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SENATE BILL NO. 2419

Originated in Senate Irena W Guynes Secretary

SENATE BILL NO. 2419

AN ACT TO CONFORM TO CERTAIN CHANGES TO THE MODEL ACT FOR THE UNIFORM COMMERCIAL CODE; TO AMEND SECTION 11-7-18, MISSISSIPPI CODE OF 1972, TO CONFORM THE LAW ON IMPLIED WARRANTIES, LIMITATIONS AND DISCLAIMERS TO THE NONUNIFORM CHOICE OF LAW PROVISIONS IN THE MISSISSIPPI ENACTMENT OF THE UNIFORM COMMERCIAL CODE; TO CREATE NEW SECTION 15-1-81, MISSISSIPPI CODE OF 1972, TO PROVIDE A SIX-YEAR STATUTE OF LIMITATIONS FOR NONNEGOTIABLE PROMISSORY NOTES; TO CREATE NEW SECTION 75-1-101, MISSISSIPPI CODE OF 1972, TO ENACT SHORT TITLES FOR THE UNIFORM COMMERCIAL CODE AND FOR ARTICLE 1; TO CREATE NEW SECTION 75-1-102, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE SCOPE OF THE GENERAL PROVISIONS OF ARTICLE 1; TO CREATE NEW SECTION 75-1-103, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR UNIFORM CONSTRUCTION OF THE UNIFORM COMMERCIAL CODE; TO CREATE NEW SECTION 75-1-104, MISSISSIPPI CODE OF 1972, TO PROHIBIT IMPLIED REPEAL; TO CREATE NEW SECTION 75-1-105, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR SEVERABILITY; TO CREATE NEW SECTION 75-1-106, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR GRAMMATICAL CONSTRUCTION OF PERSONAL AND POSSESSIVE PRONOUNS AS TO GENDER; TO CREATE NEW SECTION 75-1-107, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SECTION CAPTIONS ARE PART OF THE ACT; TO CREATE NEW SECTION 75-1-108, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RELATIONSHIP BETWEEN THE ACT AND THE ELECTRONIC SIGNATURES ACT; TO CREATE NEW SECTION 75-1-201, MISSISSIPPI CODE OF 1972, TO ENACT GENERAL DEFINITIONS; TO CREATE NEW SECTION 75-1-202, MISSISSIPPI CODE OF 1972, TO SPECIFY WHEN BOTH NOTICE AND KNOWLEDGE OCCUR; TO CREATE NEW SECTION 75-1-203, MISSISSIPPI CODE OF 1972, TO DISTINGUISH A LEASE FROM A SECURITY INTEREST; TO CREATE NEW SECTION 75-1-204, MISSISSIPPI CODE OF 1972, TO SPECIFY WHEN A PERSON HAS GIVEN VALUE; TO CREATE NEW SECTION 75-1-205, MISSISSIPPI CODE OF 1972, TO DEFINE REASONABLE TIME AND SEASONABLENESS; TO CREATE NEW SECTION 75-1-206, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PRESUMPTIONS OF FACT; TO CREATE NEW SECTION 75-1-301, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CHOICE OF LAW; TO CREATE NEW SECTION 75-1-302, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR VARIATION BY AGREEMENT; TO CREATE NEW SECTION 75-1-303, MISSISSIPPI CODE OF 1972, TO DEFINE COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE; TO CREATE NEW SECTION 75-1-304, MISSISSIPPI CODE OF 1972, TO REQUIRE GOOD FAITH; TO CREATE NEW SECTION 75-1-305, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR LIBERAL ADMINISTRATION OF REMEDIES; TO CREATE NEW SECTION 75-1-306, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR WAIVER OR RENUNCIATION OF CLAIM OR RIGHT UPON BREACH; TO CREATE NEW SECTION 75-1-307, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PRIMA FACIE EVIDENCE BY THIRD-PARTY DOCUMENTS; TO CREATE NEW SECTION 75-1-308, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS; TO CREATE NEW SECTION

