

House Bill 1240 (COMMITTEE SUBSTITUTE)

By: Representatives Reeves of the 99th, Gunter of the 8th, Leverett of the 123rd, Oliver of the 82nd, Evans of the 57th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 11 of the Official Code of Georgia Annotated, relating to the commercial
2 code, so as to update and modernize various statutes in the commercial code relating to
3 commercial transactions in order to maintain uniformity in this state's statutes governing
4 commercial transactions as recommended by the National Conference of Commissioners on
5 Uniform State Laws; to establish commercial law for transactions involving digital assets;
6 to provide for a short title; to renumber Article 12 as Article 13; to add a new Article 12 to
7 the commercial code pertaining to controllable electronic records; to add a new Article 12A
8 pertaining to transitional provisions; to make conforming amendments; to provide that
9 nothing in this Act shall be construed to support, endorse, create, or implement a national
10 digital currency; to provide for related matters; to repeal conflicting laws; and for other
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 1240 (SUB)

13 **PART I**
14 **SHORT TITLE**
15 **SECTION 1-1.**

16 This Act shall be known and may be cited as the "Uniform Commercial Code Modernization
17 Act of 2024."

18 **SECTION 1-2.**

19 Nothing in this Act shall be construed to support, endorse, create, or implement a national
20 digital currency.

21 **PART II**
22 **RENUMBERING OF EXISTING ARTICLE 12 TO THE COMMERCIAL CODE**
23 **SECTION 2-1.**

24 Title 11 of the Official Code of Georgia Annotated, relating to the commercial code, is
25 amended by renumbering Article 12 as Article 13, by renumbering Code Section 11-12-101
26 as Code Section 11-13-101, and by renumbering Code Section 11-12-102 as Code Section
27 11-13-102.

28 **PART III**
29 **ADOPTION OF ARTICLE 12 TO THE COMMERCIAL CODE**
30 **SECTION 3-1.**

31 Said title is further amended by adopting a new Article 12, relating to controllable electronic
32 records, as follows:

33 "ARTICLE 12

34 CONTROLLABLE ELECTRONIC RECORDS

35 11-12-101. Short title.

36 This article shall be known and may be cited as the 'Uniform Commercial Code —
37 Controllable Electronic Records.'

38 11-12-102. Definitions.

39 (a) Article 12 definitions. As used in this article, the term:

40 (1) 'Controllable electronic record' means a record stored in an electronic medium that
41 can be subjected to control under Code Section 11-12-105. The term does not include a
42 controllable account, a controllable payment intangible, a deposit account, an electronic
43 copy of a record evidencing chattel paper, an electronic document of title, electronic
44 money, investment property, or a transferable record.

45 (2) 'Qualifying purchaser' means a purchaser of a controllable electronic record or an
46 interest in a controllable electronic record that obtains control of the controllable
47 electronic record for value, in good faith, and without notice of a claim of a property right
48 in the controllable electronic record.

49 (3) 'Transferable record' has the meaning provided for that term in:

50 (A) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce
51 Act, 15 U.S.C. Section 7021(a)(1), as amended; or

52 (B) Subsection (a) of Code Section 10-12-16.

53 (4) 'Value' has the meaning provided in subsection (a) of Code Section 11-3-303, as if
54 references in that subsection to an 'instrument' were references to a controllable account,
55 controllable electronic record, or controllable payment intangible.

56 (b) **Definitions in Article 9.** The definitions in Article 9 of this title of 'account debtor,'
57 'controllable account,' 'controllable payment intangible,' 'chattel paper,' 'deposit account,'
58 'electronic money,' and 'investment property' apply to this article.

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

61 11-12-103. **Relation to Article 9 and consumer laws.**

62 (a) **Article 9 of this title governs in case of conflict.** If there is conflict between this
63 article and Article 9 of this title, Article 9 of this title governs.

64 (b) **Applicable consumer law and other laws.** A transaction subject to this article is
65 subject to any applicable rule of law that establishes a different rule for consumers and to
66 any other statute or regulation of this state that regulates the rates, charges, agreements, and
67 practices for loans, credit sales, or other extensions of credit, and to any consumer
68 protection statute or regulation of this state.

69 11-12-104. **Rights in controllable account, controllable electronic record, and**
70 **controllable payment intangible.**

71 (a) **Applicability of section to controllable account and controllable payment**
72 **intangible.** This Code section applies to the acquisition and purchase of rights in a
73 controllable account or controllable payment intangible, including the rights and benefits
74 under subsections (c), (d), (e), (g), and (h) of this Code section of a purchaser and
75 qualifying purchaser, in the same manner this Code section applies to a controllable
76 electronic record.

77 (b) **Control of controllable account and controllable payment intangible.** To
78 determine whether a purchaser of a controllable account or a controllable payment
79 intangible is a qualifying purchaser, the purchaser obtains control of the account or

80 payment intangible if it obtains control of the controllable electronic record that evidences
81 the account or payment intangible.

82 (c) **Applicability of other law to acquisition of rights.** Except as provided in this Code
83 section, law other than this article determines whether a person acquires a right in a
84 controllable electronic record and the right the person acquires.

85 (d) **Shelter principle and purchase of limited interest.** A purchaser of a controllable
86 electronic record acquires all rights in the controllable electronic record that the transferor
87 had or had power to transfer, except that a purchaser of a limited interest in a controllable
88 electronic record acquires rights only to the extent of the interest purchased.

89 (e) **Rights of qualifying purchaser.** A qualifying purchaser acquires its rights in the
90 controllable electronic record free of a claim of a property right in the controllable
91 electronic record.

92 (f) **Limitation of rights of qualifying purchaser in other property.** Except as provided
93 in subsections (a) and (e) of this Code section for a controllable account and a controllable
94 payment intangible or law other than this article, a qualifying purchaser takes a right to
95 payment, right to performance, or other interest in property evidenced by the controllable
96 electronic record subject to a claim of a property right in the right to payment, right to
97 performance, or other interest in property.

98 (g) **No-action protection for qualifying purchaser.** An action may not be asserted
99 against a qualifying purchaser based on both a purchase by the qualifying purchaser of a
100 controllable electronic record and a claim of a property right in another controllable
101 electronic record, whether the action is framed in conversion, replevin, constructive trust,
102 equitable lien, or other theory.

103 (h) **Filing not notice.** Filing of a financing statement under Article 9 of this title is not
104 notice of a claim of a property right in a controllable electronic record.

105 11-12-105. Control of controllable electronic record.

106 (a) General rule: control of controllable electronic record. A person has control of a
107 controllable electronic record if the electronic record, a record attached to or logically
108 associated with the electronic record, or a system in which the electronic record is
109 recorded:

110 (1) Gives the person:

111 (A) Power to avail itself of substantially all the benefit from the electronic record; and

112 (B) Exclusive power, subject to subsection (b) of this Code section, to:

113 (i) Prevent others from availing themselves of substantially all the benefit from the
114 electronic record; and

115 (ii) Transfer control of the electronic record to another person or cause another
116 person to obtain control of another controllable electronic record as a result of the
117 transfer of the electronic record; and

118 (2) Enables the person readily to identify itself in any way, including by name,
119 identifying number, cryptographic key, office, or account number, as having the powers
120 specified in paragraph (1) of this subsection.

121 (b) **Meaning of exclusive.** Subject to subsection (c) of this Code section, a power is
122 exclusive under subparagraphs (a)(1)(B)(i) and (a)(1)(B)(ii) of this Code section even if:

123 (1) The controllable electronic record, a record attached to or logically associated with
124 the electronic record, or a system in which the electronic record is recorded limits the use
125 of the electronic record or has a protocol programmed to cause a change, including a
126 transfer or loss of control or a modification of benefits afforded by the electronic record;
127 or

128 (2) The power is shared with another person.

129 (c) **When power not shared with another person.** A power of a person is not shared
130 with another person under paragraph (2) of subsection (b) of this Code section and the
131 person's power is not exclusive if:

132 (1) The person can exercise the power only if the power also is exercised by the other
133 person; and

134 (2) The other person:

135 (A) Can exercise the power without exercise of the power by the person; or

136 (B) Is the transferor to the person of an interest in the controllable electronic record or
137 a controllable account or controllable payment intangible evidenced by the controllable
138 electronic record.

139 (d) **Presumption of exclusivity of certain powers.** If a person has the powers specified
140 in subparagraphs (a)(1)(B)(i) and (a)(1)(B)(ii) of this Code section, the powers are
141 presumed to be exclusive.

142 (e) **Control through another person.** A person has control of a controllable electronic
143 record if another person, other than the transferor to the person of an interest in the
144 controllable electronic record or a controllable account or controllable payment intangible
145 evidenced by the controllable electronic record:

146 (1) Has control of the electronic record and acknowledges that it has control on behalf
147 of the person; or

148 (2) Obtains control of the electronic record after having acknowledged that it will obtain
149 control of the electronic record on behalf of the person.

150 (f) **No requirement to acknowledge.** A person that has control under this Code section
151 is not required to acknowledge that it has control on behalf of another person.

152 (g) **No duties or confirmation.** If a person acknowledges that it has or will obtain control
153 on behalf of another person, unless the person otherwise agrees or law other than this
154 article or Article 9 of this title otherwise provides, the person does not owe any duty to the
155 other person and is not required to confirm the acknowledgment to any other person.

156 11-12-106. Discharge of account debtor on controllable account or controllable
157 payment intangible.

158 (a) Discharge of account debtor. An account debtor on a controllable account or
159 controllable payment intangible may discharge its obligation by paying:

160 (1) The person having control of the controllable electronic record that evidences the
161 controllable account or controllable payment intangible; or

162 (2) Except as provided in subsection (b) of this Code section, a person that formerly had
163 control of the controllable electronic record.

164 (b) Content and effect of notification. Subject to subsection (d) of this Code section, the
165 account debtor may not discharge its obligation by paying a person that formerly had
166 control of the controllable electronic record if the account debtor receives a notification
167 that:

168 (1) Is signed by a person that formerly had control or the person to which control was
169 transferred;

170 (2) Reasonably identifies the controllable account or controllable payment intangible;

171 (3) Notifies the account debtor that control of the controllable electronic record that
172 evidences the controllable account or controllable payment intangible was transferred;

173 (4) Identifies the transferee, in any reasonable way, including by name, identifying
174 number, cryptographic key, office, or account number; and

175 (5) Provides a commercially reasonable method by which the account debtor is to pay
176 the transferee.

177 (c) Discharge following effective notification. After receipt of a notification that
178 complies with subsection (b) of this Code section, the account debtor may discharge its
179 obligation by paying in accordance with the notification and may not discharge the
180 obligation by paying a person that formerly had control.

181 (d) When notification ineffective. Subject to subsection (h) of this Code section,
182 notification is ineffective under subsection (b) of this Code section:

183 (1) Unless, before the notification is sent, the account debtor and the person that, at that
184 time, had control of the controllable electronic record that evidences the controllable
185 account or controllable payment intangible agree in a signed record to a commercially
186 reasonable method by which a person may furnish reasonable proof that control has been
187 transferred;

188 (2) To the extent an agreement between the account debtor and seller of a payment
189 intangible limits the account debtor's duty to pay a person other than the seller and the
190 limitation is effective under law other than this article; or

191 (3) At the option of the account debtor, if the notification notifies the account debtor to:

192 (A) Divide a payment;

193 (B) Make less than the full amount of an installment or other periodic payment; or

194 (C) Pay any part of a payment by more than one method or to more than one person.

195 (e) **Proof of transfer of control.** Subject to subsection (h) of this Code section, if
196 requested by the account debtor, the person giving the notification under subsection (b) of
197 this Code section seasonably shall furnish reasonable proof, using the method in the
198 agreement referred to in paragraph (1) of subsection (d) of this Code section, that control
199 of the controllable electronic record has been transferred. Unless the person complies with
200 the request, the account debtor may discharge its obligation by paying a person that
201 formerly had control, even if the account debtor has received a notification under
202 subsection (b) of this Code section.

203 (f) **What constitutes reasonable proof.** A person furnishes reasonable proof under
204 subsection (e) of this Code section that control has been transferred if the person
205 demonstrates, using the method in the agreement referred to in paragraph (1) of
206 subsection (d) of this Code section, that the transferee has the power to:

207 (1) Avail itself of substantially all the benefit from the controllable electronic record;

208 (2) Prevent others from availing themselves of substantially all the benefit from the
209 controllable electronic record; and

210 (3) Transfer the powers specified in paragraphs (1) and (2) of this subsection to another
211 person.

212 (g) **Rights not waivable.** Subject to subsection (h) of this Code section, an account debtor
213 may not waive or vary its rights under paragraph (1) of subsection (d) of this Code section
214 and subsection (e) of this Code section or its option under paragraph (3) of subsection (d)
215 of this Code section.

216 (h) **Rule for individual under other law.** This Code section is subject to law other than
217 this article which establishes a different rule for an account debtor who is an individual and
218 who incurred the obligation primarily for personal, family, or household purposes.

219 11-12-107. **Governing law.**

220 (a) **Governing law: general rule.** Except as provided in subsection (b) of this Code
221 section, the local law of a controllable electronic record's jurisdiction governs a matter
222 covered by this article.

223 (b) **Governing law: Code Section 11-12-106.** For a controllable electronic record that
224 evidences a controllable account or controllable payment intangible, the local law of the
225 controllable electronic record's jurisdiction governs a matter covered by Code
226 Section 11-12-106 unless an effective agreement determines that the local law of another
227 jurisdiction governs.

228 (c) **Controllable electronic record's jurisdiction.** The following rules determine a
229 controllable electronic record's jurisdiction under this Code section:

230 (1) If the controllable electronic record, or a record attached to or logically associated
231 with the controllable electronic record and readily available for review, expressly
232 provides that a particular jurisdiction is the controllable electronic record's jurisdiction
233 for purposes of this article or this title, that jurisdiction is the controllable electronic
234 record's jurisdiction;

235 (2) If paragraph (1) of this subsection does not apply and the rules of the system in which
236 the controllable electronic record is recorded are readily available for review and
237 expressly provide that a particular jurisdiction is the controllable electronic record's
238 jurisdiction for purposes of this article or this title, that jurisdiction is the controllable
239 electronic record's jurisdiction;

240 (3) If paragraphs (1) and (2) of this subsection do not apply and the controllable
241 electronic record, or a record attached to or logically associated with the controllable
242 electronic record and readily available for review, expressly provides that the controllable
243 electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the
244 controllable electronic record's jurisdiction;

245 (4) If paragraphs (1), (2), and (3) of this subsection do not apply and the rules of the
246 system in which the controllable electronic record is recorded are readily available for
247 review and expressly provide that the controllable electronic record or the system is
248 governed by the law of a particular jurisdiction, that jurisdiction is the controllable
249 electronic record's jurisdiction; and

250 (5) If paragraphs (1) through (4) of this subsection do not apply, the controllable
251 electronic record's jurisdiction is the District of Columbia.

