

By: Senator(s) Fillingane

To: Judiciary, Division A;
Business and Financial
Institutions

SENATE BILL NO. 2419

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 USC 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



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

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

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

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

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

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

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

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

(2) As security for, or in total or partial 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 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



(2) If the transaction bears 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 or nation is effective, whether or not the transaction bears a reasonable relation to the designated state or nation.

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

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

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

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

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

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

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

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

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

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

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

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

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

75-2A-518. (1) After a default by a lessor under the lease contract of the type described in Section 75-2A-508(1), or, if 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 instrument,
1217 means (i) an indorser or an accommodation party, (ii) a drawer
1218 having the obligation described in Section 75-3-414(d), or (iii)
1219 any other party to the instrument that has recourse against
1220 another party to the instrument pursuant to Section 75-3-116(b).

1221 (b) Other definitions applying to this chapter and the
1222 sections in which they appear are:

1223	"Acceptance"	Section 75-3-409
1224	"Accommodated party"	Section 75-3-419
1225	"Accommodation party"	Section 75-3-419
1226	<u>"Account"</u>	<u>Section 75-4-104</u>



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



1259 (c) The following definitions in other chapters apply to
1260 this chapter:

1261 * * *

1262	"Banking day"	Section 75-4-104
1263	"Clearinghouse"	Section 75-4-104
1264	"Collecting bank"	Section 75-4-105
1265	"Depository bank"	Section 75-4-105
1266	"Documentary draft"	Section 75-4-104
1267	"Intermediary bank"	Section 75-4-105
1268	"Item"	Section 75-4-104
1269	"Payor bank"	Section 75-4-105
1270	"Suspends payments"	Section 75-4-104

1271 (d) In addition, Chapter 1 contains general definitions and
1272 principles of construction and interpretation applicable
1273 throughout this chapter.

1274 **SECTION 15.** Section 75-3-106, Mississippi Code of 1972, is
1275 amended as follows:

1276 75-3-106. (a) Except as provided in this section, for the
1277 purposes of Section 75-3-104(a), a promise or order is
1278 unconditional unless it states (i) an express condition to
1279 payment, (ii) that the promise or order is subject to or governed
1280 by another record, or (iii) that rights or obligations with
1281 respect to the promise or order are stated in another record. A
1282 reference to another record does not of itself make the promise or
1283 order conditional.

1284 (b) A promise or order is not made conditional (i) by a
1285 reference to another record for a statement of rights with respect
1286 to collateral, prepayment, or acceleration, or (ii) because
1287 payment is limited to resort to a particular fund or source.

1288 (c) If a promise or order requires, as a condition to
1289 payment, a countersignature by a person whose specimen signature
1290 appears on the promise or order, the condition does not make the
1291 promise or order conditional for the purposes of Section



1292 75-3-104(a). If the person whose specimen signature appears on an
1293 instrument fails to countersign the instrument, the failure to
1294 countersign is a defense to the obligation of the issuer, but the
1295 failure does not prevent a transferee of the instrument from
1296 becoming a holder of the instrument.

1297 (d) If a promise or order at the time it is issued or first
1298 comes into possession of a holder contains a statement, required
1299 by applicable statutory or administrative law, to the effect that
1300 the rights of a holder or transferee are subject to claims or
1301 defenses that the issuer could assert against the original payee,
1302 the promise or order is not thereby made conditional for the
1303 purposes of Section 75-3-104(a); but if the promise or order is an
1304 instrument, there cannot be a holder in due course of the
1305 instrument.

1306 **SECTION 16.** Section 75-3-116, Mississippi Code of 1972, is
1307 amended as follows:

1308 75-3-116. (a) Except as otherwise provided in the
1309 instrument, two (2) or more persons who have the same liability on
1310 an instrument as makers, drawers, acceptors, indorsers who indorse
1311 as joint payees, or anomalous indorsers are jointly and severally
1312 liable in the capacity in which they sign.

1313 (b) Except as provided in Section 75-3-419(f) or by
1314 agreement of the affected parties, a party having joint and
1315 several liability who pays the instrument is entitled to receive
1316 from any party having the same joint and several liability
1317 contribution in accordance with applicable law.

1318 * * *

1319 **SECTION 17.** Section 75-3-119, Mississippi Code of 1972, is
1320 amended as follows:

1321 75-3-119. In an action for breach of an obligation for which
1322 a third person is answerable over pursuant to this chapter or
1323 Chapter 4, the defendant may give the third person * * * notice of
1324 the litigation in a record, and the person notified may then give



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

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

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

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

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

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

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



1358 defenses of the obligor stated in subsection (a)(2) or claims in
1359 recoupment stated in subsection (a)(3) against a person other than
1360 the holder.

1361 (c) Except as stated in subsection (d), in an action to
1362 enforce the obligation of a party to pay the instrument, the
1363 obligor may not assert against the person entitled to enforce the
1364 instrument a defense, claim in recoupment, or claim to the
1365 instrument (Section 75-3-306) of another person, but the other
1366 person's claim to the instrument may be asserted by the obligor if
1367 the other person is joined in the action and personally asserts
1368 the claim against the person entitled to enforce the instrument.
1369 An obligor is not obliged to pay the instrument if the person
1370 seeking enforcement of the instrument does not have rights of a
1371 holder in due course and the obligor proves that the instrument is
1372 a lost or stolen instrument.

1373 (d) In an action to enforce the obligation of an
1374 accommodation party to pay an instrument, the accommodation party
1375 may assert against the person entitled to enforce the instrument
1376 any defense or claim in recoupment under subsection (a) that the
1377 accommodated party could assert against the person entitled to
1378 enforce the instrument, except the defenses of discharge in
1379 insolvency proceedings, infancy, and lack of legal capacity.

1380 (e) In a consumer transaction, if law other than this
1381 chapter requires that an instrument include a statement to the
1382 effect that the rights of a holder or transferee are subject to a
1383 claim or defense that the issuer could assert against the original
1384 payee, and the instrument does not include such a statement:

1385 (1) The instrument has the same effect as if the
1386 instrument included such a statement;

1387 (2) The issuer may assert against the holder or
1388 transferee all claims and defenses that would have been available
1389 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.



1422 **SECTION 20.** Section 75-3-312, Mississippi Code of 1972, is
1423 amended as follows:

1424 75-3-312. (a) In this section:

1425 (1) "Check" means a cashier's check, teller's check, or
1426 certified check.

1427 (2) "Claimant" means a person who claims the right to
1428 receive the amount of a cashier's check, teller's check, or
1429 certified check that was lost, destroyed, or stolen.

1430 (3) "Declaration of loss" means a * * * statement, made
1431 in a record under penalty of perjury, to the effect that (i) the
1432 declarer lost possession of a check, (ii) the declarer is the
1433 drawer or payee of the check, in the case of a certified check, or
1434 the remitter or payee of the check, in the case of a cashier's
1435 check or teller's check, (iii) the loss of possession was not the
1436 result of a transfer by the declarer or a lawful seizure, and (iv)
1437 the declarer cannot reasonably obtain possession of the check
1438 because the check was destroyed, its whereabouts cannot be
1439 determined, or it is in the wrongful possession of an unknown
1440 person or a person that cannot be found or is not amenable to
1441 service of process.

1442 (4) "Obligated bank" means the issuer of a cashier's
1443 check or teller's check or the acceptor of a certified check.

1444 (b) A claimant may assert a claim to the amount of a check
1445 by a communication to the obligated bank describing the check with
1446 reasonable certainty and requesting payment of the amount of the
1447 check, if (i) the claimant is the drawer or payee of a certified
1448 check or the remitter or payee of a cashier's check or teller's
1449 check, (ii) the communication contains or is accompanied by a
1450 declaration of loss of the claimant with respect to the check,
1451 (iii) the communication is received at a time and in a manner
1452 affording the bank a reasonable time to act on it before the check
1453 is paid, and (iv) the claimant provides reasonable identification
1454 if requested by the obligated bank. Delivery of a declaration of



1455 loss is a warranty of the truth of the statements made in the
1456 declaration. If a claim is asserted in compliance with this
1457 subsection, the following rules apply:

1458 (1) The claim becomes enforceable at the later of (i)
1459 the time the claim is asserted, or (ii) the ninetieth day
1460 following the date of the check, in the case of a cashier's check
1461 or teller's check, or the ninetieth day following the date of
1462 acceptance, in the case of a certified check.

1463 (2) Until the claim becomes enforceable, it has no
1464 legal effect and the obligated bank may pay the check or, in the
1465 case of a teller's check, may permit the drawee to pay the check.
1466 Payment to a person entitled to enforce the check discharges all
1467 liability of the obligated bank with respect to the check.

1468 (3) If the claim becomes enforceable before the check
1469 is presented for payment, the obligated bank is not obliged to pay
1470 the check.