75-1-309, MISSISSIPPI CODE OF 1972, TO ALLOW THE OPTION TO ACCELERATE AT WILL; TO CREATE NEW SECTION 75-1-310, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE SUBORDINATION OF OBLIGATIONS; TO AMEND SECTIONS 75-2-103, 75-2-107, 75-2-202, 75-2A-103, 75-2A-501, 75-2A-51, 75-2A-518, 75-2A-527, 75-2A-528, 75-3-103, 75-3-106, 75-3-116, 75-3-119, 75-3-305, 75-3-309, 75-3-312, 75-3-415, 75-3-416, 75-3-417, 75-3-419, 75-3-602, 75-3-604, 75-3-605, 75-4-104, 75-4-105, 75-4-207, 75-4-208, 75-4-212, 75-4-301, 75-4-403, 75-4A-105, 75-4A-106, 75-4A-204, 75-5-103, 75-7-102, 75-8-102 AND 75-9-102, MISSISSIPPI CODE OF 1972, TO CONFORM; TO CREATE NEW SECTION 79-13-505, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ENFORCEABILITY OF LIMITATIONS ON ASSIGNMENTS OF PARTNERSHIP INTERESTS; TO CREATE NEW SECTION 79-14-706, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ENFORCEABILITY OF LIMITATIONS ON ASSIGNMENTS OF LIMITED PARTNERSHIP INTERESTS; TO CREATE NEW SECTION 1-3-81, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EDITORIAL NATURE OF SECTION CAPTIONS UNLESS SPECIFICALLY PROVIDED OTHERWISE BY LAW; TO REPEAL SECTIONS 75-1-101, 75-1-102, 75-1-103, 75-1-104, 75-1-105, 75-1-106, 75-1-107, 75-1-108, 75-1-109, 75-1-110, 75-1-201, 75-1-202, 75-1-203, 75-1-204, 75-1-205, 75-1-206, 75-1-207 AND 75-1-208, MISSISSIPPI CODE OF 1972, WHICH COMPRISE THE UNIFORM COMMERCIAL CODE ARTICLE 1 - GENERAL PROVISIONS, AND ARE BEING REPLACED BY REVISED ARTICLE 1 - GENERAL PROVISIONS; TO REPEAL SECTION 75-2-208, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE PRACTICAL CONSTRUCTION OF "COURSE OF PERFORMANCE" FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE ARTICLE 2 - SALES, THE SUBSTANCE THEREOF BEING REENACTED IN REVISED ARTICLE 1 - GENERAL PROVISIONS; TO REPEAL SECTION 75-2A-207, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE PRACTICAL CONSTRUCTION OF "COURSE OF PERFORMANCE" FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE ARTICLE 2A - LEASES, THE SUBSTANCE THEREOF BEING REENACTED IN REVISED ARTICLE 1 - GENERAL PROVISIONS; AND FOR RELATED PURPOSES.

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

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

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

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

<u>15-1-81.</u> **Actions on nonnegotiable promissory notes.** (1) An action to enforce the obligations of a party to pay a

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.

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

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

(18) "Fungible goods" means:

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

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

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

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

(21) "Holder" means:

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

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

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

(23) "Insolvent" means:

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

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

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

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

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

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

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

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

(29) "Purchase" means taking by sale, lease, discount, 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.

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

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

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

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

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

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

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

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

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

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

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

(1) Has actual knowledge of it;

(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 application of the code; parties' power to choose applicable law. (a) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement, the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state. However, the law of the State of Mississippi shall always govern the rights and duties of the parties in regard to disclaimers of implied warranties of merchantability or fitness, limitations of remedies for breaches of implied warranties of merchantability or fitness, or the necessity for privity of contract to maintain a civil action for breach of implied warranties of merchantability or fitness notwithstanding any agreement by the parties that the

laws of some other state or nation shall govern the rights and duties of the parties.

(b) Where one (1) of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods (Section 75-2-402).

Applicability of the Article on Leases (Sections 75-2A-105 and 75-2A-106).

Applicability of the Article on Bank Deposits and Collections (Section 75-4-102).

Governing law in the Article on Funds Transfers (Section 75-4A-507).

Letters of credit (Section 75-5-116).

Applicability of the Article on Investment Securities (Section 75-8-110).

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens (Sections 75-9-301 through 75-9-307).