252 (d) **Applicability of Article 12.** If paragraph (5) of subsection (c) of this Code section
253 applies and Article 12 is not in effect in the District of Columbia without material
254 modification, the governing law for a matter covered by this article is the law of the District
255 of Columbia as though Article 12 were in effect in the District of Columbia without
256 material modification. In this subsection, the term 'Article 12' means Article 12 of Uniform
257 Commercial Code Amendments (2022).

258 (e) **Relation of matter or transaction to controllable electronic record's jurisdiction**
259 **not necessary.** To the extent subsections (a) and (b) of this Code section provide that the
260 local law of the controllable electronic record's jurisdiction governs a matter covered by

261 this article, that law governs even if the matter or a transaction to which the matter relates
262 does not bear any relation to the controllable electronic record's jurisdiction.
263 (f) Rights of purchasers determined at time of purchase. The rights acquired under
264 Code Section 11-12-104 by a purchaser or qualifying purchaser are governed by the law
265 applicable under this Code section at the time of purchase."

266 **PART IV**
267 **ADOPTION OF ARTICLE 12A TO THE COMMERCIAL CODE**
268 **SECTION 4-1.**

269 Said title is further amended by adopting a new Article 12A, relating to transitional
270 provisions for Uniform Commercial Code Amendments, as follows:

271 "ARTICLE 12A
272 TRANSITIONAL PROVISIONS
273 FOR UNIFORM COMMERCIAL CODE AMENDMENTS

274 Part 1
275 General Provisions and Definitions

276 11-12A-101. Title.
277 This article shall be known and may be cited as 'Transitional Provisions for Uniform
278 Commercial Code Amendments (2024).'

279 11-12A-102. Definitions.
280 (a) Article 12A Definitions. In this article:
281 (1) 'Adjustment date' means July 1, 2025.

282 (2) 'Article 12' means Article 12 of this title.

283 (3) 'Article 12 property' means a controllable account, controllable electronic record, or
284 controllable payment intangible.

285 (b) **Definitions in other articles.** The following definitions in other articles of this title
286 apply to this article:

287 'Controllable account.' Code Section 11-9-102.

288 'Controllable electronic record.' Code Section 11-12-102.

289 'Controllable payment intangible.' Code Section 11-9-102.

290 'Electronic money.' Code Section 11-9-102.

291 'Financing statement.' Code Section 11-9-102.

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

294 Part 2

295 General Transitional Provisions

296 11-12A-201. **Saving clause.**

297 Except as provided in Part 3 of this article, a transaction validly entered into before July
298 1, 2024, and the rights, duties, and interests flowing from the transaction remain valid
299 thereafter and may be terminated, completed, consummated, or enforced as required or
300 permitted by law other than this title or, if applicable, this title, as though the Uniform
301 Commercial Code Modernization Act of 2024 had not taken effect.

302 Part 3

303 Transitional Provisions for Articles 9 and 12

304 11-12A-301. Saving clause.

305 (a) Pre-effective date transaction, lien, or interest. Except as provided in this part,
306 Article 9 of this title as amended by the Uniform Commercial Code Modernization Act of
307 2024 and Article 12 of this title apply to a transaction, lien, or other interest in property,
308 even if the transaction, lien, or interest was entered into, created, or acquired before July
309 1, 2024.

310 (b) Continuing validity. Except as provided in subsection (c) of this Code section and
311 Code Sections 11-12A-302 through 11-12A-306:

312 (1) A transaction, lien, or interest in property that was validly entered into, created, or
313 transferred before July 1, 2024, and was not governed by this title, but would be subject
314 to Article 9 of this title as amended by the Uniform Commercial Code Modernization Act
315 of 2024 or Article 12 of this title if it had been entered into, created, or transferred on or
316 after July 1, 2024, including the rights, duties, and interests flowing from the transaction,
317 lien, or interest, remains valid on and after July 1, 2024; and

318 (2) The transaction, lien, or interest may be terminated, completed, consummated, and
319 enforced as required or permitted by the Uniform Commercial Code Modernization Act
320 of 2024 or by the law that would apply if the Uniform Commercial Code Modernization
321 Act of 2024 had not taken effect.

322 (c) Pre-effective date proceeding. The Uniform Commercial Code Modernization Act
323 of 2024 does not affect an action, case, or proceeding commenced before July 1, 2024.

324 11-12A-302. Security interest perfected before effective date.

325 (a) Continuing perfection: perfection requirements satisfied. A security interest that
326 is enforceable and perfected immediately before July 1, 2024, is a perfected security

327 interest under the Uniform Commercial Code Modernization Act of 2024, if, on July 1,
328 2024, the requirements for enforceability and perfection under the Uniform Commercial
329 Code Modernization Act of 2024 are satisfied without further action.

330 **(b) Continuing perfection: enforceability or perfection requirements not satisfied.**

331 If a security interest is enforceable and perfected immediately before July 1, 2024, but the
332 requirements for enforceability or perfection under the Uniform Commercial Code
333 Modernization Act of 2024 are not satisfied on July 1, 2024, the security interest:

334 (1) Is a perfected security interest until the earlier of the time perfection would have
335 ceased under the law in effect immediately before July 1, 2024, or the adjustment date;

336 (2) Remains enforceable thereafter only if the security interest satisfies the requirements
337 for enforceability under Code Section 11-9-203, as amended by the Uniform Commercial
338 Code Modernization Act of 2024, before the adjustment date; and

339 (3) Remains perfected thereafter only if the requirements for perfection under the
340 Uniform Commercial Code Modernization Act of 2024 are satisfied before the time
341 specified in paragraph (1) of this subsection.

342 **11-12A-303. Security interest unperfected before effective date.**

343 A security interest that is enforceable immediately before July 1, 2024, but is unperfected
344 at that time:

345 (1) Remains an enforceable security interest until the adjustment date;

346 (2) Remains enforceable thereafter if the security interest becomes enforceable under
347 Code Section 11-9-203, as amended by the Uniform Commercial Code Modernization
348 Act of 2024, on July 1, 2024, or before the adjustment date; and

349 (3) Becomes perfected:

350 (A) Without further action, on July 1, 2024, if the requirements for perfection under
351 the Uniform Commercial Code Modernization Act of 2024 are satisfied before or at that
352 time; or

353 (B) When the requirements for perfection are satisfied if the requirements are satisfied
354 after that time.

355 11-12A-304. Effectiveness of actions taken before effective date.

356 (a) Pre-effective date action; attachment and perfection before adjustment date. If
357 action, other than the filing of a financing statement, is taken before July 1, 2024, and the
358 action would have resulted in perfection of the security interest had the security interest
359 become enforceable before July 1, 2024, the action is effective to perfect a security interest
360 that attaches under the Uniform Commercial Code Modernization Act of 2024 before the
361 adjustment date. An attached security interest becomes unperfected on the adjustment date
362 unless the security interest becomes a perfected security interest under the Uniform
363 Commercial Code Modernization Act of 2024 before the adjustment date.

364 (b) Pre-effective date filing. The filing of a financing statement before July 1, 2024, is
365 effective to perfect a security interest on July 1, 2024, to the extent the filing would satisfy
366 the requirements for perfection under the Uniform Commercial Code Modernization Act
367 of 2024.

368 (c) Pre-effective date enforceability action. The taking of an action before July 1, 2024,
369 is sufficient for the enforceability of a security interest on July 1, 2024, if the action would
370 satisfy the requirements for enforceability under the Uniform Commercial Code
371 Modernization Act of 2024.

372 11-12A-305. Priority.

373 (a) Determination of priority. Subject to subsections (b) and (c) of this Code section, the
374 Uniform Commercial Code Modernization Act of 2024 determines the priority of
375 conflicting claims to collateral.

376 (b) **Established priorities.** Subject to subsection (c) of this Code section, if the priorities
377 of claims to collateral were established before July 1, 2024, Article 9 of this title as in
378 effect before July 1, 2024, determines priority.

379 (c) **Determination of certain priorities on adjustment date.** On the adjustment date, to
380 the extent the priorities determined by Article 9 of this title as amended by the Uniform
381 Commercial Code Modernization Act of 2024 modify the priorities established before July
382 1, 2024, the priorities of claims to Article 12 property and electronic money established
383 before July 1, 2024, cease to apply.

384 11-12A-306. **Priority of claims when priority rules of Article 9 of this title do not**
385 **apply.**

386 (a) **Determination of priority.** Subject to subsections (b) and (c) of this Code section,
387 Article 12 of this title determines the priority of conflicting claims to Article 12 property
388 when the priority rules of Article 9 of this title as amended by the Uniform Commercial
389 Code Modernization Act of 2024 do not apply.

390 (b) **Established priorities.** Subject to subsection (c) of this Code section, when the
391 priority rules of Article 9 of this title as amended by the Uniform Commercial Code
392 Modernization Act of 2024 do not apply and the priorities of claims to Article 12 property
393 were established before July 1, 2024, law other than Article 12 of this title determines
394 priority.

395 (c) **Determination of certain priorities on adjustment date.** When the priority rules of
396 Article 9 of this title as amended by the Uniform Commercial Code Modernization Act of
397 2024 do not apply, to the extent the priorities determined by the Uniform Commercial Code
398 Modernization Act of 2024 modify the priorities established before July 1, 2024, the
399 priorities of claims to Article 12 property established before July 1, 2024, cease to apply
400 on the adjustment date.

401 Part 4
 402 Effective Date

403 11-12A-401. Effective date.
 404 The Uniform Commercial Code Modernization Act of 2024 takes effect on July 1, 2024."

405 **PART V**
 406 **NATIONAL CONFERENCE OF**
 407 **COMMISSIONERS ON UNIFORM STATE LAWS**
 408 **RECOMMENDED CHANGES TO THE COMMERCIAL CODE**
 409 **SECTION 5-1.**

410 Said title is further amended by revising Code Section 11-1-201, relating to general
 411 definitions, as follows:

412 "11-1-201. **General definitions.**

413 (a) Unless the context otherwise requires, words or phrases defined in this Code section,
 414 or in the additional definitions contained in other articles of this title that apply to particular
 415 articles or parts thereof, have the meanings stated.

416 (b) Subject to additional definitions contained in the other articles of this title that are
 417 applicable to specific articles or parts thereof, in this title:

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

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

421 (3) 'Agreement,' as distinguished from 'contract,' means the bargain of the parties in fact
 422 as found in their language or inferred from other circumstances including course of
 423 performance, course of dealing, or usage of trade as provided in Code Section 11-1-303.

- 424 (4) 'Bank' means a person engaged in the business of banking and includes a savings
425 bank, savings and loan association, credit union, or trust company.
- 426 (5) 'Bearer' means a person in control of a negotiable electronic document of title or a
427 person in possession of a negotiable instrument, negotiable tangible document of title, or
428 certificated security that is payable to bearer or indorsed in blank.
- 429 (6) 'Bill of lading' means a document evidencing the receipt of goods for shipment issued
430 by a person engaged in the business of directly or indirectly transporting or forwarding
431 goods. The term does not include a warehouse receipt.
- 432 (7) 'Branch' includes a separately incorporated foreign branch of a bank.
- 433 (8) 'Burden of establishing' a fact means the burden of persuading the trier of fact that
434 the existence of the fact is more probable than its nonexistence.
- 435 (9) 'Buyer in ordinary course of business' means a person that buys goods in good faith
436 without knowledge that the sale violates the rights of another person in the goods, and in
437 the ordinary course from a person, other than a pawnbroker, in the business of selling
438 goods of that kind. A person buys goods in the ordinary course if the sale to the person
439 comports with the usual or customary practices in the kind of business in which the seller
440 is engaged or with the seller's own usual or customary practices. A person that sells oil,
441 gas, or other minerals at the wellhead or minehead is a person in the business of selling
442 goods of that kind. A buyer in the ordinary course of business may buy for cash, by
443 exchange of other property, or on secured or unsecured credit, and may acquire goods or
444 documents of title under a preexisting contract for sale. Only a buyer that takes
445 possession of the goods or has a right to recover the goods from the seller under Article
446 2 of this title may be a buyer in ordinary course of business. A person that acquires
447 goods in a transfer in bulk or as security for or in total or partial satisfaction of a money
448 debt is not a buyer in ordinary course of business.
- 449 (10) 'Conspicuous,' with reference to a term, means so written, displayed, or presented
450 that, based on the totality of the circumstances, a reasonable person against which it is to

451 operate ought to have noticed it. Whether a term is 'conspicuous' or not is a decision for
452 the court. Conspicuous terms include the following:

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

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

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

461 (12) 'Contract,' as distinguished from 'agreement,' means the total legal obligation that
462 results from the parties' agreement as determined by this title and any other applicable
463 law.

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

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

470 (15) 'Delivery,' with respect to an electronic document of title, means voluntary transfer
471 of control and, with respect to an instrument, a tangible document of title, or an
472 authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer
473 of possession.

474 (16) 'Document of title' ~~includes a bill of lading, dock warrant, dock receipt, warehouse~~
475 ~~receipt, or order for delivery of goods and any other document which~~ means a record (A)
476 that in the regular course of business or financing is treated as adequately evidencing that
477 the person in possession or control of it the record is entitled to receive, control, hold, and

478 dispose of the ~~document~~ record and the goods it the record covers. ~~To be a document of~~
 479 ~~title, a document must purport and (B) that purports~~ to be issued by or addressed to a
 480 bailee and ~~purport~~ to cover goods in the bailee's possession which are either identified or
 481 are fungible portions of an identified mass. The term includes a bill of lading, transport
 482 document, dock warrant, dock receipt, warehouse receipt, and order for delivery of
 483 goods. An electronic document of title means a document of title evidenced by a record
 484 consisting of information stored in an electronic medium. A tangible document of title
 485 means a document of title evidenced by a record consisting of information that is
 486 inscribed on a tangible medium.

487 (16.1) 'Electronic' means relating to technology having electrical, digital, magnetic,
 488 wireless, optical, electromagnetic, or similar capabilities.

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

490 (18) 'Fungible goods' means:

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

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

494 (19) 'Genuine' means free of forgery or counterfeiting.

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

497 (21) 'Holder' means:

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

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

502 (C) The person in control, other than pursuant to subsection (g) of Code Section
 503 11-7-106, of a negotiable electronic document of title.

504 (22) 'Insolvency proceeding' includes any assignment for the benefit of creditors or other
505 proceeding intended to liquidate or rehabilitate the estate of the person involved.

