
2832 monetary obligation.

2833 (62) "Person related to," with respect to an
2834 individual, means:

2835 (A) The spouse of the individual;

2836 (B) A brother, brother-in-law, sister, or
2837 sister-in-law of the individual;

2838 (C) An ancestor or lineal descendant of the
2839 individual or the individual's spouse; or

2840 (D) Any other relative, by blood or marriage, of
2841 the individual or the individual's spouse who shares the same home
2842 with the individual.

2843 (63) "Person related to," with respect to an
2844 organization, means:

2845 (A) A person directly or indirectly controlling,
2846 controlled by, or under common control with the organization;

2847 (B) An officer or director of, or a person
2848 performing similar functions with respect to, the organization;

2849 (C) An officer or director of, or a person
2850 performing similar functions with respect to, a person described
2851 in subparagraph (A);

2852 (D) The spouse of an individual described in
2853 subparagraph (A), (B), or (C); or

2854 (E) An individual who is related by blood or
2855 marriage to an individual described in subparagraph (A), (B), (C),
2856 or (D) and shares the same home with the individual.

2857 (64) "Proceeds," except as used in Section 75-9-609(b),
2858 means the following property:



2859 (A) Whatever is acquired upon the sale, lease,
2860 license, exchange or other disposition of collateral;

2861 (B) Whatever is collected on, or distributed on
2862 account of, collateral;

2863 (C) Rights arising out of collateral;

2864 (D) To the extent of the value of collateral,
2865 claims arising out of the loss, nonconformity, or interference
2866 with the use of, defects or infringement of rights in, or damage
2867 to, the collateral; or

2868 (E) To the extent of the value of collateral and
2869 to the extent payable to the debtor or the secured party,
2870 insurance payable by reason of the loss or nonconformity of,
2871 defects or infringement of rights in, or damage to, the
2872 collateral.

2873 (64A) "Production-money crops" means crops that secure
2874 a production-money obligation incurred with respect to the
2875 production of those crops.

2876 (64B) "Production-money obligation" means an obligation
2877 of an obligor incurred for new value given to enable the debtor to
2878 produce crops if the value is in fact used for the production of
2879 the crops.

2880 (64C) "Production of crops" includes tilling and
2881 otherwise preparing land for growing, planting, cultivating,
2882 fertilizing, irrigating, harvesting and gathering crops, and
2883 protecting them from damage or disease.

2884 (65) "Promissory note" means an instrument that
2885 evidences a promise to pay a monetary obligation, does not
2886 evidence an order to pay, and does not contain an acknowledgment
2887 by a bank that the bank has received for deposit a sum of money or
2888 funds.

2889 (66) "Proposal" means a record authenticated by a
2890 secured party which includes the terms on which the secured party
2891 is willing to accept collateral in full or partial satisfaction of



2892 the obligation it secures pursuant to Sections 75-9-620, 75-9-621,
2893 and 75-9-622.

2894 (67) "Public-finance transaction" means a secured
2895 transaction in connection with which:

2896 (A) Debt securities are issued;

2897 (B) All or a portion of the securities issued have
2898 an initial stated maturity of at least twenty (20) years; and

2899 (C) The debtor, obligor, secured party, account
2900 debtor or other person obligated on collateral, assignor or
2901 assignee of a secured obligation, or assignor or assignee of a
2902 security interest is a state or a governmental unit of a state.

2903 (68) "Pursuant to commitment," with respect to an
2904 advance made or other value given by a secured party, means
2905 pursuant to the secured party's obligation, whether or not a
2906 subsequent event of default or other event not within the secured
2907 party's control has relieved or may relieve the secured party from
2908 its obligation.

2909 (69) "Record," except as used in "for record," "of
2910 record," "record or legal title," and "record owner," means
2911 information that is inscribed on a tangible medium or which is
2912 stored in an electronic or other medium and is retrievable in
2913 perceivable form.

2914 (70) "Registered organization" means an organization
2915 organized solely under the law of a single state or the United
2916 States and as to which the state or the United States must
2917 maintain a public record showing the organization to have been
2918 organized.