1471 (4) When the claim becomes enforceable, the obligated
1472 bank becomes obliged to pay the amount of the check to the
1473 claimant if payment of the check has not been made to a person
1474 entitled to enforce the check. Subject to Section 75-4-302(a)(1),
1475 payment to the claimant discharges all liability of the obligated
1476 bank with respect to the check.

1477 (c) If the obligated bank pays the amount of a check to a
1478 claimant under subsection (b)(4) and the check is presented for
1479 payment by a person having rights of a holder in due course, the
1480 claimant is obliged to (i) refund the payment to the obligated
1481 bank if the check is paid, or (ii) pay the amount of the check to
1482 the person having rights of a holder in due course if the check is
1483 dishonored.

1484 (d) If a claimant has the right to assert a claim under
1485 subsection (b) and is also a person entitled to enforce a
1486 cashier's check, teller's check, or certified check which is lost,



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

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

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

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

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

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

* * *

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

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

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



1519 (2) All signatures on the instrument are authentic and
1520 authorized;

1521 (3) The instrument has not been altered;

1522 (4) The instrument is not subject to a defense or claim
1523 in recoupment of any party which can be asserted against the
1524 warrantor; * * *

1525 (5) The warrantor has no knowledge of any insolvency
1526 proceeding commenced with respect to the maker or acceptor or, in
1527 the case of an unaccepted draft, the drawer; and

1528 (6) With respect to a remotely created check, that the
1529 person on whose account the remotely created check is drawn
1530 authorized the issuance of the check in the amount stated on the
1531 check and to the payee stated on the check.

1532 (b) A person to whom the warranties under subsection (a) are
1533 made and who took the instrument in good faith may recover from
1534 the warrantor as damages for breach of warranty an amount equal to
1535 the loss suffered as a result of the breach, but not more than the
1536 amount of the instrument plus expenses and loss of interest
1537 incurred as a result of the breach.

1538 (c) The warranties stated in subsection (a) cannot be
1539 disclaimed with respect to checks. Unless notice of a claim for
1540 breach of warranty is given to the warrantor within thirty (30)
1541 days after the claimant has reason to know of the breach and the
1542 identity of the warrantor, the liability of the warrantor under
1543 subsection (b) is discharged to the extent of any loss caused by
1544 the delay in giving notice of the claim.

1545 (d) A cause of action for breach of warranty under this
1546 section accrues when the claimant has reason to know of the
1547 breach.

1548 **SECTION 23.** Section 75-3-417, Mississippi Code of 1972, is
1549 amended as follows:

1550 75-3-417. (a) If an unaccepted draft is presented to the
1551 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 making payment or accepting 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 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 any 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, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any 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 that the indorsement is effective under Section 75-3-404 or 75-3-405 or the drawer is precluded under Section 75-3-406 or



1585 75-4-406 from asserting against the drawee the unauthorized
1586 indorsement or alteration.

1587 (d) If (i) a dishonored draft is presented for payment to
1588 the drawer or an indorser or (ii) any other instrument is
1589 presented for payment to a party obliged to pay the instrument,
1590 and (iii) payment is received, the following rules apply:

1591 (1) The person obtaining payment and a prior transferor
1592 of the instrument warrant to the person making payment in good
1593 faith that the warrantor is, or was, at the time the warrantor
1594 transferred the instrument, a person entitled to enforce the
1595 instrument or authorized to obtain payment on behalf of a person
1596 entitled to enforce the instrument.

1597 (2) The person making payment may recover from any
1598 warrantor for breach of warranty an amount equal to the amount
1599 paid plus expenses and loss of interest resulting from the breach.

1600 (e) The warranties stated in subsections (a) and (d) cannot
1601 be disclaimed with respect to checks. Unless notice of a claim
1602 for breach of warranty is given to the warrantor within thirty
1603 (30) days after the claimant has reason to know of the breach and
1604 the identity of the warrantor, the liability of the warrantor
1605 under subsection (b) or (d) is discharged to the extent of any
1606 loss caused by the delay in giving notice of the claim.

1607 (f) A cause of action for breach of warranty under this
1608 section accrues when the claimant has reason to know of the
1609 breach.

1610 **SECTION 24.** Section 75-3-419, Mississippi Code of 1972, is
1611 amended as follows:

1612 75-3-419. (a) If an instrument is issued for value given
1613 for the benefit of a party to the instrument ("accommodated
1614 party") and another party to the instrument ("accommodation
1615 party") signs the instrument for the purpose of incurring
1616 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



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

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

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

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

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



1715 sound, or process with the present intent to adopt or accept the
1716 record.

1717 **SECTION 26.** Section 75-3-604, Mississippi Code of 1972, is
1718 amended as follows:

1719 75-3-604. (a) A person entitled to enforce an instrument,
1720 with or without consideration, may discharge the obligation of a
1721 party to pay the instrument (i) by an intentional voluntary act,
1722 such as surrender of the instrument to the party, destruction,
1723 mutilation, or cancellation of the instrument, cancellation or
1724 striking out of the party's signature, or the addition of words to
1725 the instrument indicating discharge, or (ii) by agreeing not to
1726 sue or otherwise renouncing rights against the party by a signed
1727 record.

1728 (b) Cancellation or striking out of an indorsement pursuant
1729 to subsection (a) does not affect the status and rights of a party
1730 derived from the indorsement.

1731 (c) In this section, "signed," with respect to a record that
1732 is not a writing, includes the attachment to or logical
1733 association with the record of an electronic symbol, sound, or
1734 process with the present intent to adopt or accept the record.

1735 **SECTION 27.** Section 75-3-605, Mississippi Code of 1972, is
1736 amended as follows:

1737 75-3-605. **Discharge of secondary obligors.** (a) If a person
1738 entitled to enforce an instrument releases the obligation of a
1739 principal obligor in whole or in part, and another party to the
1740 instrument is a secondary obligor with respect to the obligation
1741 of that principal obligor, the following rules apply:

1742 (1) Any obligations of the principal obligor to the
1743 secondary obligor with respect to any previous payment by the
1744 secondary obligor are not affected. Unless the terms of the
1745 release preserve the secondary obligor's recourse, the principal
1746 obligor is discharged, to the extent of the release, from any
1747 other duties to the secondary obligor under this article.



1748 (2) Unless the terms of the release provide that the
1749 person entitled to enforce the instrument retains the right to
1750 enforce the instrument against the secondary obligor, the
1751 secondary obligor is discharged to the same extent as the
1752 principal obligor from any unperformed portion of its obligation
1753 on the instrument. If the instrument is a check and the
1754 obligation of the secondary obligor is based on an indorsement of
1755 the check, the secondary obligor is discharged without regard to
1756 the language or circumstances of the discharge or other release.

1757 (3) If the secondary obligor is not discharged under
1758 paragraph (2), the secondary obligor is discharged to the extent
1759 of the value of the consideration for the release, and to the
1760 extent that the release would otherwise cause the secondary
1761 obligor a loss.

1762 (b) If a person entitled to enforce an instrument grants a
1763 principal obligor an extension of the time at which one or more
1764 payments are due on the instrument and another party to the
1765 instrument is a secondary obligor with respect to the obligation
1766 of that principal obligor, the following rules apply:

1767 (1) Any obligations of the principal obligor to the
1768 secondary obligor with respect to any previous payment by the
1769 secondary obligor are not affected. Unless the terms of the
1770 extension preserve the secondary obligor's recourse, the extension
1771 correspondingly extends the time for performance of any other
1772 duties owed to the secondary obligor by the principal obligor
1773 under this article.

1774 (2) The secondary obligor is discharged to the extent
1775 that the extension would otherwise cause the secondary obligor a
1776 loss.

1777 (3) To the extent that the secondary obligor is not
1778 discharged under paragraph (2), the secondary obligor may perform
1779 its obligations to a person entitled to enforce the instrument as
1780 if the time for payment had not been extended or, unless the terms



1781 of the extension provide that the person entitled to enforce the
1782 instrument retains the right to enforce the instrument against the
1783 secondary obligor as if the time for payment had not been
1784 extended, treat the time for performance of its obligations as
1785 having been extended correspondingly.

1786 (c) If a person entitled to enforce an instrument agrees,
1787 with or without consideration, to a modification of the obligation
1788 of a principal obligor other than a complete or partial release or
1789 an extension of the due date and another party to the instrument
1790 is a secondary obligor with respect to the obligation of that
1791 principal obligor, the following rules apply:

1792 (1) Any obligations of the principal obligor to the
1793 secondary obligor with respect to any previous payment by the
1794 secondary obligor are not affected. The modification
1795 correspondingly modifies any other duties owed to the secondary
1796 obligor by the principal obligor under this article.

1797 (2) The secondary obligor is discharged from any
1798 unperformed portion of its obligation to the extent that the
1799 modification would otherwise cause the secondary obligor a loss.