506 (23) 'Insolvent' means:

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

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

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

511 (24) 'Money' means a medium of exchange that is currently authorized or adopted by a
512 domestic or foreign government. The term and includes a monetary unit of account
513 established by an intergovernmental organization or by agreement between two or more
514 countries. The term does not include an electronic record that is a medium of exchange
515 recorded and transferable in a system that existed and operated for the medium of
516 exchange before the medium of exchange was authorized or adopted by the government.

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

518 (26) 'Party,' as distinct from 'third party,' means a person who has engaged in a
519 transaction or made an agreement subject to this title.

520 (27) 'Person' means an individual, corporation, business trust, estate, trust, partnership,
521 limited liability company, association, joint venture, government, governmental
522 subdivision, agency, or instrumentality, ~~public corporation,~~ or any other legal or
523 commercial entity. The term includes a protected series, however denominated, of an
524 entity if the protected series is established under law other than this title that limits, or
525 limits if conditions specified under the law are satisfied, the ability of a creditor of the
526 entity or of any other protected series of the entity to satisfy a claim from assets of the
527 protected series.

528 (28) 'Present value' means the amount as of a date certain of one or more sums payable
529 in the future, discounted to the date certain by use of either an interest rate specified by
530 the parties if that rate is not manifestly unreasonable at the time the transaction is entered

531 into or, if an interest rate is not so specified, a commercially reasonable rate that takes
532 into account the facts and circumstances at the time the transaction is entered into.

533 (29) 'Purchase' means taking by sale, lease, discount, negotiation, mortgage, pledge, lien,
534 security interest, issue or reissue, gift, or any other voluntary transaction creating an
535 interest in property.

536 (30) 'Purchaser' means a person who takes by purchase.

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

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

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

544 (34) 'Rights' includes remedies.

545 (35) 'Security interest' means an interest in personal property or fixtures which secures
546 payment or performance of an obligation. The term also includes any interest of a
547 consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory
548 note in a transaction that is subject to Article 9 of this title. The term does not include the
549 special property interest of a buyer of goods on identification of those goods to a contract
550 for sale under Code Section 11-2-401, but a buyer may also acquire a 'security interest'
551 by complying with Article 9 of this title. Except as otherwise provided in Code Section
552 11-2-505, the right of a seller or lessor of goods under Article 2 or 2A of this title to
553 retain or acquire possession of the goods is not a 'security interest,' but a seller or lessor
554 may also acquire a 'security interest' by complying with Article 9 of this title. The
555 retention or reservation of title by a seller of goods notwithstanding shipment or delivery
556 to the buyer under Code Section 11-2-401 is limited in effect to a reservation of a
557 'security interest.'

558 Whether a transaction in the form of a lease creates a 'security interest' shall be
 559 determined pursuant to Code Section 11-1-203.

560 (36) 'Send,' in connection with a ~~writing, record, or notice~~ notification, means:

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

566 (B) To cause the record or notification to be received within the time it would have
 567 been received if properly sent under subparagraph (A) of this paragraph. ~~In any other~~
 568 ~~way to cause to be received any record or notice within the time it would have arrived~~
 569 ~~if properly sent.~~

570 (37) 'Sign' 'Signed' ~~includes using any symbol executed or adopted with present intention~~
 571 ~~to adopt or accept a writing.~~ means, with present intent to authenticate or adopt a record:

572 (A) Execute or adopt a tangible symbol; or

573 (B) Attach to or logically associate with the record an electronic symbol, sound, or
 574 process.

575 'Signed', 'signing', and 'signature' have corresponding meanings.

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

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

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

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

583 (42) 'Warehouse receipt' means a ~~receipt~~ document of title issued by a person engaged
 584 in the business of storing goods for hire.

585 (43) 'Written' or 'writing' includes printing, typewriting, or any other intentional
586 reduction to tangible form."

587 **SECTION 5-2.**

588 Said title is further amended in Code Section 11-1-203, relating to distinguishing leases from
589 security interests, by revising subsection (a) as follows:

590 "(a) Whether a transaction in the form of a lease creates a lease or security interest is
591 determined by the facts of each case."

592 **SECTION 5-3.**

593 Said title is further amended by revising Code Section 11-1-204, relating to value, as follows:

594 "11-1-204. **Value.**

595 Except as otherwise provided in Articles 3, 4, 5, and ~~6~~ 12 of this title, a person gives value
596 for rights if the person acquires them:

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

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

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

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

603 **SECTION 5-4.**

604 Said title is further amended in Code Section 11-1-301, relating to territorial applicability and
605 parties' power to choose applicable law, by revising subsection (c) as follows:

606 "(c) If one of the following provisions of this title specifies the applicable law, that
607 provision governs and a contrary agreement is effective only to the extent permitted by the
608 law so specified:

- 609 (1) Code Section 11-2-402;
 610 (2) Code Sections 11-2A-105 and 11-2A-106;
 611 (3) Code Section 11-4-102;
 612 (4) Code Section 11-4A-507;
 613 (5) Code Section 11-5-116;
 614 (6) ~~Code Section 11-6-103~~ Reserved;
 615 (7) Code Section 11-8-110; ~~or~~
 616 (8) Code Sections 11-9-301 through 11-9-307; or
 617 (9) Code Section 11-12-107."

618 **SECTION 5-5.**

619 Said title is further amended in Code Section 11-1-303, relating to course of performance,
 620 course of dealing, and usage of trade, by revising subsection (f) as follows:

621 "(f) Subject to Code ~~Section~~ Sections 11-2-209 and 11-2A-208, a course of performance
 622 is relevant to show a waiver or modification of any term inconsistent with the course of
 623 performance."

624 **SECTION 5-6.**

625 Said title is further amended by revising Code Section 11-2-102, relating to scope and
 626 certain security and other transactions excluded from this article, as follows:

627 "11-2-102. **Scope; certain security and other transactions excluded from this article.**
 628 (1) Unless the context otherwise requires, and except as provided in subsection (3) of this
 629 Code section, this article applies to transactions in goods and, in the case of a hybrid
 630 transaction, it applies to the extent provided in subsection (2) of this Code section. Unless
 631 ~~the context otherwise requires, this article applies to transactions in goods; it does not apply~~
 632 ~~to any transaction which although in the form of an unconditional contract to sell or present~~
 633 ~~sale is intended to operate only as a security transaction nor does this article impair or~~

634 ~~repeal any statute regulating sales to consumers, farmers, or other specified classes of~~
 635 ~~buyers.~~

636 (2) In a hybrid transaction:

637 (a) If the sale-of-goods aspects do not predominate, only the provisions of this article
 638 which relate primarily to the sale-of-goods aspects of the transaction apply, and the
 639 provisions that relate primarily to the transaction as a whole do not apply.

640 (b) If the sale-of-goods aspects predominate, this article applies to the transaction but
 641 does not preclude application in appropriate circumstances of other law to aspects of the
 642 transaction which do not relate to the sale of goods.

643 (3) This article does not:

644 (a) Apply to a transaction that, even though in the form of an unconditional contract to
 645 sell or present sale, operates only to create a security interest; or

646 (b) Impair or repeal a statute regulating sales to consumers, farmers, or other specified
 647 classes of buyers."

648 **SECTION 5-7.**

649 Said title is further amended by revising Code Section 11-2-106, relating to definitions of
 650 "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract;
 651 "termination"; and "cancellation", as follows:

652 "11-2-106. **Definitions: 'contract'; 'agreement'; 'contract for sale'; 'sale'; 'present**
 653 **sale'; 'conforming' to contract; 'termination'; 'cancellation-'; hybrid**
 654 **transaction.'**

655 (1) In this article unless the context otherwise requires 'contract' and 'agreement' are
 656 limited to those relating to the present or future sale of goods. 'Contract for sale' includes
 657 both a present sale of goods and a contract to sell goods at a future time. A 'sale' consists
 658 in the passing of title from the seller to the buyer for a price (Code Section 11-2-401). A
 659 'present sale' means a sale which is accomplished by the making of the contract.

660 (2) Goods or conduct including any part of a performance are 'conforming' or conform to
 661 the contract when they are in accordance with the obligations under the contract.

662 (3) 'Termination' occurs when either party pursuant to a power created by agreement or
 663 law puts an end to the contract otherwise than for its breach. On 'termination' all
 664 obligations which are still executory on both sides are discharged but any right based on
 665 prior breach or performance survives.

666 (4) 'Cancellation' occurs when either party puts an end to the contract for breach by the
 667 other and its effect is the same as that of 'termination' except that the canceling party also
 668 retains any remedy for breach of the whole contract or any unperformed balance.

669 (5) 'Hybrid transaction' means a single transaction involving a sale of goods and:

670 (a) The provision of services;

671 (b) A lease of other goods; or

672 (c) A sale, lease, or license of property other than goods."

673 **SECTION 5-8.**

674 Said title is further amended by revising Code Section 11-2-201, relating to formal
 675 requirements and statute of frauds, as follows:

676 "11-2-201. **Formal requirements; statute of frauds.**

677 (1) Except as otherwise provided in this Code section a contract for the sale of goods for
 678 the price of \$500.00 or more is not enforceable by way of action or defense unless there is
 679 ~~some writing~~ a record sufficient to indicate that a contract for sale has been made between
 680 the parties and signed by the party against whom enforcement is sought or by ~~his~~ the party's
 681 authorized agent or broker. A ~~writing~~ record is not insufficient because it omits or
 682 incorrectly states a term agreed upon but the contract is not enforceable under this
 683 ~~paragraph subsection~~ beyond the quantity of goods shown in such writing the record.

684 (2) Between merchants if within a reasonable time a ~~writing~~ record in confirmation of the
 685 contract and sufficient against the sender is received and the party receiving it has reason

686 to know its contents, it satisfies the requirements of subsection (1) of this Code section
 687 against ~~such~~ the party unless ~~written~~ notice in a record of objection to its contents is given
 688 within ten days after it is received.

689 (3) A contract which does not satisfy the requirements of subsection (1) of this Code
 690 section but which is valid in other respects is enforceable:

691 (a) If the goods are to be specially manufactured for the buyer and are not suitable for
 692 sale to others in the ordinary course of the seller's business and the seller, before notice
 693 of repudiation is received and under circumstances which reasonably indicate that the
 694 goods are for the buyer, has made either a substantial beginning of their manufacture or
 695 commitments for their procurement; or

696 (b) If the party against whom enforcement is sought admits in his or her pleading,
 697 testimony, or otherwise in court that a contract for sale was made, but the contract is not
 698 enforceable under this provision beyond the quantity of goods admitted; or

699 (c) With respect to goods for which payment has been made and accepted or which have
 700 been received and accepted (Code Section 11-2-606)."

701 **SECTION 5-9.**

702 Said title is further amended by revising Code Section 11-2-202, relating to final written
 703 expression and parol or extrinsic evidence, as follows:

704 "11-2-202. **Final ~~written~~ expression; parol or extrinsic evidence.**

705 Terms with respect to which the confirmatory memoranda of the parties agree or which are
 706 otherwise set forth in a writing record intended by the parties as a final expression of their
 707 agreement with respect to such terms as are included therein may not be contradicted by
 708 evidence of any prior agreement or of a contemporaneous oral agreement but may be
 709 explained or supplemented:

710 (a) By course of performance, course of dealing, or usage of trade (Code Section
 711 11-1-303); and

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

715 **SECTION 5-10.**

716 Said title is further amended in Code Section 11-2-209, relating to modification, rescission,
717 and waiver, by revising subsection (2) as follows:

718 "(2) A signed agreement which excludes modification or rescission except by a signed
719 writing or other signed record cannot be otherwise modified or rescinded, but except as
720 between merchants such a requirement on a form supplied by the merchant must be
721 separately signed by the other party."

722 **SECTION 5-11.**

723 Said title is further amended by revising Code Section 11-2A-102, relating to scope, as
724 follows:

725 "11-2A-102. **Scope.**

726 (1) This article applies to any transaction, regardless of form, that creates a lease and, in
727 the case of a hybrid lease, it applies to the extent provided in subsection (2) of this Code
728 section.

729 (2) In a hybrid lease:

730 (a) If the lease-of-goods aspects do not predominate:

731 (i) Only the provisions of this article which relate primarily to the lease-of-goods
732 aspects of the transaction apply, and the provisions that relate primarily to the
733 transaction as a whole do not apply;

734 (ii) Code Section 11-2A-209 applies if the lease is a finance lease; and

735 (iii) Code Section 11-2A-407 applies to the promises of the lessee in a finance lease
 736 to the extent the promises are consideration for the right to possession and use of the
 737 leased goods; and
 738 (b) If the lease-of-goods aspects predominate, this article applies to the transaction, but
 739 does not preclude application in appropriate circumstances of other law to aspects of the
 740 lease which do not relate to the lease of goods."

741 **SECTION 5-12.**

742 Said title is further amended in subsection (1) of Code Section 11-2A-103, relating to
 743 definitions and index of definitions, by adding a new paragraph to read as follows:

744 "(h.1) 'Hybrid lease' means a single transaction involving a lease of goods and:

745 (i) The provision of services;

746 (ii) A sale of other goods; or

747 (iii) A sale, lease, or license of property other than goods."

748 **SECTION 5-13.**

749 Said title is further amended by revising Code Section 11-2A-107, relating to waiver or
 750 renunciation of claim or right after default, as follows:

751 "11-2A-107. **Waiver or renunciation of claim or right after default.**

752 Any claim or right arising out of an alleged default or breach of warranty may be
 753 discharged in whole or in part without consideration by a ~~written~~ waiver or renunciation
 754 in a signed and record delivered by the aggrieved party."

755 **SECTION 5-14.**

756 Said title is further amended by revising Code Section 11-2A-202, relating to final
 757 expression: parole or extrinsic evidence, as follows:

758 "11-2A-202. **Final ~~written~~ expression: Parole or extrinsic evidence.**

759 Terms with respect to which the confirmatory memoranda of the parties agree or which are
760 otherwise set forth in a writing record intended by the parties as a final expression of their
761 agreement with respect to such terms as are included therein may not be contradicted by
762 evidence of any prior agreement or of a contemporaneous oral agreement but may be
763 explained or supplemented:

- 764 (a) By course of dealing or usage of trade or by course of performance; and
765 (b) By evidence of consistent additional terms unless the court finds the writing record
766 to have been intended also as a complete and exclusive statement of the terms of the
767 agreement."