2919 (71) "Secondary obligor" means an obligor to the extent
2920 that:

2921 (A) The obligor's obligation is secondary; or

2922 (B) The obligor has a right of recourse with
2923 respect to an obligation secured by collateral against the debtor,
2924 another obligor, or property of either.



2925 (72) "Secured party" means:

2926 (A) A person in whose favor a security interest is

2927 created or provided for under a security agreement, whether or not

2928 any obligation to be secured is outstanding;

2929 (B) A person that holds an agricultural lien;

2930 (C) A consignor;

2931 (D) A person to which accounts, chattel paper,

2932 payment intangibles, or promissory notes have been sold;

2933 (E) A trustee, indenture trustee, agent,

2934 collateral agent, or other representative in whose favor a

2935 security interest or agricultural lien is created or provided for;

2936 or

2937 (F) A person that holds a security interest

2938 arising under Section 75-2-401, 75-2-505, 75-2-711(3),

2939 75-2A-508(5), 75-4-210, or 75-5-118.

2940 (73) "Security agreement" means an agreement that

2941 creates or provides for a security interest.

2942 (74) "Send," in connection with a record or

2943 notification, means:

2944 (A) To deposit in the mail, deliver for

2945 transmission, or transmit by any other usual means of

2946 communication, with postage or cost of transmission provided for,

2947 addressed to any address reasonable under the circumstances; or

2948 (B) To cause the record or notification to be

2949 received within the time that it would have been received if

2950 properly sent under subparagraph (A).

2951 (75) "Software" means a computer program and any

2952 supporting information provided in connection with a transaction

2953 relating to the program. The term does not include a computer

2954 program that is included in the definition of goods.

2955 (76) "State" means a state of the United States, the

2956 District of Columbia, Puerto Rico, the United States Virgin



2957 Islands, or any territory or insular possession subject to the
2958 jurisdiction of the United States.

2959 (77) "Supporting obligation" means a letter-of-credit
2960 right or secondary obligation that supports the payment or
2961 performance of an account, chattel paper, a document, a general
2962 intangible, an instrument, or investment property.

2963 (78) "Tangible chattel paper" means chattel paper
2964 evidenced by a record or records consisting of information that is
2965 inscribed on a tangible medium.

2966 (79) "Termination statement" means an amendment of a
2967 financing statement which:

2968 (A) Identifies, by its file number, the initial
2969 financing statement to which it relates; and

2970 (B) Indicates either that it is a termination
2971 statement or that the identified financing statement is no longer
2972 effective.

2973 (80) "Transmitting utility" means a person primarily
2974 engaged in the business of:

2975 (A) Operating a railroad, subway, street railway,
2976 or trolley bus;

2977 (B) Transmitting communications electrically,
2978 electromagnetically, or by light;

2979 (C) Transmitting goods by pipeline or sewer; or

2980 (D) Transmitting or producing and transmitting
2981 electricity, steam, gas, or water.

2982 (b) The following definitions in other articles apply to
2983 this article:

2984 "Applicant" Section 75-5-102

2985 "Beneficiary" Section 75-5-102

2986 "Broker" Section 75-8-102

2987 "Certificated security" Section 75-8-102

2988 "Check" Section 75-3-104

2989 "Clearing corporation" Section 75-8-102



2990	"Contract for sale"	Section 75-2-106
2991	"Control"	Section 75-7-106
2992	"Customer"	Section 75-4-104
2993	"Entitlement holder"	Section 75-8-102
2994	"Financial asset"	Section 75-8-102
2995	"Holder in due course"	Section 75-3-302
2996	"Issuer" (with respect to	
2997	a letter of credit or	
2998	letter-of-credit right)	Section 75-5-102
2999	"Issuer" (with respect to a	
3000	security)	Section 75-8-201
3001	"Issuer" (with respect to	
3002	documents of title)	Section 75-7-102
3003	"Lease"	Section 75-2A-103
3004	"Lease agreement"	Section 75-2A-103
3005	"Lease contract"	Section 75-2A-103
3006	"Leasehold interest"	Section 75-2A-103
3007	"Lessee"	Section 75-2A-103
3008	"Lessee in ordinary course	
3009	of business"	Section 75-2A-103
3010	"Lessor"	Section 75-2A-103
3011	"Lessor's residual interest"	Section 75-2A-103
3012	"Letter of credit"	Section 75-5-102
3013	"Merchant"	Section 75-2-104
3014	"Negotiable instrument"	Section 75-3-104
3015	"Nominated person"	Section 75-5-102
3016	"Note"	Section 75-3-104
3017	"Proceeds of a letter of	
3018	credit"	Section 75-5-114
3019	"Prove"	Section 75-3-103
3020	"Sale"	Section 75-2-106
3021	"Securities account"	Section 75-8-501
3022	"Securities intermediary"	Section 75-8-102



3023 "Security" Section 75-8-102
3024 "Security certificate" Section 75-8-102
3025 "Security entitlement" Section 75-8-102
3026 "Uncertificated security" Section 75-8-102
3027 (c) Article 1 contains general definitions and principles of
3028 construction and interpretation applicable throughout this
3029 article.

3030 **SECTION 42.** The following shall be codified as Section
3031 79-13-505, Mississippi Code of 1972:

3032 79-13-505. **Enforceability of limitations on assignments of**
3033 **partnership interests.** Sections 75-9-406 and 75-9-408 do not
3034 apply to a partnership interest in a partnership formed under the
3035 laws of Mississippi, including the rights, powers and interests
3036 arising under a certificate of partnership or partnership
3037 agreement or under this chapter. To the extent of any conflict or
3038 inconsistency between this section and Sections 75-9-406 and
3039 75-9-408, this section prevails. It is the express intent of this
3040 section to permit the enforcement, as a contract among the
3041 partners of a partnership, of any provision of a partnership
3042 agreement that would otherwise be ineffective under Sections
3043 75-9-406 and 75-9-408.

3044 **SECTION 43.** The following shall be codified as Section
3045 79-14-706, Mississippi Code of 1972:

3046 79-14-706. **Enforceability of limitations on assignments of**
3047 **limited partnership interests.** Sections 75-9-406 and 75-9-408 do
3048 not apply to a limited partnership interest in a limited
3049 partnership formed under the laws of Mississippi, including the
3050 rights, powers and interests arising under the certificate of
3051 limited partnership or limited partnership agreement or under this
3052 chapter. To the extent of any conflict or inconsistency between
3053 this section and Sections 75-9-406 and 75-9-408, this section
3054 prevails. It is the express intent of this section to permit the
3055 enforcement, as a contract among the partners of a limited



3056 partnership, of any provision of a limited partnership agreement
3057 that would otherwise be ineffective under Sections 75-9-406 and
3058 75-9-408.

3059 **SECTION 44.** Sections 75-1-101, 75-1-102, 75-1-103, 75-1-104,
3060 75-1-105, 75-1-106, 75-1-107, 75-1-108, 75-1-109, 75-1-110,
3061 75-1-201, 75-1-202, 75-1-203, 75-1-204, 75-1-205, 75-1-206,
3062 75-1-207 and 75-1-208, Mississippi Code of 1972, which comprise
3063 the Uniform Commercial Code Article 1 - General Provisions, are
3064 repealed.

3065 **SECTION 45.** Section 75-2-208, Mississippi Code of 1972,
3066 which provides for the practical construction of "course of
3067 performance" for purposes of the Uniform Commercial Code Article 2
3068 - Sales, is repealed, the substance thereof being reenacted in
3069 Article 1 - General Provisions.

3070 **SECTION 46.** Section 75-2A-207, Mississippi Code of 1972,
3071 which provides for the practical construction of "course of
3072 performance" for purposes of the Uniform Commercial Code Article
3073 2A - Leases, is repealed, the substance thereof being reenacted in
3074 Article 1 - General Provisions.

3075 **SECTION 47.** This act shall take effect and be in force from
3076 and after July 1, 2010.