1800 (3) To the extent that the secondary obligor is not
1801 discharged under paragraph (2), the secondary obligor may satisfy
1802 its obligation on the instrument as if the modification had not
1803 occurred, or treat its obligation on the instrument as having been
1804 modified correspondingly.

1805 (d) If the obligation of a principal obligor is secured by
1806 an interest in collateral, another party to the instrument is a
1807 secondary obligor with respect to that obligation, and a person
1808 entitled to enforce the instrument impairs the value of the
1809 interest in collateral, the obligation of the secondary obligor is
1810 discharged to the extent of the impairment. The value of an
1811 interest in collateral is impaired to the extent the value of the
1812 interest is reduced to an amount less than the amount of the
1813 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



1847 (2) The recourse of the secondary obligor continues as
1848 if the release or extension had not been granted.

1849 (h) Except as otherwise provided in subsection (i), a
1850 secondary obligor asserting discharge under this section has the
1851 burden of persuasion both with respect to the occurrence of the
1852 acts alleged to harm the secondary obligor and loss or prejudice
1853 caused by those acts.

1854 (i) If the secondary obligor demonstrates prejudice caused
1855 by an impairment of its recourse, and the circumstances of the
1856 case indicate that the amount of loss is not reasonably
1857 susceptible of calculation or requires proof of facts that are not
1858 ascertainable, it is presumed that the act impairing recourse
1859 caused a loss or impairment equal to the liability of the
1860 secondary obligor on the instrument. In that event, the burden of
1861 persuasion as to any lesser amount of the loss is on the person
1862 entitled to enforce the instrument.

1863 **SECTION 28.** Section 75-4-104, Mississippi Code of 1972, is
1864 amended as follows:

1865 75-4-104. (a) In this chapter, unless the context otherwise
1866 requires:

1867 (1) "Account" means any deposit or credit account with
1868 a bank, including a demand, time, savings, passbook, share draft,
1869 or like account, other than an account evidenced by a certificate
1870 of deposit.

1871 (2) "Afternoon" means the period of a day between noon
1872 and midnight.

1873 (3) "Banking day" means the part of a day on which a
1874 bank is open to the public for carrying on substantially all of
1875 its banking functions.

1876 (4) "Clearinghouse" means an association of banks or
1877 other payors regularly clearing items.



1878 (5) "Customer" means a person having an account with a
1879 bank or for whom a bank has agreed to collect items, including a
1880 bank that maintains an account at another bank.

1881 (6) "Documentary draft" means a draft to be presented
1882 for acceptance or payment if specified documents, certificated
1883 securities (Section 75-8-102) or instructions for uncertificated
1884 securities (Section 75-8-102), or other certificates, statements,
1885 or the like are to be received by the drawee or other payor before
1886 acceptance or payment of the draft.

1887 (7) "Draft" means a draft as defined in Section
1888 75-3-104 or an item, other than an instrument, that is an order.

1889 (8) "Drawee" means a person ordered in a draft to make
1890 payment.

1891 (9) "Item" means an instrument or a promise or order to
1892 pay money handled by a bank for collection or payment. The term
1893 does not include a payment order governed by Chapter 4A or a
1894 credit or debit card slip.

1895 (10) "Midnight deadline" with respect to a bank is
1896 midnight on its next banking day following the banking day on
1897 which it receives the relevant item or notice or from which the
1898 time for taking action commences to run, whichever is later.

1899 (11) "Settle" means to pay in cash, by clearinghouse
1900 settlement, in a charge or credit or by remittance, or otherwise
1901 as agreed. A settlement may be either provisional or final.

1902 (12) "Suspends payments" with respect to a bank means
1903 that it has been closed by order of the supervisory authorities,
1904 that a public officer has been appointed to take it over, or that
1905 it ceases or refuses to make payments in the ordinary course of
1906 business.

1907 (b) Other definitions applying to this chapter and the
1908 sections in which they appear are:

1909 "Agreement for electronic

1910 presentment"

Section 75-4-110



1911	* * *	
1912	"Collecting bank"	Section 75-4-105
1913	"Depository bank"	Section 75-4-105
1914	"Intermediary bank"	Section 75-4-105
1915	"Payor bank"	Section 75-4-105
1916	"Presenting bank"	Section 75-4-105
1917	"Presentment notice"	Section 75-4-110
1918	(c) The following definitions in other chapters apply to	
1919	this chapter:	
1920	"Acceptance"	Section 75-3-409
1921	"Alteration"	Section 75-3-407
1922	"Cashier's check"	Section 75-3-104
1923	"Certificate of deposit"	Section 75-3-104
1924	"Certified check"	Section 75-3-409
1925	"Check"	Section 75-3-104
1926	"Control"	Section 75-7-106
1927	* * *	
1928	"Holder in due course"	Section 75-3-302
1929	"Instrument"	Section 75-3-104
1930	"Notice of dishonor"	Section 75-3-503
1931	"Order"	Section 75-3-103
1932	"Ordinary care"	Section 75-3-103
1933	"Person entitled to enforce"	Section 75-3-301
1934	"Presentment"	Section 75-3-501
1935	"Promise"	Section 75-3-103
1936	"Prove"	Section 75-3-103
1937	<u>"Remotely created check"</u>	<u>Section 75-3-103</u>
1938	"Teller's check"	Section 75-3-104
1939	"Unauthorized signature"	Section 75-3-403
1940	(d) In addition, Chapter 1 contains general definitions and	
1941	principles of construction and interpretation applicable	
1942	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



2041 that the indorsement is effective under Section 75-3-404 or
2042 75-3-405 or the drawer is precluded under Section 75-3-406 or
2043 75-4-406 from asserting against the drawee the unauthorized
2044 indorsement or alteration.

2045 (d) If (i) a dishonored draft is presented for payment to
2046 the drawer or an indorser or (ii) any other item is presented for
2047 payment to a party obliged to pay the item, and the item is paid,
2048 the person obtaining payment and a prior transferor of the item
2049 warrant to the person making payment in good faith that the
2050 warrantor is, or was, at the time the warrantor transferred the
2051 item, a person entitled to enforce the item or authorized to
2052 obtain payment on behalf of a person entitled to enforce the item.
2053 The person making payment may recover from any warrantor for
2054 breach of warranty an amount equal to the amount paid plus
2055 expenses and loss of interest resulting from the breach.

2056 (e) The warranties stated in subsections (a) and (d) cannot
2057 be disclaimed with respect to checks. Unless notice of a claim
2058 for breach of warranty is given to the warrantor within thirty
2059 (30) days after the claimant has reason to know of the breach and
2060 the identity of the warrantor, the warrantor is discharged to the
2061 extent of any loss caused by the delay in giving notice of the
2062 claim.

2063 (f) A cause of action for breach of warranty under this
2064 section accrues when the claimant has reason to know of the
2065 breach.

2066 **SECTION 32.** Section 75-4-212, Mississippi Code of 1972, is
2067 amended as follows:

2068 75-4-212. (a) Unless otherwise instructed, a collecting
2069 bank may present an item not payable by, through, or at a bank by
2070 sending to the party to accept or pay a record providing notice
2071 that the bank holds the item for acceptance or payment. The
2072 notice must be sent in time to be received on or before the day
2073 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:



2107 (1) As to an item presented through a clearinghouse,
2108 when it is delivered to the presenting or last collecting bank or
2109 to the clearinghouse or is sent or delivered in accordance with
2110 clearinghouse rules; or

2111 (2) In all other cases, when it is sent or delivered to
2112 the bank's customer or transferor or pursuant to instructions.

2113 **SECTION 34.** Section 75-4-403, Mississippi Code of 1972, is
2114 amended as follows:

2115 75-4-403. (a) A customer or any person authorized to draw
2116 on the account if there is more than one person may stop payment
2117 of any item drawn on the customer's account or close the account
2118 by an order to the bank describing the item or account with
2119 reasonable certainty received at a time and in a manner that
2120 affords the bank a reasonable opportunity to act on it before any
2121 action by the bank with respect to the item described in Section
2122 75-4-303. If the signature of more than one person is required to
2123 draw on an account, any of these persons may stop payment or close
2124 the account.

2125 (b) A stop-payment order is effective for six (6) months,
2126 but it lapses after fourteen (14) calendar days if the original
2127 order was oral and was not confirmed in writing within that
2128 period. A stop-payment order may be renewed for additional
2129 six-month periods by a record given to the bank within a period
2130 during which the stop-payment order is effective.

2131 (c) The burden of establishing the fact and amount of loss
2132 resulting from the payment of an item contrary to a stop-payment
2133 order or order to close an account is on the customer. The loss
2134 from payment of an item contrary to a stop-payment order may
2135 include damages for dishonor of subsequent items under Section
2136 75-4-402.