768 **SECTION 5-15.**

769 Said title is further amended by revising Code Section 11-2A-208, relating to modification,
770 rescission and waiver, as follows:

771 "11-2A-208. **Modification, rescission, and waiver.**

- 772 (1) An agreement modifying a lease contract needs no consideration to be binding.
773 (2) A signed lease agreement that excludes modification or rescission except by a signed
774 writing record may not be otherwise modified or rescinded, but, except as between
775 merchants, such a requirement on a form supplied by a merchant must be separately signed
776 by the other party.
777 (3) The requirements of the statute of frauds section of this article (Code Section
778 11-2A-201) must be satisfied if the contract as modified is within its provisions.
779 (4) Although an attempt at modification or rescission does not satisfy the requirements of
780 subsection (2) of this Code section, it may operate as a waiver.
781 (5) A party who has made a waiver affecting an executory portion of a lease contract may
782 retract the waiver by reasonable notification received by the other party that strict
783 performance will be required of any term waived, unless the retraction would be unjust in
784 view of a material change of position in reliance on the waiver."

785 **SECTION 5-16.**

786 Said title is further amended in subsection (a) of Code Section 11-3-104, relating to
 787 negotiable instruments, by revising paragraph (3) as follows:

788 "(3) Does not state any other undertaking or instruction by the person promising or
 789 ordering payment to do any act in addition to the payment of money, but the promise or
 790 order may contain:

- 791 (i) An undertaking or power to give, maintain, or protect collateral to secure payment;
 792 (ii) An authorization or power to the holder to confess judgment or realize on or
 793 dispose of collateral; or
 794 (iii) A waiver of the benefit of any law intended for the advantage or protection of an
 795 obligor;
 796 (iv) A term that specifies the law that governs the promise or order; or
 797 (v) An undertaking to resolve in a specified forum a dispute concerning the promise
 798 or order."

799 **SECTION 5-17.**

800 Said title is further amended by revising Code Section 11-3-105, relating to issue of
 801 instruments, as follows:

802 "11-3-105. **Issue of instrument.**

803 (a) 'Issue' means:

804 (1) The the first delivery of an instrument by the maker or drawer, whether to a holder
 805 or nonholder, for the purpose of giving rights on the instrument to any person; or

806 (2) If agreed by the payee, the first transmission by the drawer to the payee of an image
 807 of an item and information derived from the item that enables the depository bank to
 808 collect the item by transferring or presenting under federal law an electronic check.

809 (b) An unissued instrument, or an unissued incomplete instrument that is completed, is
 810 binding on the maker or drawer, but nonissuance is a defense. An instrument that is

811 conditionally issued or is issued for a special purpose is binding on the maker or drawer,
812 but failure of the condition or special purpose to be fulfilled is a defense.
813 (c) 'Issuer' applies to issued and unissued instruments and means a maker or drawer of an
814 instrument."

815 **SECTION 5-18.**

816 Said title is further amended by revising Code Section 11-3-119, relating to notices of rights
817 to defend actions, as follows:

818 "11-3-119. **Notice of right to defend action.**

819 In an action for breach of an obligation for which a third person is answerable over
820 pursuant to this article or Article 4 of this title, the defendant may give the third person
821 ~~written~~ notice of the litigation in a record, and the person notified may then give similar
822 notice to any other person who is answerable over. If the notice states that (i) the person
823 notified may come in and defend; and (ii) failure to do so will bind the person notified in
824 an action later brought by the person giving the notice as to any determination of fact
825 common to the two litigations, the person notified is so bound unless after reasonable
826 receipt of the notice the person notified does come in and defend."

827 **SECTION 5-19.**

828 Said title is further amended in subsection (a) of Code Section 11-3-312, relating to lost,
829 destroyed, or stolen cashier's checks, teller's checks, or certified checks, by revising the
830 introductory language of paragraph (3) as follows:

831 "(3) 'Declaration of loss' means a ~~written~~ statement, made in a record under penalty of
832 perjury, to the effect that:"

833 **SECTION 5-20.**

834 Said title is further amended by revising Code Section 11-3-401, relating to signatures, as
835 follows:

836 "11-3-401. **Signature necessary for liability on instrument.**

837 ~~(a)~~ A person is not liable on an instrument unless (i) the person signed the instrument;
838 or (ii) the person is represented by an agent or representative who signed the instrument
839 and the signature is binding on the represented person under Code Section 11-3-402.

840 ~~(b) A signature may be made (i) manually or by means of a device or machine; and (ii) by~~
841 ~~the use of any name, including a trade or assumed name or by a word, mark, or symbol~~
842 ~~executed or adopted by a person with present intention to authenticate a writing."~~

843 **SECTION 5-21.**

844 Said title is further amended by revising Code Section 11-3-604, relating to discharge by
845 cancellation or renunciation, as follows:

846 "11-3-604. **Discharge by cancellation or renunciation.**

847 (a) A person entitled to enforce an instrument, with or without consideration, may
848 discharge the obligation of a party to pay the instrument by (i) an intentional voluntary act
849 such as surrender of the instrument to the party, destruction, mutilation, or cancellation of
850 the instrument, cancellation or striking out of the party's signature, or the addition of words
851 to the instrument indicating discharge; or (ii) agreeing not to sue or otherwise renouncing
852 rights against the party by a signed writing record. The obligation of a party to pay a check
853 is not discharged solely by destruction of the check in connection with a process in which
854 information is extracted from the check and an image of the check is made and,
855 subsequently, the information and image are transmitted for payment.

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

858 **SECTION 5-22.**

859 Said title is further amended in Code Section 11-4-212, relating to presentment by notice of
860 item not payable by, through, or at a bank and liability of drawer or indorser, by revising
861 subsection (a) as follows:

862 "(a) Unless otherwise instructed, a collecting bank may present an item not payable by,
863 through, or at a bank by sending to the party to accept or pay a written record providing
864 notice that the bank holds the item for acceptance or payment. The notice must be sent in
865 time to be received on or before the day when presentment is due and the bank must meet
866 any requirement of the party to accept or pay under Code Section 11-3-501 by the close of
867 the bank's next banking day after it knows of the requirement."

868 **SECTION 5-23.**

869 Said title is further amended in subsection (a) of Code Section 11-4-301, relating to deferred
870 posting, recovery of payment by return of items, time of dishonor, and return of items by
871 payor bank, by revising paragraph (2) as follows:

872 "(2) Sends ~~written~~ a record providing notice of dishonor or nonpayment if the item is
873 unavailable for return."

874 **SECTION 5-23.1.**

875 Said title is further amended in Code Section 11-4-403, relating to customer's right to stop
876 payment and burden of proof of loss, by revising subsection (b) as follows:

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

881 **SECTION 5-24.**

882 Said title is further amended in subsection (a) of Code Section 11-4A-103, relating to
883 payment order – definitions, by revising the introductory language of paragraph (1) as
884 follows:

885 "(1) 'Payment order' means an instruction of a sender to a receiving bank, transmitted
886 orally, ~~electronically, or in writing~~ or in a record, to pay, or to cause another bank to pay,
887 a fixed or determinable amount of money to a beneficiary if:"

888 **SECTION 5-25.**

889 Said title is further amended by revising Code Section 11-4A-201, relating to security
890 procedures, as follows:

891 "11-4A-201. **Security procedure.**

892 'Security procedure' means a procedure established by agreement of a customer and a
893 receiving bank for the purpose of (i) verifying that a payment order or communication
894 amending or canceling a payment order is that of the customer, or (ii) detecting error in the
895 transmission or the content of the payment order or communication. A security procedure
896 may impose an obligation on the receiving bank or the customer and may require the use
897 of algorithms or other codes, identifying words, ~~or numbers,~~ symbols, sounds, biometrics,
898 encryption, callback procedures, or similar security devices. Comparison of a signature on
899 a payment order or communication with an authorized specimen signature of the customer
900 or requiring a payment order to be sent from a known email address, IP address, or
901 telephone number is not by itself a security procedure."

902 **SECTION 5-26.**

903 Said title is further amended in Code Section 11-4A-202, relating to authorized and verified
904 payment orders, by revising subsections (b) and (c) as follows:

905 "(b) If a bank and its customer have agreed that the authenticity of payment orders issued
906 to the bank in the name of the customer as sender will be verified pursuant to a security
907 procedure, a payment order received by the receiving bank is effective as the order of the
908 customer, whether or not authorized, if (i) the security procedure is a commercially
909 reasonable method of providing security against unauthorized payment orders, and (ii) the
910 bank proves that it accepted the payment order in good faith and in compliance with the
911 bank's obligations under the security procedure and any ~~written~~ agreement or instruction
912 of the customer, evidenced by a record, restricting acceptance of payment orders issued in
913 the name of the customer. The bank is not required to follow an instruction that violates
914 ~~a written~~ an agreement, evidenced by a record, with the customer or notice of which is not
915 received at a time and in a manner affording the bank a reasonable opportunity to act on
916 it before the payment order is accepted.

917 (c) Commercial reasonableness of a security procedure is a question of law to be
918 determined by considering the wishes of the customer expressed to the bank, the
919 circumstances of the customer known to the bank, including the size, type, and frequency
920 of payment orders normally issued by the customer to the bank, alternative security
921 procedures offered to the customer, and security procedures in general use by customers
922 and receiving banks similarly situated. A security procedure is deemed to be commercially
923 reasonable if (i) the security procedure was chosen by the customer after the bank offered,
924 and the customer refused, a security procedure that was commercially reasonable for that
925 customer, and (ii) the customer expressly agreed in ~~writing~~ a record to be bound by any
926 payment order, whether or not authorized, issued in its name and accepted by the bank in
927 compliance with the bank's obligations under the security procedure chosen by the
928 customer."

929 **SECTION 5-27.**

930 Said title is further amended in subsection (a) of Code Section 11-4A-203, relating to
931 unenforceability of certain verified payment orders, by revising paragraph (1) as follows:

932 "(1) By express ~~written~~ agreement evidenced by a record, the receiving bank may limit
933 the extent to which it is entitled to enforce or retain payment of the payment order."

934 **SECTION 5-28.**

935 Said title is further amended in Code Section 11-4A-210, relating to rejection of payment
936 order, by revising subsection (a) as follows:

937 "(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted
938 to the sender orally, ~~electronically~~, or in writing a record. A notice of rejection need not
939 use any particular words and is sufficient if it indicates that the receiving bank is rejecting
940 the order or will not execute or pay the order. Rejection is effective when the notice is
941 given if transmission is by a means that is reasonable in the circumstances. If notice of
942 rejection is given by a means that is not reasonable, rejection is effective when the notice
943 is received. If an agreement of the sender and receiving bank establishes the means to be
944 used to reject a payment order, (i) any means complying with the agreement is reasonable
945 and (ii) any means not complying is not reasonable unless no significant delay in receipt
946 of the notice resulted from the use of the noncomplying means."

947 **SECTION 5-29.**

948 Said title is further amended in Code Section 11-4A-211, relating to cancellation and
949 amendment of payment orders, by revising subsection (a) as follows:

950 "(a) A communication of the sender of a payment order canceling or amending the order
951 may be transmitted to the receiving bank orally, ~~electronically~~, or in writing a record. If
952 a security procedure is in effect between the sender and the receiving bank, the
953 communication is not effective to cancel or amend the order unless the communication is

954 verified pursuant to the security procedure or the bank agrees to the cancellation or
955 amendment."

956 **SECTION 5-30.**

957 Said title is further amended in Code Section 11-4A-305, relating to liability for late or
958 improper execution or failure to execute a payment order, by revising subsections (c) and (d)
959 as follows:

960 "(c) In addition to the amounts payable under subsections (a) and (b), damages, including
961 consequential damages, are recoverable to the extent provided in an express ~~written~~
962 agreement of the receiving bank, evidenced by a record.

963 (d) If a receiving bank fails to execute a payment order it was obliged by express
964 agreement to execute, the receiving bank is liable to the sender for its expenses in the
965 transaction and for incidental expenses and interest losses resulting from the failure to
966 execute. Additional damages, including consequential damages, are recoverable to the
967 extent provided in an express ~~written~~ agreement of the receiving bank, evidenced by a
968 record, but are not otherwise recoverable."

969 **SECTION 5-31.**

970 Said title is further amended by revising Code Section 11-5-104, relating to formal
971 requirements, as follows:

972 "11-5-104. **Formal requirements.**

973 A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued
974 in any form that is a signed record ~~and is authenticated:~~

975 ~~(1) By a signature; or~~

976 ~~(2) In accordance with the agreement of the parties or the standard practice referred to~~
977 ~~in subsection (c) of Code Section 11-5-108."~~

978 **SECTION 5-32.**

979 Said title is further amended by revising Code Section 11-5-116, relating to choice of law and
980 forum, as follows:

981 "11-5-116. **Choice of law and forum.**

982 (a) The liability of an issuer, nominated person, or adviser for any action or omission is
983 governed by the law of the jurisdiction chosen by an agreement in the form of a record
984 signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner provided in Code~~
985 ~~Section 11-5-104~~ or by a provision in the person's letter of credit, confirmation, or other
986 undertaking. The jurisdiction whose law is chosen need not bear any relation to the
987 transaction.

988 (b) Unless subsection (a) of this Code section applies, the liability of an issuer, nominated
989 person, or adviser for any action or omission is governed by the law of the jurisdiction in
990 which the person is located. The person is considered to be located at the address indicated
991 in the person's undertaking. If more than one address is indicated, the person is considered
992 to be located at the address from which the person's undertaking was issued.

993 (c) For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of
994 credit, but not enforcement of a judgment, all branches of a bank are considered separate
995 juridical entities and a bank is considered to be located at the place where its relevant
996 branch is considered to be located under this subsection (d) of this Code section.

997 (d) A branch of a bank is considered to be located at the address indicated in the branch's
998 undertaking. If more than one address is indicated, the branch is considered to be located
999 at the address from which the undertaking was issued.

1000 ~~(e)~~(e) Except as otherwise provided in this subsection, the liability of an issuer, nominated
1001 person, or adviser is governed by any rules of custom or practice, such as the Uniform
1002 Customs and Practice for Documentary Credits, to which the letter of credit, confirmation,
1003 or other undertaking, is expressly made subject. If:

1004 (1) This article would govern the liability of an issuer, nominated person, or adviser
 1005 under subsection (a) or (b) of this Code section;

1006 (2) The relevant undertaking incorporates rules of custom or practice; and

1007 (3) There is conflict between this article and the incorporated rules as applied to that
 1008 undertaking,

1009 the incorporated rules govern except to the extent of any conflict with the nonvariable
 1010 provisions specified in subsection (c) of Code Section 11-5-103.

1011 ~~(d)~~(f) If there is conflict between this article and Article 3, 4, 4A, or 9 of this title, this
 1012 article governs.

1013 ~~(e)~~(g) The forum for settling disputes arising out of an undertaking within this article may
 1014 be chosen in the manner and with the binding effect that governing law may be chosen in
 1015 accordance with subsection (a) of this Code section."