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

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

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

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

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

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

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

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

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

Section 75-1-305. Remedies to be liberally administered. (a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

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

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

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

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

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

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

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

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

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

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

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

(b) [Reserved]

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

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

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

"Acceptance"	Section 75-2-606
"Banker's credit"	Section 75-2-325
"Between merchants"	Section 75-2-104
"Cancellation"	Section 75-2-106(4)
"Commercial unit"	Section 75-2-105
"Confirmed credit"	Section 75-2-325
"Conforming to contract"	Section 75-2-106
"Contract for sale"	Section 75-2-106
"Cover"	Section 75-2-712
"Entrusting"	Section 75-2-403
"Financing agency"	Section 75-2-104
"Future goods"	Section 75-2-105
"Goods"	Section 75-2-105
"Identification"	Section 75-2-501
"Installment contract"	Section 75-2-612
"Letter of Credit"	Section 75-2-325

"Lot"	Section 75-2-105
"Merchant"	Section 75-2-104
"Overseas"	Section 75-2-323
"Person in position of seller"	Section 75-2-707
"Present sale"	Section 75-2-106
"Sale"	Section 75-2-106
"Sale on approval"	Section 75-2-326
"Sale or return"	Section 75-2-326
"Termination"	Section 75-2-106

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

"Check"	Section 75-3-104
"Consignee"	Section 75-7-102
"Consignor"	Section 75-7-102
"Consumer goods"	Section 75-9-102
"Control"	Section 75-7-106
"Dishonor"	Section 75-3-502
"Draft"	Section 75-3-104

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

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

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

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance 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 75-2A-103, Mississippi Code of 1972, is amended as follows:

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

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest

or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and 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, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises

and warranties, including any disclaimers and limitations of them or of remedies.

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

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

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

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

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

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

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

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

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

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

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

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

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

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into;

otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

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

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

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

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

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

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

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

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

"Account"	Section 75-9-102(a)(2)
"Between merchants"	Section 75-2-104(3)
"Buyer"	Section 75-2-103(1)(a)
"Chattel paper"	Section 75-9-102(a)(11)
"Consumer goods"	Section 75-9-102(a)(23)
"Document"	Section 75-9-102(a)(30)
"Entrusting"	Section 75-2-403(3)

"General intangible"	Section 75-9-102(a)(42)

* * *

"Instrument"	Section 75-9-102(a)(47)
"Merchant"	Section 75-2-104(1)
"Mortgage"	Section 75-9-102(a)(55)
"Pursuant to commitment"	Section 75-9-102(a)(68)
"Receipt"	Section 75-2-103(1)(c)
"Sale"	Section 75-2-106(1)
"Sale on approval"	Section 75-2-326
"Sale or return"	Section 75-2-326
"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 8. 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 9. 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 10. 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 value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

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

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

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential

damages, less expenses saved in consequence of the lessor's default or breach of warranty.

SECTION 11. Section 75-2A-527, Mississippi Code of 1972, is amended as follows:

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

(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 the disposition is by 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 lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, 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, and (iii) any incidental damages allowed under Section 75-2A-530, less expenses saved in consequence of the lessee's default.

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

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

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

SECTION 12. Section 75-2A-528, Mississippi Code of 1972, is amended as follows:

75-2A-528. (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 lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 75-2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 75-2A-523(1) or 75-2A-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under Section

75-2A-530, less expenses saved in consequence of the lessee's default.

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

SECTION 13. Section 75-3-103, Mississippi Code of 1972, is amended as follows:

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

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

(2) [Reserved]

(3) [Reserved]

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

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

(6) [Reserved]

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

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

(9) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with

respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or Chapter 4.

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

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

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

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

(14) [Reserved]

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

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

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

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

"Acceptance"	Section 75-3-409
"Accommodated party"	Section 75-3-419
"Accommodation party"	Section 75-3-419
"Account"	Section 75-4-104
"Alteration"	Section 75-3-407
"Anomalous indorsement"	Section 75-3-205
"Blank indorsement"	Section 75-3-205
"Cashier's check"	Section 75-3-104
"Certificate of deposit"	Section 75-3-104
"Certified check"	Section 75-3-409
"Check"	Section 75-3-104
"Consideration"	Section 75-3-303
"Draft"	Section 75-3-104
"Holder in due course"	Section 75-3-302
"Incomplete instrument"	Section 75-3-115
"Indorsement"	Section 75-3-204
"Indorser"	Section 75-3-204
"Instrument"	Section 75-3-104
"Issue"	Section 75-3-105
"Issuer"	Section 75-3-105
"Negotiable instrument"	Section 75-3-104
"Negotiation"	Section 75-3-201
"Note"	Section 75-3-104
"Payable at a definite time"	Section 75-3-108
"Payable on demand"	Section 75-3-108
"Payable to bearer"	Section 75-3-109
"Payable to order"	Section 75-3-109
"Payment"	Section 75-3-602
"Person entitled to enforce"	Section 75-3-301
"Presentment"	Section 75-3-501
"Reacquisition"	Section 75-3-207