2137 **SECTION 35.** Section 75-4A-105, Mississippi Code of 1972, is
2138 amended as follows:

2139 75-4A-105. (a) In this chapter:



2140 (1) "Authorized account" means a deposit account of a
2141 customer in a bank designated by the customer as a source of
2142 payment of payment orders issued by the customer to the bank. If
2143 a customer does not so designate an account, any account of the
2144 customer is an authorized account if payment of a payment order
2145 from that account is not inconsistent with a restriction on the
2146 use of that account.

2147 (2) "Bank" means a person engaged in the business of
2148 banking and includes a savings bank, savings and loan association,
2149 credit union, and trust company. A branch or separate office of a
2150 bank is a separate bank for purposes of this chapter.

2151 (3) "Customer" means a person, including a bank, having
2152 an account with a bank or from whom a bank has agreed to receive
2153 payment orders.

2154 (4) "Funds-transfer business day" of a receiving bank
2155 means the part of a day during which the receiving bank is open
2156 for the receipt, processing, and transmittal of payment orders and
2157 cancellations and amendments of payment orders.

2158 (5) "Funds-transfer system" means a wire transfer
2159 network, automated clearinghouse, or other communication system of
2160 a clearinghouse or other association of banks through which a
2161 payment order by a bank may be transmitted to the bank to which
2162 the order is addressed.

2163 (6) [Reserved]

2164 (7) "Prove" with respect to a fact means to meet the
2165 burden of establishing the fact (Section 75-1-201(b)(8)).

2166 (b) Other definitions applying to this chapter and the
2167 sections in which they appear are:

2168	"Acceptance"	Section 75-4A-209
2169	"Beneficiary"	Section 75-4A-103
2170	"Beneficiary's bank"	Section 75-4A-103
2171	"Executed"	Section 75-4A-301
2172	"Execution date"	Section 75-4A-301



2173	"Funds transfer"	Section 75-4A-104
2174	"Funds-transfer system rule"	Section 75-4A-501
2175	"Intermediary bank"	Section 75-4A-104
2176	"Originator"	Section 75-4A-104
2177	"Originator's bank"	Section 75-4A-104
2178	"Payment by beneficiary's	
2179	bank to beneficiary"	Section 75-4A-405
2180	"Payment by originator to	
2181	beneficiary"	Section 75-4A-406
2182	"Payment by sender to	
2183	receiving bank"	Section 75-4A-403
2184	"Payment date"	Section 75-4A-401
2185	"Payment order"	Section 75-4A-103
2186	"Receiving bank"	Section 75-4A-103
2187	"Security procedure"	Section 75-4A-201
2188	"Sender"	Section 75-4A-103

2189 (c) The following definitions in Title 75, Chapter 4, apply
2190 to this chapter:

2191	"Clearinghouse"	Section 75-4-104
2192	"Item"	Section 75-4-104
2193	"Suspends payments"	Section 75-4-104

2194 (d) In addition Title 75, Chapter 1, contains general
2195 definitions and principles of construction and interpretation
2196 applicable throughout this chapter.

2197 **SECTION 36.** Section 75-4A-106, Mississippi Code of 1972, is
2198 amended as follows:

2199 75-4A-106. (a) The time of receipt of a payment order or
2200 communication cancelling or amending a payment order is determined
2201 by the rules applicable to receipt of a notice stated in Section
2202 75-1-202. A receiving bank may fix a cut-off time or times on a
2203 funds-transfer business day for the receipt and processing of
2204 payment orders and communications cancelling or amending payment
2205 orders. Different cut-off times may apply to payment orders,

2206 cancellations, or amendments, or to different categories of
2207 payment orders, cancellations, or amendments. A cut-off time may
2208 apply to senders generally or different cut-off times may apply to
2209 different senders or categories of payment orders. If a payment
2210 order or communication cancelling or amending a payment order is
2211 received after the close of a funds-transfer business day or after
2212 the appropriate cut-off time on a funds-transfer business day, the
2213 receiving bank may treat the payment order or communication as
2214 received at the opening of the next funds-transfer business day.

2215 (b) If this chapter refers to an execution date or payment
2216 date or states a day on which a receiving bank is required to take
2217 action, and the date or day does not fall on a funds-transfer
2218 business day, the next day that is a funds-transfer business day
2219 is treated as the date or day stated, unless the contrary is
2220 stated in this chapter.

2221 **SECTION 37.** Section 75-4A-204, Mississippi Code of 1972, is
2222 amended as follows:

2223 75-4A-204. (a) If a receiving bank accepts a payment order
2224 issued in the name of its customer as sender which is (i) not
2225 authorized and not effective as the order of the customer under
2226 Section 75-4A-202, or (ii) not enforceable, in whole or in part,
2227 against the customer under Section 75-4A-203, the bank shall
2228 refund any payment of the payment order received from the customer
2229 to the extent the bank is not entitled to enforce payment and
2230 shall pay interest on the refundable amount calculated from the
2231 date the bank received payment to the date of the refund.
2232 However, the customer is not entitled to interest from the bank on
2233 the amount to be refunded if the customer fails to exercise
2234 ordinary care to determine that the order was not authorized by
2235 the customer and to notify the bank of the relevant facts within a
2236 reasonable time not exceeding ninety (90) days after the date the
2237 customer received notification from the bank that the order was
2238 accepted or that the customer's account was debited with respect



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

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

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

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

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

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

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



2271 **SECTION 39.** Section 75-7-102, Mississippi Code of 1972, is
2272 amended as follows:

2273 75-7-102. (a) In this chapter, unless the context otherwise
2274 requires:

2275 (1) "Bailee" means a person that by a warehouse
2276 receipt, bill of lading, or other document of title acknowledges
2277 possession of goods and contracts to deliver them.

2278 (2) "Carrier" means a person that issues a bill of
2279 lading.

2280 (3) "Consignee" means a person named in a bill of
2281 lading to which or to whose order the bill promises delivery.

2282 (4) "Consignor" means a person named in a bill of
2283 lading as the person from which the goods have been received for
2284 shipment.

2285 (5) "Delivery order" means a record that contains an
2286 order to deliver goods directed to a warehouse, carrier, or other
2287 person that in the ordinary course of business issues warehouse
2288 receipts or bills of lading.

2289 (6) [Reserved]

2290 (7) "Goods" means all things that are treated as
2291 movable for the purposes of a contract for storage or
2292 transportation.

2293 (8) "Issuer" means a bailee that issues a document of
2294 title or, in the case of an unaccepted delivery order, the person
2295 that orders the possessor of goods to deliver. The term includes
2296 a person for which an agent or employee purports to act in issuing
2297 a document if the agent or employee has real or apparent authority
2298 to issue documents, even if the issuer did not receive any goods,
2299 the goods were misdescribed, or in any other respect the agent or
2300 employee violated the issuer's instructions.

2301 (9) "Person entitled under the document" means the
2302 holder, in the case of a negotiable document of title, or the
2303 person to which delivery of the goods is to be made by the terms



2304 of, or pursuant to instructions in a record under, a nonnegotiable
2305 document of title.

2306 (10) [Reserved]

2307 (11) "Sign" means, with present intent to authenticate
2308 or adopt a record:

2309 (A) To execute or adopt a tangible symbol; or

2310 (B) To attach to or logically associate with the
2311 record an electronic sound, symbol, or process.

2312 (12) "Shipper" means a person that enters into a
2313 contract of transportation with a carrier.

2314 (13) "Warehouse" means a person engaged in the business
2315 of storing goods for hire.

2316 (b) Definitions in other chapters applying to this chapter
2317 and the sections in which they appear are:

2318 (1) "Contract for sale," Section 75-2-106.

2319 (2) "Lessee in the ordinary course of business,"
2320 Section 75-2A-103.

2321 (3) "'Receipt' of goods," Section 75-2-103.

2322 (c) In addition, Chapter 1 of this title contains general
2323 definitions and principles of construction and interpretation
2324 applicable throughout this chapter.

2325 **SECTION 40.** Section 75-8-102, Mississippi Code of 1972, is
2326 amended as follows:

2327 75-8-102. (a) In this chapter:

2328 (1) "Adverse claim" means a claim that a claimant has a
2329 property interest in a financial asset and that it is a violation
2330 of the rights of the claimant for another person to hold,
2331 transfer, or deal with the financial asset.

2332 (2) "Bearer form," as applied to a certificated
2333 security, means a form in which the security is payable to the
2334 bearer of the security certificate according to its terms but not
2335 by reason of an indorsement.



2336 (3) "Broker" means a person defined as a broker or
2337 dealer under the federal securities laws, but without excluding a
2338 bank acting in that capacity.

2339 (4) "Certificated security" means a security that is
2340 represented by a certificate.