1016 **SECTION 5-33.**

1017 Said title is further amended in subsection (a) of Code Section 11-7-102, relating to
 1018 definitions and index of definitions, by repealing and reserving paragraphs (10) and (11).

1019 **SECTION 5-34.**

1020 Said title is further amended by revising Code Section 11-7-106, relating to control of
 1021 electronic document of title, as follows:

1022 "11-7-106. **Control of electronic document of title.**

1023 (a) A person has control of an electronic document of title if a system employed for
 1024 evidencing the transfer of interests in the electronic document reliably establishes that
 1025 person as the person to which the electronic document was issued or transferred.

1026 (b) A system satisfies subsection (a) of this Code section, and a person ~~is deemed to have~~
 1027 has control of an electronic document of title, if the document is created, stored, and
 1028 ~~assigned~~ transferred in a manner that:

- 1029 (1) A single authoritative copy of the document exists which is unique, identifiable, and,
1030 except as otherwise provided in paragraphs (4), (5), and (6) of this subsection,
1031 unalterable;
- 1032 (2) The authoritative copy identifies the person asserting control as:
- 1033 (A) The person to which the document was issued; or
- 1034 (B) If the authoritative copy indicates that the document has been transferred, the
1035 person to which the document was most recently transferred;
- 1036 (3) The authoritative copy is communicated to and maintained by the person asserting
1037 control or its designated custodian;
- 1038 (4) Copies or amendments that add or change an identified ~~assignee~~ transferee of the
1039 authoritative copy can be made only with the consent of the person asserting control;
- 1040 (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as
1041 a copy that is not the authoritative copy; and
- 1042 (6) Any amendment of the authoritative copy is readily identifiable as authorized or
1043 unauthorized.
- 1044 (c) A system satisfies subsection (a) of this Code section, and a person has control of an
1045 electronic document of title, if an authoritative electronic copy of the document, a record
1046 attached to or logically associated with the electronic copy, or a system in which the
1047 electronic copy is recorded:
- 1048 (1) Enables the person readily to identify each electronic copy as either an authoritative
1049 copy or a nonauthoritative copy;
- 1050 (2) Enables the person readily to identify itself in any way, including by name,
1051 identifying number, cryptographic key, office, or account number, as the person to which
1052 each authoritative electronic copy was issued or transferred; and
- 1053 (3) Gives the person exclusive power, subject to subsection (d) of this Code section, to:
- 1054 (A) Prevent others from adding or changing the person to which each authoritative
1055 electronic copy has been issued or transferred; and

- 1056 (B) Transfer control of each authoritative electronic copy.
- 1057 (d) Subject to subsection (e) of this Code section, a power is exclusive under
1058 subparagraphs (c)(3)(A) and (c)(3)(B) of this Code section even if:
- 1059 (1) The authoritative electronic copy, a record attached to or logically associated with
1060 the authoritative electronic copy, or a system in which the authoritative electronic copy
1061 is recorded limits the use of the document of title or has a protocol that is programmed
1062 to cause a change, including a transfer or loss of control; or
- 1063 (2) The power is shared with another person.
- 1064 (e) A power of a person is not shared with another person under paragraph (2) of
1065 subsection (d) of this Code section and the person's power is not exclusive if:
- 1066 (1) The person can exercise the power only if the power also is exercised by the other
1067 person; and
- 1068 (2) The other person:
- 1069 (A) Can exercise the power without exercise of the power by the person; or
- 1070 (B) Is the transferor to the person of an interest in the document of title.
- 1071 (f) If a person has the powers specified in subparagraphs (c)(3)(A) and (c)(3)(B) of this
1072 Code section, the powers are presumed to be exclusive.
- 1073 (g) A person has control of an electronic document of title if another person, other than the
1074 transferor to the person of an interest in the document:
- 1075 (1) Has control of the document and acknowledges that it has control on behalf of the
1076 person; or
- 1077 (2) Obtains control of the document after having acknowledged that it will obtain control
1078 of the document on behalf of the person.
- 1079 (h) A person that has control under this Code section is not required to acknowledge that
1080 it has control on behalf of another person.
- 1081 (i) If a person acknowledges that it has or will obtain control on behalf of another person,
1082 unless the person otherwise agrees or law other than this article or Article 9 of this title

1083 otherwise provides, the person does not owe any duty to the other person and is not
1084 required to confirm the acknowledgment to any other person."

1085 **SECTION 5-35.**

1086 Said title is further amended by revising Code Section 11-8-102, relating to definitions, as
1087 follows:

1088 "11-8-102. **Definitions.**

1089 (a) In this article:

1090 (1) 'Adverse claim' means a claim that a claimant has a property interest in a financial
1091 asset and that it is a violation of the rights of the claimant for another person to hold,
1092 transfer, or deal with the financial asset.

1093 (2) 'Bearer form,' as applied to a certificated security, means a form in which the security
1094 is payable to the bearer of the security certificate according to its terms but not by reason
1095 of an indorsement.

1096 (3) 'Broker' means a person defined as a broker or dealer under the federal securities
1097 laws, but without excluding a bank acting in that capacity.

1098 (4) 'Certificated security' means a security that is represented by a certificate.

1099 (5) 'Clearing corporation' means:

1100 (i) A person that is registered as a 'clearing agency' under the federal securities laws;

1101 (ii) A federal reserve bank; or

1102 (iii) Any other person that provides clearance or settlement services with respect to
1103 financial assets that would require it to register as a clearing agency under the federal
1104 securities laws but for an exclusion or exemption from the registration requirement, if
1105 its activities as a clearing corporation, including promulgation of rules, are subject to
1106 regulation by a federal or state governmental authority.

1107 (6) 'Communicate' means to:

1108 (i) Send a signed ~~writing~~ record; or

1109 (ii) Transmit information by any mechanism agreed upon by the persons transmitting
1110 and receiving the information.

1111 (7) 'Entitlement holder' means a person identified in the records of a securities
1112 intermediary as the person having a security entitlement against the securities
1113 intermediary. If a person acquires a security entitlement by virtue of paragraph (2) or (3)
1114 of subsection (b) of Code Section 11-8-501, that person is the entitlement holder.

1115 (8) 'Entitlement order' means a notification communicated to a securities intermediary
1116 directing transfer or redemption of a financial asset to which the entitlement holder has
1117 a security entitlement.

1118 (9) 'Financial asset,' except as otherwise provided in Code Section 11-8-103, means:

1119 (i) A security;

1120 (ii) An obligation of a person or a share, participation, or other interest in a person or
1121 in property or an enterprise of a person, which is, or is of a type, dealt in or traded on
1122 financial markets, or which is recognized in any area in which it is issued or dealt in as
1123 a medium for investment; or

1124 (iii) Any property that is held by a securities intermediary for another person in a
1125 securities account if the securities intermediary has expressly agreed with the other
1126 person that the property is to be treated as a financial asset under this article.

1127 As context requires, the term means either the interest itself or the means by which a
1128 person's claim to it is evidenced, including a certificated or uncertificated security, a
1129 security certificate, or a security entitlement.

1130 (10) Reserved.

1131 (11) 'Indorsement' means a signature that alone or accompanied by other words is made
1132 on a security certificate in registered form or on a separate document for the purpose of
1133 assigning, transferring, or redeeming the security or granting a power to assign, transfer,
1134 or redeem it.

- 1135 (12) 'Instruction' means a notification communicated to the issuer of an uncertificated
1136 security which directs that the transfer of the security be registered or that the security be
1137 redeemed.
- 1138 (13) 'Registered form,' as applied to a certificated security, means a form in which:
1139 (i) The security certificate specifies a person entitled to the security; and
1140 (ii) A transfer of the security may be registered upon books maintained for that purpose
1141 by or on behalf of the issuer, or the security certificate so states.
- 1142 (14) 'Securities intermediary' means:
1143 (i) A clearing corporation; or
1144 (ii) A person, including a bank or broker, that in the ordinary course of its business
1145 maintains securities accounts for others and is acting in that capacity.
- 1146 (15) 'Security,' except as otherwise provided in Code Section 11-8-103, means an
1147 obligation of an issuer or a share, participation, or other interest in an issuer or in property
1148 or an enterprise of an issuer:
1149 (i) Which is represented by a security certificate in bearer or registered form, or the
1150 transfer of which may be registered upon books maintained for that purpose by or on
1151 behalf of the issuer;
1152 (ii) Which is one of a class or series or by its terms is divisible into a class or series of
1153 shares, participations, interests, or obligations; and
1154 (iii) Which:
1155 (A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets;
1156 or
1157 (B) Is a medium for investment and by its terms expressly provides that it is a
1158 security governed by this article.
- 1159 (16) 'Security certificate' means a certificate representing a security.
- 1160 (17) 'Security entitlement' means the rights and property interest of an entitlement holder
1161 with respect to a financial asset specified in Part 5 of this article.

- 1162 (18) 'Uncertificated security' means a security that is not represented by a certificate.
- 1163 (b) ~~The following Other definitions applying to this article and the Code sections in which~~
- 1164 ~~they appear are~~ in this article and other articles of this title apply to this article:
- 1165 'Appropriate person.' Code Section 11-8-107.
- 1166 'Control.' Code Section 11-8-106.
- 1167 'Controllable account.' Code Section 11-9-102.
- 1168 'Controllable electronic record.' Code Section 11-12-102.
- 1169 'Controllable payment intangible.' Code Section 11-9-102.
- 1170 'Delivery.' Code Section 11-8-301.
- 1171 'Investment company security.' Code Section 11-8-103.
- 1172 'Issuer.' Code Section 11-8-201.
- 1173 'Overissue.' Code Section 11-8-210.
- 1174 'Protected purchaser.' Code Section 11-8-303.
- 1175 'Securities account.' Code Section 11-8-501.
- 1176 (c) In addition, Article 1 of this title contains general definitions and principles of
- 1177 construction and interpretation applicable throughout this article.
- 1178 (d) The characterization of a person, business, or transaction for purposes of this article
- 1179 does not determine the characterization of the person, business, or transaction for purposes
- 1180 of any other law, regulation, or rule."

1181 SECTION 5-36.

1182 Said title is further amended in Code Section 11-8-103, relating to rules for determining

1183 whether certain obligations and interests are securities or financial assets, by adding a new

1184 subsection to read as follows:

1185 "(h) A controllable account, controllable electronic record, or controllable payment

1186 intangible is not a financial asset unless subparagraph (a)(9)(iii) of Code Section 11-8-102

1187 applies."

SECTION 5-37.

1188

1189 Said title is further amended by revising Code Section 11-8-106, relating to control, as
1190 follows:

1191 "11-8-106. **Control.**

1192 (a) A purchaser has 'control' of a certificated security in bearer form if the certificated
1193 security is delivered to the purchaser.

1194 (b) A purchaser has 'control' of a certificated security in registered form if the certificated
1195 security is delivered to the purchaser, and:

1196 (1) The certificate is indorsed to the purchaser or in blank by an effective indorsement;
1197 or

1198 (2) The certificate is registered in the name of the purchaser, upon original issue or
1199 registration of transfer by the issuer.

1200 (c) A purchaser has 'control' of an uncertificated security if:

1201 (1) The uncertificated security is delivered to the purchaser; or

1202 (2) The issuer has agreed that it will comply with instructions originated by the purchaser
1203 without further consent by the registered owner.

1204 (d) A purchaser has 'control' of a security entitlement if:

1205 (1) The purchaser becomes the entitlement holder;

1206 (2) The securities intermediary has agreed that it will comply with entitlement orders
1207 originated by the purchaser without further consent by the entitlement holder; or

1208 (3) Another person, ~~other than the transferor to the purchaser of an interest in the security~~
1209 ~~entitlement: has control of the security entitlement on behalf of the purchaser or, having~~
1210 ~~previously acquired control of the security entitlement, acknowledges that it has control~~
1211 ~~on behalf of the purchaser.~~

1212 (A) Has control of the security entitlement and acknowledges that it has control on
1213 behalf of the purchaser; or

1214 (B) Obtains control of the security entitlement after having acknowledged that it will
1215 obtain control of the security entitlement on behalf of the purchaser.

1216 (e) If an interest in a security entitlement is granted by the entitlement holder to the
1217 entitlement holder's own securities intermediary, the securities intermediary has control.

1218 (f) A purchaser who has satisfied the requirements of subsection (c) or (d) of this Code
1219 section has control, even if the registered owner in the case of subsection (c) of this Code
1220 section or the entitlement holder in the case of subsection (d) of this Code section retains
1221 the right to make substitutions for the uncertificated security or security entitlement, to
1222 originate instructions or entitlement orders to the issuer or securities intermediary, or
1223 otherwise to deal with the uncertificated security or security entitlement.

1224 (g) An issuer or a securities intermediary may not enter into an agreement of the kind
1225 described in paragraph (2) of subsection (c) of this Code section or paragraph (2) of
1226 subsection (d) of this Code section without the consent of the registered owner or
1227 entitlement holder, but an issuer or a securities intermediary is not required to enter into
1228 such an agreement even though the registered owner or entitlement holder so directs. An
1229 issuer or securities intermediary that has entered into such an agreement is not required to
1230 confirm the existence of the agreement to another party unless requested to do so by the
1231 registered owner or entitlement holder.

1232 (h) A person that has control under this Code section is not required to acknowledge that
1233 it has control on behalf of a purchaser.

1234 (i) If a person acknowledges that it has or will obtain control on behalf of a purchaser,
1235 unless the person otherwise agrees or law other than this article or Article 9 of this title
1236 otherwise provides, the person does not owe any duty to the purchaser and is not required
1237 to confirm the acknowledgment to any other person."

SECTION 5-38.

1238
1239 Said title is further amended in Code Section 11-8-110, relating to applicability and choice
1240 of law, by adding a new subsection to read as follows:

1241 "(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction
1242 governs a matter or transaction specified in subsection (a) or (b) of this Code section even
1243 if the matter or transaction does not bear any relation to the jurisdiction."

SECTION 5-39.

1244
1245 Said title is further amended by revising Code Section 11-8-303, relating to protected
1246 purchasers, as follows:

1247 "11-8-303. **Protected purchaser.**

1248 (a) 'Protected purchaser' means a purchaser of a certificated or uncertificated security, or
1249 of an interest therein, who:

1250 (1) Gives value;

1251 (2) Does not have notice of any adverse claim to the security; and

1252 (3) Obtains control of the certificated or uncertificated security.

1253 (b) ~~A In addition to acquiring the rights of a purchaser,~~ a protected purchaser also acquires
1254 its interest in the security free of any adverse claim."

SECTION 5-40.