"Special indorsement"	Section 75-3-205
"Teller's check"	Section 75-3-104
"Transfer of instrument"	Section 75-3-203
"Traveler's check"	Section 75-3-104
"Value"	Section 75-3-303

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

* * *

"Banking day"	Section 75-4-104
"Clearinghouse"	Section 75-4-104
"Collecting bank"	Section 75-4-105
"Depositary bank"	Section 75-4-105
"Documentary draft"	Section 75-4-104
"Intermediary bank"	Section 75-4-105
"Item"	Section 75-4-104
"Payor bank"	Section 75-4-105
"Suspends payments"	Section 75-4-104

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

SECTION 14. Section 75-3-106, Mississippi Code of 1972, is amended as follows:

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

(b) A promise or order is not made conditional (i) by a reference to another record for a statement of rights with respect

to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Section 75-3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

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

SECTION 15. Section 75-3-116, Mississippi Code of 1972, is amended as follows:

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

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

* * *

SECTION 16. Section 75-3-119, Mississippi Code of 1972, is amended as follows:

75-3-119. In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or Chapter 4, the defendant may give the third person * * * notice of 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 17. 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 defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

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

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

SECTION 18. 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.

SECTION 19. Section 75-3-312, Mississippi Code of 1972, is amended as follows:

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

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

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

(3) "Declaration of loss" means a * * * statement, made in a record under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the

drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check 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.

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

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

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

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check.

Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

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

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

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

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a 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 20. 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 21. 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;

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

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which 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) A person to whom the warranties under subsection (a) are made and who took the instrument 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 instrument plus expenses and loss of interest incurred as a result of the breach.

(c) 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 liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

SECTION 22. Section 75-3-417, Mississippi Code of 1972, is amended as follows:

75-3-417. (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 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 75-4-406 from asserting against the drawee the unauthorized indorsement or alteration. If a drawee asserts a claim for breach of warranty under subsection (a)(4), the warrantor may defend by proving that the person on whose account the remotely created check is drawn is precluded under Section 75-4-406, as applicable, from asserting against the drawee the unauthorized issuance of the check.

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

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good

faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

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

(e) The warranties stated in subsections (a) and (d) 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 liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

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

SECTION 23. Section 75-3-419, Mississippi Code of 1972, is amended as follows:

75-3-419. (a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring 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 24. 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 made in a record, a transferee shall seasonably furnish reasonable proof that the note has been transferred.

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

SECTION 25. Section 75-3-604, Mississippi Code of 1972, is amended as follows:

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

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

(c) 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, sound, or process with the present intent to adopt or accept the record.

SECTION 26. Section 75-3-605, Mississippi Code of 1972, is amended as follows:

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

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

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

(3) If the secondary obligor is not discharged under paragraph (2), the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the

extent that the release would otherwise cause the secondary obligor a loss.

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

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

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

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

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

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

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

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

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

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

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

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not

ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

SECTION 27. Section 75-4-104, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Agreement for electronic presentment"	Section 75-4-110

* * *

"Collecting bank"	Section 75-4-105
"Depositary bank"	Section 75-4-105
"Intermediary bank"	Section 75-4-105
"Payor bank"	Section 75-4-105
"Presenting bank"	Section 75-4-105
"Presentment notice"	Section 75-4-110

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

"Acceptance"	Section 75-3-409
"Alteration"	Section 75-3-407
"Cashier's check"	Section 75-3-104
"Certificate of deposit"	Section 75-3-104

"Certified check"	Section 75-3-409
"Check"	Section 75-3-104
"Control"	Section 75-7-106

* * *

"Holder in due course"	Section 75-3-302
"Instrument"	Section 75-3-104
"Notice of dishonor"	Section 75-3-503
"Order"	Section 75-3-103
"Ordinary care"	Section 75-3-103
"Person entitled to enforce"	Section 75-3-301
"Presentment"	Section 75-3-501
"Promise"	Section 75-3-103
"Prove"	Section 75-3-103
"Remotely created check"	Section 75-3-103
"Teller's check"	Section 75-3-104
"Unauthorized signature"	Section 75-3-403

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

SECTION 28. 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) "Depositary 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 depositary 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 29. 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 30. 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 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 75-4-406 from asserting against the drawee the unauthorized indorsement or alteration. If a drawee asserts a claim for breach of warranty under subsection (a)(4), the warrantor may defend by proving that the person on whose account the remotely created check is drawn is precluded under Section 75-4-406, as applicable, from asserting against the drawee the unauthorized issuance of the check.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the

item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) 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.