2341 (5) "Clearing corporation" means:

2342 (i) A person that is registered as a "clearing
2343 agency" under the federal securities laws;

2344 (ii) A federal reserve bank; or

2345 (iii) Any other person that provides clearance or
2346 settlement services with respect to financial assets that would
2347 require it to register as a clearing agency under the federal
2348 securities laws but for an exclusion or exemption from the
2349 registration requirement, if its activities as a clearing
2350 corporation, including promulgation of rules, are subject to
2351 regulation by a federal or state governmental authority.

2352 (6) "Communicate" means to:

2353 (i) Send a signed writing; or

2354 (ii) Transmit information by any mechanism agreed
2355 upon by the persons transmitting and receiving the information.

2356 (7) "Entitlement holder" means a person identified in
2357 the records of a securities intermediary as the person having a
2358 security entitlement against the securities intermediary. If a
2359 person acquires a security entitlement by virtue of Section
2360 75-8-501(b) (2) or (3), that person is the entitlement holder.

2361 (8) "Entitlement order" means a notification
2362 communicated to a securities intermediary directing transfer or
2363 redemption of a financial asset to which the entitlement holder
2364 has a security entitlement.

2365 (9) "Financial asset," except as otherwise provided in
2366 Section 75-8-103, means:

2367 (i) A security;



2368 (ii) An obligation of a person or a share,
2369 participation, or other interest in a person or in property or an
2370 enterprise of a person, which is, or is of a type, dealt in or
2371 traded on financial markets, or which is recognized in any area in
2372 which it is issued or dealt in as a medium for investment; or

2373 (iii) Any property that is held by a securities
2374 intermediary for another person in a securities account if the
2375 securities intermediary has expressly agreed with the other person
2376 that the property is to be treated as a financial asset under this
2377 chapter. As context requires, the term means either the interest
2378 itself or the means by which a person's claim to it is evidenced,
2379 including a certificated or uncertificated security, a security
2380 certificate, or a security entitlement.

2381 (10) [Reserved]

2382 (11) "Indorsement" means a signature that alone or
2383 accompanied by other words is made on a security certificate in
2384 registered form or on a separate document for the purpose of
2385 assigning, transferring, or redeeming the security or granting a
2386 power to assign, transfer, or redeem it.

2387 (12) "Instruction" means a notification communicated to
2388 the issuer of an uncertificated security which directs that the
2389 transfer of the security be registered or that the security be
2390 redeemed.

2391 (13) "Registered form," as applied to a certificated
2392 security, means a form in which:

2393 (i) The security certificate specifies a person
2394 entitled to the security; and

2395 (ii) A transfer of the security may be registered
2396 upon books maintained for that purpose by or on behalf of the
2397 issuer, or the security certificate so states.

2398 (14) "Securities intermediary" means:

2399 (i) A clearing corporation; or



2400 (ii) A person, including a bank or broker, that in
2401 the ordinary course of its business maintains securities accounts
2402 for others and is acting in that capacity.

2403 (15) "Security," except as otherwise provided in
2404 Section 75-8-103, means an obligation of an issuer or a share,
2405 participation, or other interest in an issuer or in property or an
2406 enterprise of an issuer:

2407 (i) Which is represented by a security certificate
2408 in bearer or registered form, or the transfer of which may be
2409 registered upon books maintained for that purpose by or on behalf
2410 of the issuer;

2411 (ii) Which is one of a class or series or by its
2412 terms is divisible into a class or series of shares,
2413 participations, interests, or obligations; and

2414 (iii) Which:

2415 (A) Is, or is of a type, dealt in or traded
2416 on securities exchanges or securities markets; or

2417 (B) Is a medium for investment and by its
2418 terms expressly provides that it is a security governed by this
2419 chapter.

2420 (16) "Security certificate" means a certificate
2421 representing a security.

2422 (17) "Security entitlement" means the rights and
2423 property interest of an entitlement holder with respect to a
2424 financial asset specified in Part 5 of this chapter.

2425 (18) "Uncertificated security" means a security that is
2426 not represented by a certificate.

2427 (b) Other definitions applying to this chapter and the
2428 sections in which they appear are:

2429	Appropriate person	Section 75-8-107
2430	Control	Section 75-8-106
2431	Delivery	Section 75-8-301
2432	Investment company security	Section 75-8-103



2433	Issuer	Section 75-8-201
2434	Overissue	Section 75-8-210
2435	Protected purchaser	Section 75-8-303
2436	Securities account	Section 75-8-501

2437 (c) In addition, Chapter 1 contains general definitions and
2438 principles of construction and interpretation applicable
2439 throughout this chapter.

2440 (d) The characterization of a person, business, or
2441 transaction for purposes of this chapter does not determine the
2442 characterization of the person, business, or transaction for
2443 purposes of any other law, regulation, or rule.

2444 **SECTION 41.** Section 75-9-102, Mississippi Code of 1972, is
2445 amended as follows:

2446 75-9-102. (a) In this article:

2447 (1) "Accession" means goods that are physically united
2448 with other goods in such a manner that the identity of the
2449 original goods is not lost.

2450 (2) "Account," except as used in "account for," means a
2451 right to payment of a monetary obligation, whether or not earned
2452 by performance, (i) for property that has been or is to be sold,
2453 leased, licensed, assigned, or otherwise disposed of, (ii) for
2454 services rendered or to be rendered, (iii) for a policy of
2455 insurance issued or to be issued, (iv) for a secondary obligation
2456 incurred or to be incurred, (v) for energy provided or to be
2457 provided, (vi) for the use or hire of a vessel under a charter or
2458 other contract, (vii) arising out of the use of a credit or charge
2459 card or information contained on or for use with the card, or
2460 (viii) as winnings in a lottery or other game of chance operated
2461 or sponsored by a state, governmental unit of a state, or person
2462 licensed or authorized to operate the game by a state or
2463 governmental unit of a state. The term includes
2464 health-care-insurance receivables. The term does not include (i)
2465 rights to payment evidenced by chattel paper or an instrument,



2466 (ii) commercial tort claims, (iii) deposit accounts, (iv)
2467 investment property, (v) letter-of-credit rights or letters of
2468 credit, or (vi) rights to payment for money or funds advanced or
2469 sold, other than rights arising out of the use of a credit or
2470 charge card or information contained on or for use with the card.

2471 (3) "Account debtor" means a person obligated on an
2472 account, chattel paper, or general intangible. The term does not
2473 include persons obligated to pay a negotiable instrument, even if
2474 the instrument constitutes part of chattel paper.

2475 (4) "Accounting," except as used in "accounting for,"
2476 means a record:

2477 (A) Authenticated by a secured party;

2478 (B) Indicating the aggregate unpaid secured
2479 obligations as of a date not more than thirty-five (35) days
2480 earlier or thirty-five (35) days later than the date of the
2481 record; and

2482 (C) Identifying the components of the obligations
2483 in reasonable detail.

2484 (5) "Agricultural lien" means an interest in farm
2485 products:

2486 (A) Which secures payment or performance of an
2487 obligation for:

2488 (i) Goods or services furnished in connection
2489 with a debtor's farming operation; or

2490 (ii) Rent on real property leased by a debtor
2491 in connection with its farming operation;

2492 (B) Which is created by statute in favor of a
2493 person that:

2494 (i) In the ordinary course of its business
2495 furnished goods or services to a debtor in connection with a
2496 debtor's farming operation; or

2497 (ii) Leased real property to a debtor in
2498 connection with the debtor's farming operation; and



2499 (C) Whose effectiveness does not depend on the
2500 person's possession of the personal property.

2501 (6) "As-extracted collateral" means:

2502 (A) Oil, gas, or other minerals that are subject
2503 to a security interest that:

2504 (i) Is created by a debtor having an interest
2505 in the minerals before extraction; and

2506 (ii) Attaches to the minerals as extracted;
2507 or

2508 (B) Accounts arising out of the sale at the
2509 wellhead or minehead of oil, gas, or other minerals in which the
2510 debtor had an interest before extraction.

2511 (7) "Authenticate" means:

2512 (A) To sign; or

2513 (B) To execute or otherwise adopt a symbol, or
2514 encrypt or similarly process a record in whole or in part, with
2515 the present intent of the authenticating person to identify the
2516 person and adopt or accept a record.

2517 (8) "Bank" means an organization that is engaged in the
2518 business of banking. The term includes savings banks, savings and
2519 loan associations, credit unions, and trust companies.

2520 (9) "Cash proceeds" means proceeds that are money,
2521 checks, deposit accounts, or the like.

2522 (10) "Certificate of title" means a certificate of
2523 title with respect to which a statute provides for the security
2524 interest in question to be indicated on the certificate as a
2525 condition or result of the security interest's obtaining priority
2526 over the rights of a lien creditor with respect to the collateral.