1255
1256 Said title is further amended by revising Code Section 11-9-102, relating to definitions and
1257 index of definitions, as follows:

1258 "11-9-102. **Definitions and index of definitions.**

1259 (a) **Article 9 definitions.** As used in this article, the term:

1260 (1) 'Accession' means goods that are physically united with other goods in such a manner
1261 that the identity of the original goods is not lost.

- 1262 (2) 'Account,' except as used in 'account for,' 'account statement,' 'account to,'
 1263 'commodity account' in paragraph (15) of this Code section, 'customer's account,' 'deposit
 1264 account' in paragraph (30) of this Code section, 'on account of,' and 'statement of
 1265 account,' means a right to payment of a monetary obligation, whether or not earned by
 1266 performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or
 1267 otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of
 1268 insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred,
 1269 (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a
 1270 charter or other contract, (vii) arising out of the use of a credit or charge card or
 1271 information contained on or for use with the card, or (viii) as winnings in a lottery or
 1272 other game of chance operated or sponsored by a state, governmental unit of a state, or
 1273 person licensed or authorized to operate the game by a state or governmental unit of a
 1274 state. The term includes controllable accounts and health care insurance receivables. The
 1275 term does not include (i) ~~rights to payment evidenced by chattel paper or an instrument,~~
 1276 (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter of
 1277 credit rights or letters of credit, ~~or~~ (vi) rights to payment for money or funds advanced or
 1278 sold, other than rights arising out of the use of a credit or charge card or information
 1279 contained on or for use with the card, or (vii) rights to payment evidenced by an
 1280 instrument.
- 1281 (3) 'Account debtor' means a person obligated on an account, chattel paper, or general
 1282 intangible. The term does not include persons obligated to pay a negotiable instrument,
 1283 even if the negotiable instrument constitutes part of evidences chattel paper.
- 1284 (4) 'Accounting,' except as used in 'accounting for,' means a record:
- 1285 (A) ~~Signed~~ Authenticated by a secured party;
 - 1286 (B) Indicating the aggregate unpaid secured obligations as of a date not more than 35
 1287 days earlier or 35 days later than the date of the record; and
 - 1288 (C) Identifying the components of the obligations in reasonable detail.

- 1289 (5) 'Agricultural lien' means an interest in farm products:
- 1290 (A) Which secures payment or performance of an obligation for:
- 1291 (i) Goods or services furnished in connection with a debtor's farming operation; or
- 1292 (ii) Rent on real property leased by a debtor in connection with its farming operation;
- 1293 (B) Which is created by statute in favor of a person that:
- 1294 (i) In the ordinary course of its business furnished goods or services to a debtor in
- 1295 connection with a debtor's farming operation; or
- 1296 (ii) Leased real property to a debtor in connection with the debtor's farming
- 1297 operation; and
- 1298 (C) Whose effectiveness does not depend on the person's possession of the personal
- 1299 property.
- 1300 (6) 'As-extracted collateral' means:
- 1301 (A) Oil, gas, or other minerals that are subject to a security interest that:
- 1302 (i) Is created by a debtor having an interest in the minerals before extraction; and
- 1303 (ii) Attaches to the minerals as extracted; or
- 1304 (B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other
- 1305 minerals in which the debtor had an interest before extraction.
- 1306 (7) ~~'Authenticate' means:~~
- 1307 ~~(A) To sign; or~~
- 1308 ~~(B) With present intent to adopt or accept a record, to attach to or logically associate~~
- 1309 ~~with such record an electronic sound, symbol, or process~~ Reserved.
- 1310 (7.1) 'Assignee,' except as used in 'assignee for benefit of creditors,' means a person (i)
- 1311 in whose favor a security interest that secures an obligation is created or provided for
- 1312 under a security agreement, whether or not the obligation is outstanding or (ii) to which
- 1313 an account, chattel paper, payment intangible, or promissory note has been sold. The
- 1314 term includes a person to which a security interest has been transferred by a secured
- 1315 party.

1316 (7.2) 'Assignor' means a person that (i) under a security agreement creates or provides
1317 for a security interest that secures an obligation or (ii) sells an account, chattel paper,
1318 payment intangible, or promissory note. The term includes a secured party that has
1319 transferred a security interest to another person.

1320 (8) 'Authority' means the Georgia Superior Court Clerks' Cooperative Authority.

1321 (9) 'Bank' means an organization that is engaged in the business of banking. The term
1322 includes savings banks, savings and loan associations, credit unions, and trust companies.

1323 (10) 'Cash proceeds' means proceeds that are money, checks, deposit accounts, or the
1324 like.

1325 (11) 'Certificate of title' means a certificate of title with respect to which a statute
1326 provides for the security interest in question to be indicated on the certificate as a
1327 condition or result of the security interest's obtaining priority over the rights of a lien
1328 creditor with respect to the collateral. The term shall include another record maintained
1329 as an alternative to a certificate of title by the governmental unit that issues certificates
1330 of title if a statute permits the security interest in question to be indicated on the record
1331 as a condition or result of the security interest's obtaining priority over the rights of a lien
1332 creditor with respect to the collateral.

1333 (12) 'Chattel paper' means: ~~a record or records that evidence both a monetary obligation~~
1334 ~~and a security interest in specific goods, a security interest in specific goods and software~~
1335 ~~used in the goods, a lease of specific goods, or a lease of specific goods and license of~~
1336 ~~software used in the goods. As used in this paragraph, 'monetary obligation' means a~~
1337 ~~monetary obligation secured by the goods or owed under a lease of the goods and~~
1338 ~~includes a monetary obligation with respect to software used in the goods. The term does~~
1339 ~~not include:~~

1340 ~~(A) Charters or other contracts involving the use or hire of a vessel; or~~

1341 ~~(B) Records that evidence a right to payment arising out of the use of a credit or charge~~
1342 ~~card or information contained on or for use with the card.~~

1343 ~~If a transaction is evidenced by records that include an instrument or series of~~
1344 ~~instruments, the group of records taken together constitutes chattel paper:~~

1345 (A) A right to payment of a monetary obligation secured by specific goods, if the right
1346 to payment and security agreement are evidenced by a record; or

1347 (B) A right to payment of a monetary obligation owed by a lessee under a lease
1348 agreement with respect to specific goods and a monetary obligation owed by the lessee
1349 in connection with the transaction giving rise to the lease, if:

1350 (i) The right to payment and lease agreement are evidenced by a record; and

1351 (ii) The predominant purpose of the transaction giving rise to the lease was to give
1352 the lessee the right to possession and use of the goods.

1353 The term does not include a right to payment arising out of a charter or other contract
1354 involving the use or hire of a vessel or a right to payment arising out of the use of a credit
1355 or charge card or information contained on or for use with the card.

1356 (13) 'Collateral' means the property subject to a security interest or agricultural lien. The
1357 term includes:

1358 (A) Proceeds to which a security interest attaches;

1359 (B) Accounts, chattel paper, payment intangibles, and promissory notes that have been
1360 sold; and

1361 (C) Goods that are the subject of a consignment.

1362 (14) 'Commercial tort claim' means a claim arising in tort with respect to which:

1363 (A) The claimant is an organization; or

1364 (B) The claimant is an individual and the claim:

1365 (i) Arose in the course of the claimant's business or profession; and

1366 (ii) Does not include damages arising out of personal injury to or the death of an
1367 individual.

1368 (15) 'Commodity account' means an account maintained by a commodity intermediary
1369 in which a commodity contract is carried for a commodity customer.

- 1370 (16) 'Commodity contract' means a commodity futures contract, an option on a
1371 commodity futures contract, a commodity option, or another contract if the contract or
1372 option is:
- 1373 (A) Traded on or subject to the rules of a board of trade that has been designated as a
1374 contract market for such a contract pursuant to federal commodities laws; or
 - 1375 (B) Traded on a foreign commodity board of trade, exchange, or market and is carried
1376 on the books of a commodity intermediary for a commodity customer.
- 1377 (17) 'Commodity customer' means a person for which a commodity intermediary carries
1378 a commodity contract on its books.
- 1379 (18) 'Commodity intermediary' means a person that:
- 1380 (A) Is registered as a futures commission merchant under federal commodities law; or
 - 1381 (B) In the ordinary course of its business provides clearance or settlement services for
1382 a board of trade that has been designated as a contract market pursuant to federal
1383 commodities law.
- 1384 (19) 'Communicate' means:
- 1385 (A) To send a written or other tangible record;
 - 1386 (B) To transmit a record by any means agreed upon by the persons sending and
1387 receiving the record; or
 - 1388 (C) In the case of transmission of a record to or by a filing office or the authority, to
1389 transmit a record by any means prescribed by filing office rule.
- 1390 (20) 'Consignee' means a merchant to which goods are delivered in a consignment.
- 1391 (21) 'Consignment' means a transaction, regardless of its form, in which a person delivers
1392 goods to a merchant for the purpose of sale and:
- 1393 (A) The merchant:
 - 1394 (i) Deals in goods of that kind under a name other than the name of the person
1395 making delivery;
 - 1396 (ii) Is not an auctioneer; and

- 1397 (iii) Is not generally known by its creditors to be substantially engaged in selling the
1398 goods of others;
- 1399 (B) With respect to each delivery, the aggregate value of the goods is \$1,000.00 or
1400 more at the time of delivery;
- 1401 (C) The goods are not consumer goods immediately before delivery; and
- 1402 (D) The transaction does not create a security interest that secures an obligation.
- 1403 (22) 'Consignor' means a person that delivers goods to a consignee in a consignment.
- 1404 (23) 'Consumer debtor' means a debtor in a consumer transaction.
- 1405 (24) 'Consumer goods' means goods that are used or bought for use primarily for
1406 personal, family, or household purposes.
- 1407 (25) 'Consumer goods transaction' means a consumer transaction in which:
- 1408 (A) An individual incurs an obligation primarily for personal, family, or household
1409 purposes; and
- 1410 (B) A security interest in consumer goods secures the obligation.
- 1411 (26) 'Consumer obligor' means an obligor who is an individual and who incurred the
1412 obligation as part of a transaction entered into primarily for personal, family, or
1413 household purposes.
- 1414 (27) 'Consumer transaction' means a transaction in which (i) an individual incurs an
1415 obligation primarily for personal, family, or household purposes, (ii) a security interest
1416 secures the obligation, and (iii) the collateral is held or acquired primarily for personal,
1417 family, or household purposes. The term includes consumer goods transactions.
- 1418 (28) 'Continuation statement' means an amendment of a financing statement which:
- 1419 (A) Identifies, by its file number, the initial financing statement to which it relates; and
1420 (B) Indicates that it is a continuation statement for, or that it is filed to continue the
1421 effectiveness of, the identified financing statement.

1422 (28.1) 'Controllable account' means an account evidenced by a controllable electronic
1423 record that provides that the account debtor undertakes to pay the person that has control
1424 under Code Section 11-12-105 of the controllable electronic record.

1425 (28.2) 'Controllable payment intangible' means a payment intangible evidenced by a
1426 controllable electronic record that provides that the account debtor undertakes to pay the
1427 person that has control under Code Section 11-12-105 of the controllable electronic
1428 record.

1429 (29) 'Debtor' means:

1430 (A) A person having an interest, other than a security interest or other lien, in the
1431 collateral, whether or not the person is an obligor;

1432 (B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

1433 (C) A consignee.

1434 (30) 'Deposit account' means a demand, time, savings, passbook, or similar account
1435 maintained with a bank. The term does not include investment property or accounts
1436 evidenced by an instrument.

1437 (31) 'Document' means a document of title or a receipt of the type described in
1438 subsection ~~(2)~~(b) of Code Section 11-7-201.

1439 ~~(32) 'Electronic chattel paper' means chattel paper evidenced by a record or records~~
1440 ~~consisting of information stored in an electronic medium~~ Reserved.

1441 (32.1) 'Electronic money' means money in an electronic form.

1442 (33) 'Encumbrance' means a right, other than an ownership interest, in real property. The
1443 term includes mortgages and other liens on real property.

1444 (34) 'Equipment' means goods other than inventory, farm products, or consumer goods.

1445 (35) 'Farm products' means goods, other than standing timber, with respect to which the
1446 debtor is engaged in a farming operation and which are:

1447 (A) Crops grown, growing, or to be grown, including:

1448 (i) Crops produced on trees, vines, and bushes; and

- 1449 (ii) Aquatic goods produced in aquacultural operations;
1450 (B) Livestock, born or unborn, including aquatic goods produced in aquacultural
1451 operations;
1452 (C) Supplies used or produced in a farming operation; or
1453 (D) Products of crops or livestock in their unmanufactured states.
- 1454 (36) 'Farming operation' means raising, cultivating, propagating, fattening, grazing, or
1455 any other farming, livestock, or aquacultural operation.
- 1456 (37) 'File number' means the number assigned to an initial financing statement pursuant
1457 to subsection (a) of Code Section 11-9-519.
- 1458 (38) 'Filing office' means an office designated in Code Section 11-9-501 as the place to
1459 file a financing statement.
- 1460 (39) 'Filing office rule' means a rule adopted pursuant to Code Section 11-9-526.
- 1461 (40) 'Financing statement' means a record or records composed of an initial financing
1462 statement and any filed record relating to the initial financing statement.
- 1463 (41) 'Fixture filing' means the filing of a financing statement covering goods that are or
1464 are to become fixtures and satisfying subsections (a) and (b) of Code Section 11-9-502.
1465 The term includes the filing of a financing statement covering goods of a transmitting
1466 utility which are or are to become fixtures.
- 1467 (42) 'Fixtures' means goods that have become so related to particular real property that
1468 an interest in them arises under real property law.
- 1469 (43) 'General intangible' means any personal property, including things in action, other
1470 than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods,
1471 instruments, investment property, letter of credit rights, letters of credit, money, and oil,
1472 gas, or other minerals before extraction. The term includes controllable electronic
1473 records, payment intangibles, and software.
- 1474 (44) Reserved.

1475 (45) 'Goods' means all things that are movable when a security interest attaches. The
1476 term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a
1477 conveyance or contract for sale, (iii) the unborn young of animals, and (iv) crops grown,
1478 growing, or to be grown, even if the crops are produced on trees, vines, or bushes. The
1479 term also includes a computer program embedded in goods and any supporting
1480 information provided in connection with a transaction relating to the program if (i) the
1481 program is associated with the goods in such a manner that it customarily is considered
1482 part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right
1483 to use the program in connection with the goods. The term does not include a computer
1484 program embedded in goods that consist solely of the medium in which the program is
1485 embedded. The term also does not include accounts, chattel paper, commercial tort
1486 claims, deposit accounts, documents, general intangibles, instruments, investment
1487 property, letter of credit rights, letters of credit, money, or oil, gas, or other minerals
1488 before extraction.