(f) 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 75-4-212, Mississippi Code of 1972, is amended as follows:

75-4-212. (a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day 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 32. 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:

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

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

SECTION 33. Section 75-4-403, Mississippi Code of 1972, is amended as follows:

75-4-403. (a) A customer or any person authorized to draw on the account if there is more than one (1) person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 75-4-303. If the signature of more than one (1) person is required to draw on an account, any of these persons may stop payment or close the account.

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

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

SECTION 34. Section 75-4A-105, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

(6) [Reserved]

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

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

"Acceptance"	Section 75-4A-209
"Beneficiary"	Section 75-4A-103
"Beneficiary's bank"	Section 75-4A-103
"Executed"	Section 75-4A-301
"Execution date"	Section 75-4A-301
"Funds transfer"	Section 75-4A-104
"Funds-transfer system rule"	Section 75-4A-501
"Intermediary bank"	Section 75-4A-104
"Originator"	Section 75-4A-104
"Originator's bank"	Section 75-4A-104
"Payment by beneficiary's bank to beneficiary"	Section 75-4A-405

"Payment by originator to beneficiary"	Section 75-4A-406
"Payment by sender to receiving bank"	Section 75-4A-403
"Payment date"	Section 75-4A-401
"Payment order"	Section 75-4A-103
"Receiving bank"	Section 75-4A-103
"Security procedure"	Section 75-4A-201
"Sender"	Section 75-4A-103

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

"Clearinghouse"	Section 75-4-104
"Item"	Section 75-4-104
"Suspends payments"	Section 75-4-104

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

SECTION 35. Section 75-4A-106, Mississippi Code of 1972, is amended as follows:

75-4A-106. (a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 75-1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the

receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

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

SECTION 36. Section 75-4A-204, Mississippi Code of 1972, is amended as follows:

75-4A-204. (a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 75-4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 75-4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the date the customer received notification from the bank that the order was 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 37. 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.

SECTION 38. Section 75-7-102, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

(6) [Reserved]

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

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

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

(10) [Reserved]

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

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

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

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

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

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

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

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

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

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

SECTION 39. Section 75-8-102, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

(5) "Clearing corporation" means:

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

(ii) A federal reserve bank; or

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

(6) "Communicate" means to:

(i) Send a signed writing; or

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

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

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

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

(i) A security;

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

(iii) Any property that is held by a securities intermediary for another person in a securities account if the

securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter. As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) [Reserved]

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

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

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

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

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

(14) "Securities intermediary" means:

(i) A clearing corporation; or

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

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

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

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

(iii) Which:

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

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

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

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

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

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

Appropriate person	Section 75-8-107
Control	Section 75-8-106
Delivery	Section 75-8-301
Investment company security	Section 75-8-103
Issuer	Section 75-8-201
Overissue	Section 75-8-210
Protected purchaser	Section 75-8-303
Securities account	Section 75-8-501

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

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

SECTION 40. Section 75-9-102, Mississippi Code of 1972, is amended as follows:

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

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

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

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not

include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

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

(A) Authenticated by a secured party;

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

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

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

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

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

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

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

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

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

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

(6) "As-extracted collateral" means:

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

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

(ii) Attaches to the minerals as extracted; or

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

(7) "Authenticate" means:

(A) To sign; or

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

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

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

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

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records 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. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

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

(A) Proceeds to which a security interest attaches;

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

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

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

(A) The claimant is an organization; or

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

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

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

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

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

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

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

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

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

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

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

(18) "Communicate" means:

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

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

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

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

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

(A) The merchant:

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

(ii) Is not an auctioneer; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) "Debtor" means:

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

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

(C) A consignee.

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

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

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

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

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

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

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

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

(ii) Aquatic goods produced in aquacultural operations;

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

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

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

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

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

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

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

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

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

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

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

(43) [Reserved]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv)

crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, (v) farm-raised fish produced in fresh water according to the usual and customary techniques of commercial agriculture, (vi) manufactured homes and (vii) marine vessels (herein defined as every type of watercraft used, or capable of being used, as a means of transportation on water) including both marine vessels under construction, including engines and all items of equipment installed or to be installed therein, whether such vessels are being constructed by the shipbuilder for his own use or for sale (said vessels under construction being classified as inventory within the meaning of Section 75-9-102(48)), and marine vessels after completion of construction so long as such vessels have not become "vessels of the United States" within the meaning of the Ship Mortgage Act of 1920, 46 USCS, Section 911(4), as same is now written or may hereafter be amended (said completed vessels being classified as equipment within the meaning of Section 75-9-102(33)). The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state, or a foreign country.