2527 (11) "Chattel paper" means a record or records that
2528 evidence both a monetary obligation and a security interest in
2529 specific goods, a security interest in specific goods and software
2530 used in the goods, a security interest in specific goods and
2531 license of software used in the goods, a lease of specific goods,



2532 or a lease of specific goods and license of software used in the
2533 goods. In this paragraph, "monetary obligation" means a monetary
2534 obligation secured by the goods or owed under a lease of the goods
2535 and includes a monetary obligation with respect to software used
2536 in the goods. The term does not include (i) charters or other
2537 contracts involving the use or hire of a vessel or (ii) records
2538 that evidence a right to payment arising out of the use of a
2539 credit or charge card or information contained on or for use with
2540 the card. If a transaction is evidenced by records that include
2541 an instrument or series of instruments, the group of records taken
2542 together constitutes chattel paper.

2543 (12) "Collateral" means the property subject to a
2544 security interest or agricultural lien. The term includes:

2545 (A) Proceeds to which a security interest
2546 attaches;

2547 (B) Accounts, chattel paper, payment intangibles,
2548 and promissory notes that have been sold; and

2549 (C) Goods that are the subject of a consignment.

2550 (13) "Commercial tort claim" means a claim arising in
2551 tort with respect to which:

2552 (A) The claimant is an organization; or

2553 (B) The claimant is an individual and the claim:

2554 (i) Arose in the course of the claimant's
2555 business or profession; and

2556 (ii) Does not include damages arising out of
2557 personal injury to or the death of an individual.

2558 (14) "Commodity account" means an account maintained by
2559 a commodity intermediary in which a commodity contract is carried
2560 for a commodity customer.

2561 (15) "Commodity contract" means a commodity futures
2562 contract, an option on a commodity futures contract, a commodity
2563 option, or another contract if the contract or option is:



2564 (A) Traded on or subject to the rules of a board
2565 of trade that has been designated as a contract market for such a
2566 contract pursuant to federal commodities laws; or

2567 (B) Traded on a foreign commodity board of trade,
2568 exchange, or market, and is carried on the books of a commodity
2569 intermediary for a commodity customer.

2570 (16) "Commodity customer" means a person for which a
2571 commodity intermediary carries a commodity contract on its books.

2572 (17) "Commodity intermediary" means a person that:

2573 (A) Is registered as a futures commission merchant
2574 under federal commodities law; or

2575 (B) In the ordinary course of its business
2576 provides clearance or settlement services for a board of trade
2577 that has been designated as a contract market pursuant to federal
2578 commodities law.

2579 (18) "Communicate" means:

2580 (A) To send a written or other tangible record;

2581 (B) To transmit a record by any means agreed upon
2582 by the persons sending and receiving the record; or

2583 (C) In the case of transmission of a record to or
2584 by a filing office, to transmit a record by any means prescribed
2585 by filing-office rule.

2586 (19) "Consignee" means a merchant to which goods are
2587 delivered in a consignment.

2588 (20) "Consignment" means a transaction, regardless of
2589 its form, in which a person delivers goods to a merchant for the
2590 purpose of sale and:

2591 (A) The merchant:

2592 (i) Deals in goods of that kind under a name
2593 other than the name of the person making delivery;

2594 (ii) Is not an auctioneer; and

2595 (iii) Is not generally known by its creditors
2596 to be substantially engaged in selling the goods of others;



2597 (B) With respect to each delivery, the aggregate
2598 value of the goods is One Thousand Dollars (\$1,000.00) or more at
2599 the time of delivery;

2600 (C) The goods are not consumer goods immediately
2601 before delivery; and

2602 (D) The transaction does not create a security
2603 interest that secures an obligation.

2604 (21) "Consignor" means a person that delivers goods to
2605 a consignee in a consignment.

2606 (22) "Consumer debtor" means a debtor in a consumer
2607 transaction.

2608 (23) "Consumer goods" means goods that are used or
2609 bought for use primarily for personal, family, or household
2610 purposes.

2611 (24) "Consumer-goods transaction" means a consumer
2612 transaction in which:

2613 (A) An individual incurs an obligation primarily
2614 for personal, family, or household purposes; and

2615 (B) A security interest in consumer goods secures
2616 the obligation.

2617 (25) "Consumer obligor" means an obligor who is an
2618 individual and who incurred the obligation as part of a
2619 transaction entered into primarily for personal, family, or
2620 household purposes.

2621 (26) "Consumer transaction" means a transaction in
2622 which (i) an individual incurs an obligation primarily for
2623 personal, family, or household purposes, (ii) a security interest
2624 secures the obligation, and (iii) the collateral is held or
2625 acquired primarily for personal, family, or household purposes.
2626 The term includes consumer-goods transactions.

2627 (27) "Continuation statement" means an amendment of a
2628 financing statement which:



2629 (A) Identifies, by its file number, the initial
2630 financing statement to which it relates; and

2631 (B) Indicates that it is a continuation statement
2632 for, or that it is filed to continue the effectiveness of, the
2633 identified financing statement.

2634 (28) "Debtor" means:

2635 (A) A person having an interest, other than a
2636 security interest or other lien, in the collateral, whether or not
2637 the person is an obligor;

2638 (B) A seller of accounts, chattel paper, payment
2639 intangibles, or promissory notes; or

2640 (C) A consignee.

2641 (29) "Deposit account" means a demand, time, savings,
2642 passbook, or similar account maintained with a bank. The term
2643 does not include investment property or accounts evidenced by an
2644 instrument.

2645 (30) "Document" means a document of title or a receipt
2646 of the type described in Section 75-7-201(b).

2647 (31) "Electronic chattel paper" means chattel paper
2648 evidenced by a record or records consisting of information stored
2649 in an electronic medium.

2650 (32) "Encumbrance" means a right, other than an
2651 ownership interest, in real property. The term includes mortgages
2652 and other liens on real property.

2653 (33) "Equipment" means goods other than inventory, farm
2654 products, or consumer goods.

2655 (34) "Farm products" means goods, other than standing
2656 timber, with respect to which the debtor is engaged in a farming
2657 operation and which are:

2658 (A) Crops grown, growing, or to be grown,
2659 including:

2660 (i) Crops produced on trees, vines, and
2661 bushes; and



2662 (ii) Aquatic goods produced in aquacultural
2663 operations;

2664 (B) Livestock, born or unborn, including aquatic
2665 goods produced in aquacultural operations;

2666 (C) Supplies used or produced in a farming
2667 operation; or

2668 (D) Products of crops or livestock in their
2669 unmanufactured states.

2670 (35) "Farming operation" means raising, cultivating,
2671 propagating, fattening, grazing, or any other farming, livestock
2672 or aquacultural operation.

2673 (36) "File number" means the number assigned to an
2674 initial financing statement pursuant to Section 75-9-519(a).

2675 (37) "Filing office" means an office designated in
2676 Section 75-9-501 as the place to file a financing statement.

2677 (38) "Filing-office rule" means a rule adopted pursuant
2678 to Section 75-9-526.

2679 (39) "Financing statement" means a record or records
2680 composed of an initial financing statement and any filed record
2681 relating to the initial financing statement.

2682 (40) "Fixture filing" means the filing of a financing
2683 statement covering goods that are or are to become fixtures and
2684 satisfying Section 75-9-502(a) and (b). The term includes the
2685 filing of a financing statement covering goods of a transmitting
2686 utility which are or are to become fixtures.

2687 (41) "Fixtures" means goods that have become so related
2688 to particular real property that an interest in them arises under
2689 real property law.

2690 (42) "General intangible" means any personal property,
2691 including things in action, other than accounts, chattel paper,
2692 commercial tort claims, deposit accounts, documents, goods,
2693 instruments, investment property, letter-of-credit rights, letters



2694 of credit, money, and oil, gas, or other minerals before
2695 extraction. The term includes payment intangibles and software.

2696 (43) [Reserved]

2697 (44) "Goods" means all things that are movable when a
2698 security interest attaches. The term includes (i) fixtures, (ii)
2699 standing timber that is to be cut and removed under a conveyance
2700 or contract for sale, (iii) the unborn young of animals, (iv)
2701 crops grown, growing, or to be grown, even if the crops are
2702 produced on trees, vines, or bushes, (v) farm-raised fish produced
2703 in fresh water according to the usual and customary techniques of
2704 commercial agriculture, (vi) manufactured homes and (vii) marine
2705 vessels (herein defined as every type of watercraft used, or
2706 capable of being used, as a means of transportation on water)
2707 including both marine vessels under construction, including
2708 engines and all items of equipment installed or to be installed
2709 therein, whether such vessels are being constructed by the
2710 shipbuilder for his own use or for sale (said vessels under
2711 construction being classified as inventory within the meaning of
2712 Section 75-9-102(48)), and marine vessels after completion of
2713 construction so long as such vessels have not become "vessels of
2714 the United States" within the meaning of the Ship Mortgage Act of
2715 1920, 46 USCS, Section 911(4), as same is now written or may
2716 hereafter be amended (said completed vessels being classified as
2717 equipment within the meaning of Section 75-9-102(33)). The term
2718 also includes a computer program embedded in goods and any
2719 supporting information provided in connection with a transaction
2720 relating to the program if (i) the program is associated with the
2721 goods in such a manner that it customarily is considered part of
2722 the goods, or (ii) by becoming the owner of the goods, a person
2723 acquires a right to use the program in connection with the goods.
2724 The term does not include a computer program embedded in goods
2725 that consist solely of the medium in which the program is
2726 embedded. The term also does not include accounts, chattel paper,



2727 commercial tort claims, deposit accounts, documents, general
2728 intangibles, instruments, investment property, letter-of-credit
2729 rights, letters of credit, money, or oil, gas, or other minerals
2730 before extraction.