1489 (46) 'Governmental unit' means a subdivision, agency, department, county, parish,
1490 municipality, or other unit of the government of the United States, a state, or a foreign
1491 country. The term includes an organization having a separate corporate existence if the
1492 organization is eligible to issue debt on which interest is exempt from income taxation
1493 under the laws of the United States.

1494 (47) 'Health care insurance receivable' means an interest in or claim under a policy of
1495 insurance which is a right to payment of a monetary obligation for health care goods or
1496 services provided or to be provided.

1497 (48) 'Instrument' means a negotiable instrument or any other writing that evidences a
1498 right to the payment of a monetary obligation, is not itself a security agreement or lease,
1499 and is of a type that in ordinary course of business is transferred by delivery with any
1500 necessary indorsement or assignment. The term does not include (i) investment property,
1501 (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use

1502 of a credit or charge card or information contained on or for use with the card, or (iv)
1503 writings that evidence chattel paper.

1504 (49) 'Inventory' means goods, other than farm products, which:

1505 (A) Are leased by a person as lessor;

1506 (B) Are held by a person for sale or lease or to be furnished under a contract of service;

1507 (C) Are furnished by a person under a contract of service; or

1508 (D) Consist of raw materials, work in process, or materials used or consumed in a
1509 business.

1510 (50) 'Investment property' means a security, whether certificated or uncertificated,
1511 security entitlement, securities account, commodity contract, or commodity account.

1512 (51) 'Jurisdiction of organization,' with respect to a registered organization, means the
1513 jurisdiction under whose law the organization is formed or organized.

1514 (52) 'Letter of credit right' means a right to payment or performance under a letter of
1515 credit, whether or not the beneficiary has demanded or is at the time entitled to demand
1516 payment or performance. The term does not include the right of a beneficiary to demand
1517 payment or performance under a letter of credit.

1518 (53) 'Lien creditor' means:

1519 (A) A creditor that has acquired a lien on the property involved by attachment, levy,
1520 or the like;

1521 (B) An assignee for benefit of creditors from the time of assignment;

1522 (C) A trustee in bankruptcy from the date of the filing of the petition; or

1523 (D) A receiver in equity from the time of appointment.

1524 (53.1) 'Money' has the meaning in paragraph (24) of subsection (b) of Code Section
1525 11-1-201, but does not include (i) a deposit account or (ii) money in an electronic form
1526 that cannot be subjected to control under Code Section 11-9-105A.

1527 (54) 'Mortgage' means a consensual interest in real property, including fixtures, which
1528 secures payment or performance of an obligation. The term includes a deed to secure
1529 debt.

1530 (55) 'New debtor' means a person that becomes bound as debtor under subsection (d) of
1531 Code Section 11-9-203 by a security agreement previously entered into by another
1532 person.

1533 (56) 'New value' means (i) money, (ii) money's worth in property, services, or new credit,
1534 or (iii) release by a transferee of an interest in property previously transferred to the
1535 transferee. The term does not include an obligation substituted for another obligation.

1536 (57) 'Noncash proceeds' means proceeds other than cash proceeds.

1537 (58) 'Obligor' means a person that, with respect to an obligation secured by a security
1538 interest in or an agricultural lien on the collateral, (i) owes payment or other performance
1539 of the obligation, (ii) has provided property other than the collateral to secure payment
1540 or other performance of the obligation, or (iii) is otherwise accountable in whole or in
1541 part for payment or other performance of the obligation. The term does not include
1542 issuers or nominated persons under a letter of credit.

1543 (59) 'Original debtor,' except as used in subsection (c) of Code Section 11-9-310, means
1544 a person that, as debtor, entered into a security agreement to which a new debtor has
1545 become bound under subsection (d) of Code Section 11-9-203.

1546 (60) 'Payment intangible' means a general intangible under which the account debtor's
1547 principal obligation is a monetary obligation. The term includes a controllable payment
1548 intangible.

1549 (61) 'Person related to,' with respect to an individual, means:

1550 (A) The spouse of the individual;

1551 (B) A brother, brother-in-law, sister, or sister-in-law of the individual;

1552 (C) An ancestor or lineal descendant of the individual or the individual's spouse; or

1553 (D) Any other relative, by blood or marriage, of the individual or the individual's
1554 spouse who shares the same home with the individual.

1555 (62) 'Person related to,' with respect to an organization, means:

1556 (A) A person directly or indirectly controlling, controlled by, or under common control
1557 with the organization;

1558 (B) An officer or director of, or a person performing similar functions with respect to,
1559 the organization;

1560 (C) An officer or director of, or a person performing similar functions with respect to,
1561 a person described in subparagraph (A) of this paragraph;

1562 (D) The spouse of an individual described in subparagraph (A), (B), or (C) of this
1563 paragraph; or

1564 (E) An individual who is related by blood or marriage to an individual described in
1565 subparagraph (A), (B), (C), or (D) of this paragraph and shares the same home with the
1566 individual.

1567 (63) 'Proceeds,' except as used in subsection ~~(d)~~(b) of Code Section 11-9-609, means the
1568 following property:

1569 (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition
1570 of collateral;

1571 (B) Whatever is collected on, or distributed on account of, collateral;

1572 (C) Rights arising out of collateral;

1573 (D) To the extent of the value of collateral, claims arising out of the loss,
1574 nonconformity, or interference with the use of, defects or infringement of rights in, or
1575 damage to the collateral; or

1576 (E) To the extent of the value of collateral and to the extent payable to the debtor or the
1577 secured party, insurance payable by reason of the loss or nonconformity of, defects or
1578 infringement of rights in, or damage to the collateral.

1579 (64) 'Promissory note' means an instrument that evidences a promise to pay a monetary
1580 obligation, does not evidence an order to pay, and does not contain an acknowledgment
1581 by a bank that the bank has received for deposit a sum of money or funds.

1582 (65) 'Proposal' means a record ~~authenticated~~ signed by a secured party which includes
1583 the terms on which the secured party is willing to accept collateral in full or partial
1584 satisfaction of the obligation it secures pursuant to Code Sections 11-9-620, 11-9-621,
1585 and 11-9-622.

1586 (66) 'Public finance transaction' means a secured transaction in connection with which:

1587 (A) Debt securities are issued;

1588 (B) All or a portion of the securities issued have an initial stated maturity of at least
1589 five years; and

1590 (C) The debtor, obligor, secured party, account debtor or other person obligated on
1591 collateral, assignor or assignee of a secured obligation, or assignor or assignee of a
1592 security interest is a state or a governmental unit of a state.

1593 (67) 'Public organic record' means a record that is available to the public for inspection
1594 and is:

1595 (A) A record consisting of the record initially filed with or issued by a state or the
1596 United States to form or organize an organization and any record filed with or issued
1597 by such state or the United States which amends or restates the initial record;

1598 (B) An organic record of a business trust consisting of the record initially filed with a
1599 state and any record filed with such state which amends or restates the initial record, if
1600 a statute of such state governing business trusts requires that the record be filed with
1601 such state; or

1602 (C) A record consisting of legislation enacted by the legislature of a state or the
1603 Congress of the United States which forms or organizes an organization, any record
1604 amending the legislation, and any record filed with or issued by such state or the United
1605 States which amends or restates the name of the organization.

1606 (68) 'Pursuant to commitment,' with respect to an advance made or other value given by
1607 a secured party, means pursuant to the secured party's obligation, whether or not a
1608 subsequent event of default or other event not within the secured party's control has
1609 relieved or may relieve the secured party from its obligation.

1610 (69) 'Record,' except as used in 'for record,' 'of record,' 'record or legal title,' and 'record
1611 owner,' means information that is inscribed on a tangible medium or which is stored in
1612 an electronic or other medium and is retrievable in perceivable form.

1613 (70) 'Registered organization' means an organization formed or organized solely under
1614 the law of a single state or the United States by the filing of a public organic record with,
1615 the issuance of a public organic record by, or the enactment of legislation by a state or the
1616 United States. The term shall include a business trust that is formed or organized under
1617 the law of a single state if a statute of such state governing business trusts requires that
1618 the business trust's organic record be filed with such state.

1619 (71) 'Secondary obligor' means an obligor to the extent that:

1620 (A) The obligor's obligation is secondary; or

1621 (B) The obligor has a right of recourse with respect to an obligation secured by
1622 collateral against the debtor, another obligor, or property of either.

1623 (72) 'Secured party' means:

1624 (A) A person in whose favor a security interest is created or provided for under a
1625 security agreement, whether or not any obligation to be secured is outstanding;

1626 (B) A person that holds an agricultural lien;

1627 (C) A consignor;

1628 (D) A person to which accounts, chattel paper, payment intangibles, or promissory
1629 notes have been sold;

1630 (E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose
1631 favor a security interest or agricultural lien is created or provided for; or

1632 (F) A person that holds a security interest arising under Code Section 11-2-401,
1633 11-2-505, or subsection (3) of Code Section 11-2-711, subsection (5) of Code Section
1634 11-2A-508, Code Section 11-4-210, or Code Section 11-5-118.

1635 (73) 'Security agreement' means an agreement that creates or provides for a security
1636 interest.

1637 (74) ~~'Send,' in connection with a record or notification, means:~~

1638 ~~(A) To deposit in the mail, deliver for transmission, or transmit by any other usual~~
1639 ~~means of communication, with postage or cost of transmission provided for, addressed~~
1640 ~~to any address reasonable under the circumstances; or~~

1641 ~~(B) To cause the record or notification to be received within the time that it would have~~
1642 ~~been received if properly sent under subparagraph (A) of this paragraph Reserved.~~

1643 (75) 'Software' means a computer program and any supporting information provided in
1644 connection with a transaction relating to the program. The term does not include a
1645 computer program that is included in the definition of goods.

1646 (76) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the
1647 United States Virgin Islands, or any territory or insular possession subject to the
1648 jurisdiction of the United States.

1649 (77) 'Supporting obligation' means a letter of credit right or secondary obligation that
1650 supports the payment or performance of an account, chattel paper, a document, a general
1651 intangible, an instrument, or investment property.

1652 (78) ~~'Tangible chattel paper' means chattel paper evidenced by a record or records~~
1653 ~~consisting of information that is inscribed on a tangible medium Reserved.~~

1654 (78.1) 'Tangible money' means money in a tangible form.

1655 (79) 'Termination statement' means an amendment of a financing statement which:

1656 (A) Identifies, by its file number, the initial financing statement to which it relates; and

1657 (B) Indicates either that it is a termination statement or that the identified financing
1658 statement is no longer effective.

1659 (80) 'Transmitting utility' means a person primarily engaged in the business of:

1660 (A) Operating a railroad, subway, street railway, or trolley bus;

1661 (B) Transmitting communications electrically, electromagnetically, or by light;

1662 (C) Transmitting goods by pipeline or sewer; or

1663 (D) Transmitting or producing and transmitting electricity, steam, gas, or water.

1664 (b) **Definitions in other articles.** 'Control' as provided in Code Section 11-7-106 and the
1665 following definitions in other articles apply to this article:

1666 'Applicant.' Code Section 11-5-102.

1667 'Beneficiary.' Code Section 11-5-102.

1668 'Broker.' Code Section 11-8-102.

1669 'Certificated security.' Code Section 11-8-102.

1670 'Check.' Code Section 11-3-104.

1671 'Clearing corporation.' Code Section 11-8-102.

1672 'Contract for sale.' Code Section 11-2-106.

1673 'Controllable electronic record.' Code Section 11-12-102.

1674 'Customer.' Code Section 11-4-104.

1675 'Entitlement holder.' Code Section 11-8-102.

1676 'Financial asset.' Code Section 11-8-102.

1677 'Holder in due course.' Code Section 11-3-302.

1678 'Issuer' (with respect to a letter of credit or letter of credit right). Code Section 11-5-102.

1679 'Issuer' (with respect to a security). Code Section 11-8-201.

1680 'Issuer' (with respect to documents of title). Code Section 11-7-102.

1681 'Lease.' Code Section 11-2A-103.

1682 'Lease agreement.' Code Section 11-2A-103.

1683 'Lease contract.' Code Section 11-2A-103.

1684 'Leasehold interest.' Code Section 11-2A-103.

1685 'Lessee.' Code Section 11-2A-103.

- 1686 'Lessee in ordinary course of business.' Code Section 11-2A-103.
- 1687 'Lessor.' Code Section 11-2A-103.
- 1688 'Lessor's residual interest.' Code Section 11-2A-103.
- 1689 'Letter of credit.' Code Section 11-5-102.
- 1690 'Merchant.' Code Section 11-2-104.
- 1691 'Negotiable instrument.' Code Section 11-3-104.
- 1692 'Nominated person.' Code Section 11-5-102.
- 1693 'Note.' Code Section 11-3-104.
- 1694 'Proceeds of a letter of credit.' Code Section 11-5-114.
- 1695 'Protected purchaser.' Code Section 11-8-103.
- 1696 'Prove.' Code Section 11-3-103.
- 1697 'Qualifying purchaser.' Code Section 11-12-102.
- 1698 'Sale.' Code Section 11-2-106.
- 1699 'Securities account.' Code Section 11-8-501.
- 1700 'Securities intermediary.' Code Section 11-8-102.
- 1701 'Security.' Code Section 11-8-102.
- 1702 'Security certificate.' Code Section 11-8-102.
- 1703 'Security entitlement.' Code Section 11-8-102.
- 1704 'Uncertificated security.' Code Section 11-8-102.
- 1705 (c) **Article 1 definitions and principles.** Article 1 of this title contains general definitions
- 1706 and principles of construction and interpretation applicable throughout this article."

1707 **SECTION 5-41.**

1708 Said title is further amended by revising Code Section 11-9-104, relating to control of deposit

1709 accounts, as follows:

1710 "11-9-104. **Control of deposit account.**

1711 (a) **Requirements for control.** A secured party has control of a deposit account if:

- 1712 (1) The secured party is the bank with which the deposit account is maintained;
- 1713 (2) The debtor, secured party, and bank have agreed in ~~an authenticated~~ a signed record
- 1714 that the bank will comply with instructions originated by the secured party directing
- 1715 disposition of the funds in the deposit account without further consent by the debtor; ~~or~~
- 1716 (3) The secured party becomes the bank's customer with respect to the deposit account;
- 1717 or
- 1718 (4) Another person, other than the debtor:
- 1719 (A) Has control of the deposit account and acknowledges that it has control on behalf
- 1720 of the secured party; or
- 1721 (B) Obtains control of the deposit account after having acknowledged that it will obtain
- 1722 control of the deposit account on behalf of the secured party.
- 1723 (b) **Debtor's right to direct disposition.** A secured party that has satisfied subsection (a)
- 1724 of this Code section has control, even if the debtor retains the right to direct the disposition
- 1725 of funds from the deposit account."