The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

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

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) 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.

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

(A) Are leased by a person as lessor;

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

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

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

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

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

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

(52) "Lien creditor" means:

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

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

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

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

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

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

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

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

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

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

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

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

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

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

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

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

(A) The spouse of the individual;

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

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

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

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

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

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

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

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

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

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

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

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

(C) Rights arising out of collateral;

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

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

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

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

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

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

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

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

(A) Debt securities are issued;

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

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

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

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

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

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

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

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

(72) "Secured party" means:

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

(B) A person that holds an agricultural lien;

(C) A consignor;

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

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

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

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

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

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

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

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

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

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or

performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

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

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

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

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

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

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

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

(C) Transmitting goods by pipeline or sewer; or

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

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

"Applicant"	Section 75-5-102
"Beneficiary"	Section 75-5-102
"Broker"	Section 75-8-102
"Certificated security"	Section 75-8-102
"Check"	Section 75-3-104
"Clearing corporation"	Section 75-8-102
"Contract for sale"	Section 75-2-106
"Control"	Section 75-7-106
"Customer"	Section 75-4-104
"Entitlement holder"	Section 75-8-102

"Financial asset"	Section 75-8-102
"Holder in due course"	Section 75-3-302
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 75-5-102
"Issuer" (with respect to a security)	Section 75-8-201
"Issuer" (with respect to documents of title)	Section 75-7-102
"Lease"	Section 75-2A-103
"Lease agreement"	Section 75-2A-103
"Lease contract"	Section 75-2A-103
"Leasehold interest"	Section 75-2A-103
"Lessee"	Section 75-2A-103
"Lessee in ordinary course of business"	Section 75-2A-103
"Lessor"	Section 75-2A-103
"Lessor's residual interest"	Section 75-2A-103
"Letter of credit"	Section 75-5-102
"Merchant"	Section 75-2-104
"Negotiable instrument"	Section 75-3-104
"Nominated person"	Section 75-5-102
"Note"	Section 75-3-104
"Proceeds of a letter of credit"	Section 75-5-114
"Prove"	Section 75-3-103
"Sale"	Section 75-2-106
"Securities account"	Section 75-8-501
"Securities intermediary"	Section 75-8-102
"Security"	Section 75-8-102
"Security certificate"	Section 75-8-102
"Security entitlement"	Section 75-8-102
"Uncertificated security"	Section 75-8-102

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

SECTION 41. The following shall be codified as Section 79-13-505, Mississippi Code of 1972:

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

SECTION 42. The following shall be codified as Section 79-14-706, Mississippi Code of 1972:

79-14-706. **Enforceability of limitations on assignments of limited partnership interests.** Sections 75-9-406 and 75-9-408 do not apply to a limited partnership interest in a limited partnership formed under the laws of Mississippi, including the rights, powers and interests arising under the certificate of limited partnership or limited partnership agreement or under this chapter. To the extent of any conflict or inconsistency between this section and Sections 75-9-406 and 75-9-408, this section prevails. It is the express intent of this section to permit the enforcement, as a contract among the partners of a limited partnership, of any provision of a limited partnership agreement that would otherwise be ineffective under Sections 75-9-406 and 75-9-408.

SECTION 43. The following shall be codified as Section 1-3-81, Mississippi Code of 1972:

1-3-81. (1) "Caption" means the words used to describe the substance of a title, chapter, article, subarticle, part or section of the Mississippi Code of 1972.

(2) Captions shall not constitute a part of the Mississippi Code of 1972 unless specifically so provided by law.

(3) The wording of captions that are not specifically provided to constitute law shall be editorial in nature and may be revised by a publisher of the code as the publisher deems appropriate. There shall be no exclusive right in any publisher of the code to the use of a caption that has appeared in any bill that is approved by the Governor, has become law without the Governor's signature, or is approved by the Legislature subsequent to a veto; captions that have appeared in such a bill shall be subject to editorial revision without legislative action.

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

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

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

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

PASSED BY THE SENATE
March 26, 2010

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 25, 2010

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

4/13/10 5:06pm