2731 (45) "Governmental unit" means a subdivision, agency,
2732 department, county, parish, municipality or other unit of the
2733 government of the United States, a state, or a foreign country.
2734 The term includes an organization having a separate corporate
2735 existence if the organization is eligible to issue debt on which
2736 interest is exempt from income taxation under the laws of the
2737 United States.

2738 (46) "Health-care-insurance receivable" means an
2739 interest in or claim under a policy of insurance which is a right
2740 to payment of a monetary obligation for health-care goods or
2741 services provided or to be provided.

2742 (47) "Instrument" means a negotiable instrument or any
2743 other writing that evidences a right to the payment of a monetary
2744 obligation, is not itself a security agreement or lease, and is of
2745 a type that in ordinary course of business is transferred by
2746 delivery with any necessary endorsement or assignment. The term
2747 does not include (i) investment property, (ii) letters of credit,
2748 or (iii) writings that evidence a right to payment arising out of
2749 the use of a credit or charge card or information contained on or
2750 for use with the card.

2751 (48) "Inventory" means goods, other than farm products,
2752 which:

2753 (A) Are leased by a person as lessor;

2754 (B) Are held by a person for sale or lease or to
2755 be furnished under a contract of service;

2756 (C) Are furnished by a person under a contract of
2757 service; or

2758 (D) Consist of raw materials, work in process or
2759 materials used or consumed in a business.



2760 (49) "Investment property" means a security, whether
2761 certificated or uncertificated, security entitlement, securities
2762 account, commodity contract, or commodity account.

2763 (50) "Jurisdiction of organization," with respect to a
2764 registered organization, means the jurisdiction under whose law
2765 the organization is organized.

2766 (51) "Letter-of-credit right" means a right to payment
2767 or performance under a letter of credit, whether or not the
2768 beneficiary has demanded or is at the time entitled to demand
2769 payment or performance. The term does not include the right of a
2770 beneficiary to demand payment or performance under a letter of
2771 credit.

2772 (52) "Lien creditor" means:

2773 (A) A creditor that has acquired a lien on the
2774 property involved by attachment, levy, or the like;

2775 (B) An assignee for benefit of creditors from the
2776 time of assignment;

2777 (C) A trustee in bankruptcy from the date of the
2778 filing of the petition; or

2779 (D) A receiver in equity from the time of
2780 appointment.

2781 (53) "Manufactured home" means a structure,
2782 transportable in one or more sections, which, in the traveling
2783 mode, is eight (8) body feet or more in width or forty (40) body
2784 feet or more in length, or, when erected on site, is three hundred
2785 twenty (320) or more square feet, and which is built on a
2786 permanent chassis and designed to be used as a dwelling with or
2787 without a permanent foundation when connected to the required
2788 utilities, and includes the plumbing, heating, air-conditioning,
2789 and electrical systems contained therein. The term includes any
2790 structure that meets all of the requirements of this paragraph
2791 except the size requirements and with respect to which the
2792 manufacturer voluntarily files a certification required by the



2793 United States Secretary of Housing and Urban Development and
2794 complies with the standards established under Title 42 of the
2795 United States Code.

2796 (54) "Manufactured-home transaction" means a secured
2797 transaction:

2798 (A) That creates a purchase-money security
2799 interest in a manufactured home, other than a manufactured home
2800 held as inventory; or

2801 (B) In which a manufactured home, other than a
2802 manufactured home held as inventory, is the primary collateral.

2803 (55) "Mortgage" means a consensual interest in real
2804 property, including fixtures, which secures payment or performance
2805 of an obligation. "Mortgage" shall mean and include a deed of
2806 trust.

2807 (56) "New debtor" means a person that becomes bound as
2808 debtor under Section 75-9-203(d) by a security agreement
2809 previously entered into by another person.

2810 (57) "New value" means (i) money, (ii) money's worth in
2811 property, services, or new credit, or (iii) release by a
2812 transferee of an interest in property previously transferred to
2813 the transferee. The term does not include an obligation
2814 substituted for another obligation.

2815 (58) "Noncash proceeds" means proceeds other than cash
2816 proceeds.

2817 (59) "Obligor" means a person that, with respect to an
2818 obligation secured by a security interest in or an agricultural
2819 lien on the collateral, (i) owes payment or other performance of
2820 the obligation, (ii) has provided property other than the
2821 collateral to secure payment or other performance of the
2822 obligation, or (iii) is otherwise accountable in whole or in part
2823 for payment or other performance of the obligation. The term does
2824 not include issuers or nominated persons under a letter of credit.



2825 (60) "Original debtor," except as used in Section
2826 75-9-310(c), means a person that, as debtor, entered into a
2827 security agreement to which a new debtor has become bound under
2828 Section 75-9-203(d).

2829 (61) "Payment intangible" means a general intangible
2830 under which the account debtor's principal obligation is a
2831 monetary obligation.

2832 (62) "Person related to," with respect to an
2833 individual, means:

2834 (A) The spouse of the individual;

2835 (B) A brother, brother-in-law, sister, or
2836 sister-in-law of the individual;

2837 (C) An ancestor or lineal descendant of the
2838 individual or the individual's spouse; or

2839 (D) Any other relative, by blood or marriage, of
2840 the individual or the individual's spouse who shares the same home
2841 with the individual.

2842 (63) "Person related to," with respect to an
2843 organization, means:

2844 (A) A person directly or indirectly controlling,
2845 controlled by, or under common control with the organization;

2846 (B) An officer or director of, or a person
2847 performing similar functions with respect to, the organization;

2848 (C) An officer or director of, or a person
2849 performing similar functions with respect to, a person described
2850 in subparagraph (A);

2851 (D) The spouse of an individual described in
2852 subparagraph (A), (B), or (C); or

2853 (E) An individual who is related by blood or
2854 marriage to an individual described in subparagraph (A), (B), (C),
2855 or (D) and shares the same home with the individual.

2856 (64) "Proceeds," except as used in Section 75-9-609(b),
2857 means the following property:



2858 (A) Whatever is acquired upon the sale, lease,
2859 license, exchange or other disposition of collateral;

2860 (B) Whatever is collected on, or distributed on
2861 account of, collateral;

2862 (C) Rights arising out of collateral;

2863 (D) To the extent of the value of collateral,
2864 claims arising out of the loss, nonconformity, or interference
2865 with the use of, defects or infringement of rights in, or damage
2866 to, the collateral; or

2867 (E) To the extent of the value of collateral and
2868 to the extent payable to the debtor or the secured party,
2869 insurance payable by reason of the loss or nonconformity of,
2870 defects or infringement of rights in, or damage to, the
2871 collateral.

2872 (64A) "Production-money crops" means crops that secure
2873 a production-money obligation incurred with respect to the
2874 production of those crops.

2875 (64B) "Production-money obligation" means an obligation
2876 of an obligor incurred for new value given to enable the debtor to
2877 produce crops if the value is in fact used for the production of
2878 the crops.

2879 (64C) "Production of crops" includes tilling and
2880 otherwise preparing land for growing, planting, cultivating,
2881 fertilizing, irrigating, harvesting and gathering crops, and
2882 protecting them from damage or disease.

2883 (65) "Promissory note" means an instrument that
2884 evidences a promise to pay a monetary obligation, does not
2885 evidence an order to pay, and does not contain an acknowledgment
2886 by a bank that the bank has received for deposit a sum of money or
2887 funds.

2888 (66) "Proposal" means a record authenticated by a
2889 secured party which includes the terms on which the secured party
2890 is willing to accept collateral in full or partial satisfaction of



2891 the obligation it secures pursuant to Sections 75-9-620, 75-9-621,
2892 and 75-9-622.

2893 (67) "Public-finance transaction" means a secured
2894 transaction in connection with which:

2895 (A) Debt securities are issued;

2896 (B) All or a portion of the securities issued have
2897 an initial stated maturity of at least twenty (20) years; and

2898 (C) The debtor, obligor, secured party, account
2899 debtor or other person obligated on collateral, assignor or
2900 assignee of a secured obligation, or assignor or assignee of a
2901 security interest is a state or a governmental unit of a state.

2902 (68) "Pursuant to commitment," with respect to an
2903 advance made or other value given by a secured party, means
2904 pursuant to the secured party's obligation, whether or not a
2905 subsequent event of default or other event not within the secured
2906 party's control has relieved or may relieve the secured party from
2907 its obligation.

2908 (69) "Record," except as used in "for record," "of
2909 record," "record or legal title," and "record owner," means
2910 information that is inscribed on a tangible medium or which is
2911 stored in an electronic or other medium and is retrievable in
2912 perceivable form.

2913 (70) "Registered organization" means an organization
2914 organized solely under the law of a single state or the United
2915 States and as to which the state or the United States must
2916 maintain a public record showing the organization to have been
2917 organized.

2918 (71) "Secondary obligor" means an obligor to the extent
2919 that:

2920 (A) The obligor's obligation is secondary; or

2921 (B) The obligor has a right of recourse with
2922 respect to an obligation secured by collateral against the debtor,
2923 another obligor, or property of either.



2924 (72) "Secured party" means:

2925 (A) A person in whose favor a security interest is

2926 created or provided for under a security agreement, whether or not

2927 any obligation to be secured is outstanding;

2928 (B) A person that holds an agricultural lien;

2929 (C) A consignor;

2930 (D) A person to which accounts, chattel paper,

2931 payment intangibles, or promissory notes have been sold;

2932 (E) A trustee, indenture trustee, agent,

2933 collateral agent, or other representative in whose favor a

2934 security interest or agricultural lien is created or provided for;

2935 or

2936 (F) A person that holds a security interest

2937 arising under Section 75-2-401, 75-2-505, 75-2-711(3),

2938 75-2A-508(5), 75-4-210, or 75-5-118.

2939 (73) "Security agreement" means an agreement that

2940 creates or provides for a security interest.

2941 (74) "Send," in connection with a record or

2942 notification, means:

2943 (A) To deposit in the mail, deliver for

2944 transmission, or transmit by any other usual means of

2945 communication, with postage or cost of transmission provided for,

2946 addressed to any address reasonable under the circumstances; or

2947 (B) To cause the record or notification to be

2948 received within the time that it would have been received if

2949 properly sent under subparagraph (A).

2950 (75) "Software" means a computer program and any

2951 supporting information provided in connection with a transaction

2952 relating to the program. The term does not include a computer

2953 program that is included in the definition of goods.

2954 (76) "State" means a state of the United States, the

2955 District of Columbia, Puerto Rico, the United States Virgin



2956 Islands, or any territory or insular possession subject to the
2957 jurisdiction of the United States.

2958 (77) "Supporting obligation" means a letter-of-credit
2959 right or secondary obligation that supports the payment or
2960 performance of an account, chattel paper, a document, a general
2961 intangible, an instrument, or investment property.

2962 (78) "Tangible chattel paper" means chattel paper
2963 evidenced by a record or records consisting of information that is
2964 inscribed on a tangible medium.

2965 (79) "Termination statement" means an amendment of a
2966 financing statement which:

2967 (A) Identifies, by its file number, the initial
2968 financing statement to which it relates; and

2969 (B) Indicates either that it is a termination
2970 statement or that the identified financing statement is no longer
2971 effective.

2972 (80) "Transmitting utility" means a person primarily
2973 engaged in the business of:

2974 (A) Operating a railroad, subway, street railway,
2975 or trolley bus;

2976 (B) Transmitting communications electrically,
2977 electromagnetically, or by light;

2978 (C) Transmitting goods by pipeline or sewer; or

2979 (D) Transmitting or producing and transmitting
2980 electricity, steam, gas, or water.

2981 (b) The following definitions in other articles apply to
2982 this article:

2983 "Applicant"	Section 75-5-102
2984 "Beneficiary"	Section 75-5-102
2985 "Broker"	Section 75-8-102
2986 "Certificated security"	Section 75-8-102
2987 "Check"	Section 75-3-104
2988 "Clearing corporation"	Section 75-8-102

2989	"Contract for sale"	Section 75-2-106
2990	"Control"	Section 75-7-106
2991	"Customer"	Section 75-4-104
2992	"Entitlement holder"	Section 75-8-102
2993	"Financial asset"	Section 75-8-102
2994	"Holder in due course"	Section 75-3-302
2995	"Issuer" (with respect to	
2996	a letter of credit or	
2997	letter-of-credit right)	Section 75-5-102
2998	"Issuer" (with respect to a	
2999	security)	Section 75-8-201
3000	"Issuer" (with respect to	
3001	documents of title)	Section 75-7-102
3002	"Lease"	Section 75-2A-103
3003	"Lease agreement"	Section 75-2A-103
3004	"Lease contract"	Section 75-2A-103
3005	"Leasehold interest"	Section 75-2A-103
3006	"Lessee"	Section 75-2A-103
3007	"Lessee in ordinary course	
3008	of business"	Section 75-2A-103
3009	"Lessor"	Section 75-2A-103
3010	"Lessor's residual interest"	Section 75-2A-103
3011	"Letter of credit"	Section 75-5-102
3012	"Merchant"	Section 75-2-104
3013	"Negotiable instrument"	Section 75-3-104
3014	"Nominated person"	Section 75-5-102
3015	"Note"	Section 75-3-104
3016	"Proceeds of a letter of	
3017	credit"	Section 75-5-114
3018	"Prove"	Section 75-3-103
3019	"Sale"	Section 75-2-106
3020	"Securities account"	Section 75-8-501
3021	"Securities intermediary"	Section 75-8-102



3022 "Security" Section 75-8-102
3023 "Security certificate" Section 75-8-102
3024 "Security entitlement" Section 75-8-102
3025 "Uncertificated security" Section 75-8-102
3026 (c) Article 1 contains general definitions and principles of
3027 construction and interpretation applicable throughout this
3028 article.

3029 **SECTION 42.** The following shall be codified as Section
3030 79-13-505, Mississippi Code of 1972:

3031 79-13-505. **Enforceability of limitations on assignments of**
3032 **partnership interests.** Sections 75-9-406 and 75-9-408 do not
3033 apply to a partnership interest in a partnership formed under the
3034 laws of Mississippi, including the rights, powers and interests
3035 arising under a certificate of partnership or partnership
3036 agreement or under this chapter. To the extent of any conflict or
3037 inconsistency between this section and Sections 75-9-406 and
3038 75-9-408, this section prevails. It is the express intent of this
3039 section to permit the enforcement, as a contract among the
3040 partners of a partnership, of any provision of a partnership
3041 agreement that would otherwise be ineffective under Sections
3042 75-9-406 and 75-9-408.

3043 **SECTION 43.** The following shall be codified as Section
3044 79-14-706, Mississippi Code of 1972:

3045 79-14-706. **Enforceability of limitations on assignments of**
3046 **limited partnership interests.** Sections 75-9-406 and 75-9-408 do
3047 not apply to a limited partnership interest in a limited
3048 partnership formed under the laws of Mississippi, including the
3049 rights, powers and interests arising under the certificate of
3050 limited partnership or limited partnership agreement or under this
3051 chapter. To the extent of any conflict or inconsistency between
3052 this section and Sections 75-9-406 and 75-9-408, this section
3053 prevails. It is the express intent of this section to permit the
3054 enforcement, as a contract among the partners of a limited



3055 partnership, of any provision of a limited partnership agreement
3056 that would otherwise be ineffective under Sections 75-9-406 and
3057 75-9-408.

3058 **SECTION 44.** Sections 75-1-101, 75-1-102, 75-1-103, 75-1-104,
3059 75-1-105, 75-1-106, 75-1-107, 75-1-108, 75-1-109, 75-1-110,
3060 75-1-201, 75-1-202, 75-1-203, 75-1-204, 75-1-205, 75-1-206,
3061 75-1-207 and 75-1-208, Mississippi Code of 1972, which comprise
3062 the Uniform Commercial Code Article 1 - General Provisions, are
3063 repealed.

3064 **SECTION 45.** Section 75-2-208, Mississippi Code of 1972,
3065 which provides for the practical construction of "course of
3066 performance" for purposes of the Uniform Commercial Code Article 2
3067 - Sales, is repealed, the substance thereof being reenacted in
3068 Article 1 - General Provisions.

3069 **SECTION 46.** Section 75-2A-207, Mississippi Code of 1972,
3070 which provides for the practical construction of "course of
3071 performance" for purposes of the Uniform Commercial Code Article
3072 2A - Leases, is repealed, the substance thereof being reenacted in
3073 Article 1 - General Provisions.

3074 **SECTION 47.** This act shall take effect and be in force from
3075 and after July 1, 2010.