1726 **SECTION 5-42.**

1727 Said title is further amended by revising Code Section 11-9-105, relating to control of

1728 electronic chattel paper, as follows:

1729 "11-9-105. **Control of electronic copy of record evidencing chattel paper.**

1730 ~~(a) **General rule; control of electronic chattel paper.** A secured party has control of~~

1731 ~~electronic chattel paper if a system employed for evidencing the transfer of interests in the~~

1732 ~~chattel paper reliably establishes the secured party as the person to which the chattel paper~~

1733 ~~was assigned.~~

1734 ~~(b) **Specific facts giving control.** A system satisfies the provisions of subsection (a) of~~

1735 ~~this Code section if the record or records comprising the chattel paper are created, stored,~~

1736 ~~and assigned in such a manner that:~~

1737 ~~(1) A single authoritative copy of the record or records exists which is unique,~~
1738 ~~identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this~~
1739 ~~subsection, unalterable;~~

1740 ~~(2) The authoritative copy identifies the secured party as the assignee of the record or~~
1741 ~~records;~~

1742 ~~(3) The authoritative copy is communicated to and maintained by the secured party or~~
1743 ~~its designated custodian;~~

1744 ~~(4) Copies or amendments that add or change an identified assignee of the authoritative~~
1745 ~~copy can be made only with the consent of the secured party;~~

1746 ~~(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as~~
1747 ~~a copy that is not the authoritative copy; and~~

1748 ~~(6) Any amendment of the authoritative copy is readily identifiable as authorized or~~
1749 ~~unauthorized.~~

1750 (a) **General rule: control of electronic copy of record evidencing chattel paper.** A
1751 purchaser has control of an authoritative electronic copy of a record evidencing chattel
1752 paper if a system employed for evidencing the assignment of interests in the chattel paper
1753 reliably establishes the purchaser as the person to which the authoritative electronic copy
1754 was assigned.

1755 (b) **Single authoritative copy.** A system satisfies subsection (a) of this Code section if
1756 the record or records evidencing the chattel paper are created, stored, and assigned in a
1757 manner that:

1758 (1) A single authoritative copy of the record or records exists which is unique,
1759 identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this
1760 subsection, unalterable;

1761 (2) The authoritative copy identifies the purchaser as the assignee of the record or
1762 records;

1763 (3) The authoritative copy is communicated to and maintained by the purchaser or its
1764 designated custodian;

1765 (4) Copies or amendments that add or change an identified assignee of the authoritative
1766 copy can be made only with the consent of the purchaser;

1767 (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as
1768 a copy that is not the authoritative copy; and

1769 (6) Any amendment of the authoritative copy is readily identifiable as authorized or
1770 unauthorized.

1771 (c) **One or more authoritative copies.** A system satisfies subsection (a) of this Code
1772 section, and a purchaser has control of an authoritative electronic copy of a record
1773 evidencing chattel paper, if the electronic copy, a record attached to or logically associated
1774 with the electronic copy, or a system in which the electronic copy is recorded:

1775 (1) Enables the purchaser readily to identify each electronic copy as either an
1776 authoritative copy or a nonauthoritative copy;

1777 (2) Enables the purchaser readily to identify itself in any way, including by name,
1778 identifying number, cryptographic key, office, or account number, as the assignee of the
1779 authoritative electronic copy; and

1780 (3) Gives the purchaser exclusive power, subject to subsection (d) of this Code section,
1781 to:

1782 (A) Prevent others from adding or changing an identified assignee of the authoritative
1783 electronic copy; and

1784 (B) Transfer control of the authoritative electronic copy.

1785 (d) **Meaning of exclusive.** Subject to subsection (e) of this Code section, a power is
1786 exclusive under subparagraphs (c)(3)(A) and (c)(3)(B) of this Code section even if:

1787 (1) The authoritative electronic copy, a record attached to or logically associated with
1788 the authoritative electronic copy, or a system in which the authoritative electronic copy

1789 is recorded limits the use of the authoritative electronic copy or has a protocol
1790 programmed to cause a change, including a transfer or loss of control; or

1791 (2) The power is shared with another person.

1792 (e) **When power not shared with another person.** A power of a purchaser is not shared
1793 with another person under paragraph (2) of subsection (d) of this Code section and the
1794 purchaser's power is not exclusive if:

1795 (1) The purchaser can exercise the power only if the power also is exercised by the other
1796 person; and

1797 (2) The other person:

1798 (A) Can exercise the power without exercise of the power by the purchaser; or

1799 (B) Is the transferor to the purchaser of an interest in the chattel paper.

1800 (f) **Presumption of exclusivity of certain powers.** If a purchaser has the powers
1801 specified in subparagraphs (c)(3)(A) and (c)(3)(B) of this Code section, the powers are
1802 presumed to be exclusive.

1803 (g) **Obtaining control through another person.** A purchaser has control of an
1804 authoritative electronic copy of a record evidencing chattel paper if another person, other
1805 than the transferor to the purchaser of an interest in the chattel paper:

1806 (1) Has control of the authoritative electronic copy and acknowledges that it has control
1807 on behalf of the purchaser; or

1808 (2) Obtains control of the authoritative electronic copy after having acknowledged that
1809 it will obtain control of the electronic copy on behalf of the purchaser."

1810 **SECTION 5-43.**

1811 Said title is further amended by adding new Code Section 11-9-105A, relating to control of
1812 electronic money, as follows:

1813 "11-9-105A. Control of electronic money.

1814 (a) General rule: control of electronic money. A person has control of electronic money
1815 if:

1816 (1) The electronic money, a record attached to or logically associated with the electronic
1817 money, or a system in which the electronic money is recorded gives the person:

1818 (A) Power to avail itself of substantially all the benefit from the electronic money; and

1819 (B) Exclusive power, subject to subsection (b) of this Code section, to:

1820 (i) Prevent others from availing themselves of substantially all the benefit from the
1821 electronic money; and

1822 (ii) Transfer control of the electronic money to another person or cause another
1823 person to obtain control of other electronic money as a result of the transfer of the
1824 electronic money; and

1825 (2) The electronic money, a record attached to or logically associated with the electronic
1826 money, or a system in which the electronic money is recorded enables the person readily
1827 to identify itself in any way, including by name, identifying number, cryptographic key,
1828 office, or account number, as having the powers under paragraph (1) of this subsection.

1829 (b) Meaning of exclusive. Subject to subsection (c) of this Code section, a power is
1830 exclusive under subparagraphs (a)(1)(B)(i) and (a)(1)(B)(ii) of this Code section even if:

1831 (1) The electronic money, a record attached to or logically associated with the electronic
1832 money, or a system in which the electronic money is recorded limits the use of the
1833 electronic money or has a protocol programmed to cause a change, including a transfer
1834 or loss of control; or

1835 (2) The power is shared with another person.

1836 (c) When power not shared with another person. A power of a person is not shared
1837 with another person under paragraph (2) of subsection (b) of this Code section and the
1838 person's power is not exclusive if:

- 1839 (1) The person can exercise the power only if the power also is exercised by the other
 1840 person; and
- 1841 (2) The other person:
- 1842 (A) Can exercise the power without exercise of the power by the person; or
 1843 (B) Is the transferor to the person of an interest in the electronic money.
- 1844 **(d) Presumption of exclusivity of certain powers.** If a person has the powers specified
 1845 in subparagraphs (a)(1)(B)(i) and (a)(1)(B)(ii) of this Code section, the powers are
 1846 presumed to be exclusive.
- 1847 **(e) Control through another person.** A person has control of electronic money if
 1848 another person, other than the transferor to the person of an interest in the electronic
 1849 money:
- 1850 (1) Has control of the electronic money and acknowledges that it has control on behalf
 1851 of the person; or
- 1852 (2) Obtains control of the electronic money after having acknowledged that it will obtain
 1853 control of the electronic money on behalf of the person."

1854 **SECTION 5-44.**

1855 Said title is further amended by adding new Code Section 11-9-107A, relating to control of
 1856 controllable electronic records, controllable accounts, or controllable payment intangibles,
 1857 as follows:

1858 **"11-9-107A. Control of controllable electronic record, controllable account, or**
 1859 **controllable payment intangible.**

1860 **(a) Control under Code Section 11-12-105.** A secured party has control of a controllable
 1861 electronic record as provided in Code Section 11-12-105.

1862 **(b) Control of controllable account and controllable payment intangible.** A secured
 1863 party has control of a controllable account or controllable payment intangible if the secured

1864 party has control of the controllable electronic record that evidences the controllable
1865 account or controllable payment intangible."

1866 **SECTION 5-45.**

1867 Said title is further amended by adding new Code Section 11-9-107B, relating to no
1868 requirement to acknowledge or confirm and no duties, as follows:

1869 "11-9-107B. **No requirement to acknowledge or confirm; no duties.**

1870 (a) **No requirement to acknowledge.** A person that has control under Code Section
1871 11-9-104, 11-9-105, or 11-9-105A is not required to acknowledge that it has control on
1872 behalf of another person.

1873 (b) **No duties or confirmation.** If a person acknowledges that it has or will obtain control
1874 on behalf of another person, unless the person otherwise agrees or law other than this
1875 article otherwise provides, the person does not owe any duty to the other person and is not
1876 required to confirm the acknowledgment to any other person."

1877 **SECTION 5-46.**

1878 Said title is further amended in subsection (b) of Code Section 11-9-203, relating to
1879 attachment and enforceability of security interests, proceeds, supporting obligations, and
1880 formal requisites, by revising paragraph (3) as follows:

1881 "(3) One of the following conditions is met:

1882 (A) The debtor has ~~authenticated~~ signed a security agreement that provides a
1883 description of the collateral and, if the security interest covers timber to be cut, a
1884 description of the land concerned;

1885 (B) The collateral is not a certificated security and is in the possession of the secured
1886 party under Code Section 11-9-313 pursuant to the debtor's security agreement;

1887 (C) The collateral is a certificated security in registered form and the security
 1888 certificate has been delivered to the secured party under Code Section 11-8-301
 1889 pursuant to the debtor's security agreement; ~~or~~
 1890 (D) The collateral is controllable accounts, controllable electronic records, controllable
 1891 payment intangibles, deposit accounts, ~~electronic chattel paper~~, electronic documents,
 1892 electronic money, investment property, or letter of credit rights, ~~or electronic~~
 1893 ~~documents~~, and the secured party has control under Code Section 11-7-106, 11-9-104,
 1894 ~~11-9-105~~ 11-9-105A, 11-9-106, ~~or~~ 11-9-107, or 11-9-107A pursuant to the debtor's
 1895 security agreement; or
 1896 (E) The collateral is chattel paper and the secured party has possession and control
 1897 under Code Section 11-9-314A pursuant to the debtor's security agreement."

1898 SECTION 5-47.

1899 Said title is further amended by revising Code Section 11-9-204, relating to after acquired
 1900 property and future advances, as follows:

1901 "11-9-204. **After acquired property; future advances.**

1902 (a) **After acquired collateral.** Except as otherwise provided in subsection (b) of this
 1903 Code section, a security agreement may create or provide for a security interest in after
 1904 acquired collateral.

1905 (b) **When after acquired property clause not effective.** Subject to subsection (b.1) of
 1906 this Code section, a ~~A~~ security interest does not attach under a term constituting an after
 1907 acquired property clause to:

- 1908 (1) Consumer goods, other than an accession when given as additional security, unless
 1909 the debtor acquires rights in them within ten days after the secured party gives value; or
 1910 (2) A commercial tort claim.

1911 (b.1) Limitation on subsection (b) of this Code section. Subsection (b) of this Code
 1912 section does not prevent a security interest from attaching:

1913 (1) To consumer goods as proceeds under subsection (a) of Code Section 11-9-315 or
 1914 commingled goods under subsection (c) of Code Section 11-9-336;

1915 (2) To a commercial tort claim as proceeds under subsection (a) of Code Section
 1916 11-9-315; or

1917 (3) Under an after-acquired property clause to property that is proceeds of consumer
 1918 goods or a commercial tort claim.

1919 (c) **Future advances and other value.** A security agreement may provide that collateral
 1920 secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold
 1921 in connection with, future advances or other value, whether or not the advances or value
 1922 are given pursuant to commitment."

1923 **SECTION 5-48.**

1924 Said title is further amended in Code Section 11-9-207, relating to rights and duties of a
 1925 secured party having possession or control of collateral, by revising the introductory
 1926 language of subsection (c) as follows:

1927 "(c) **Duties and rights when secured party in possession or control.** Except as
 1928 otherwise provided in subsection (d) of this Code section, a secured party having
 1929 possession of collateral or control of collateral under Code Section 11-7-106, 11-9-104,
 1930 11-9-105, 11-9-105A, 11-9-106, ~~or~~ 11-9-107, or 11-9-107A:"

1931 **SECTION 5-49.**

1932 Said title is further amended by revising Code Section 11-9-208, relating to additional duties
 1933 of a secured party having control of collateral, as follows:

1934 "11-9-208. **Additional duties of secured party having control of collateral.**

1935 (a) **Applicability of Code section.** This Code section applies to cases in which there is
 1936 no outstanding secured obligation and the secured party is not committed to make
 1937 advances, incur obligations, or otherwise give value.

1938 (b) **Duties of secured party after receiving demand from debtor.** Within ten days after
 1939 receiving ~~an authenticated~~ a signed demand by the debtor:

1940 (1) A secured party having control of a deposit account under paragraph (2) of
 1941 subsection (a) of Code Section 11-9-104 shall send to the bank with which the deposit
 1942 account is maintained ~~an authenticated statement~~ a signed record that releases the bank
 1943 from any further obligation to comply with instructions originated by the secured party;

1944 (2) A secured party having control of a deposit account under paragraph (3) of
 1945 subsection (a) of Code Section 11-9-104 shall:

1946 (A) Pay the debtor the balance on deposit in the deposit account; or

1947 (B) Transfer the balance on deposit into a deposit account in the debtor's name;

1948 ~~(3) A secured party, other than a buyer, having control of electronic chattel paper under~~
 1949 ~~Code Section 11-9-105 shall:~~

1950 ~~(A) Communicate the authoritative copy of the electronic chattel paper to the debtor~~
 1951 ~~or its designated custodian;~~

1952 ~~(B) If the debtor designates a custodian that is the designated custodian with which the~~
 1953 ~~authoritative copy of the electronic chattel paper is maintained for the secured party,~~
 1954 ~~communicate to the custodian an authenticated record releasing the designated~~
 1955 ~~custodian from any further obligation to comply with instructions originated by the~~
 1956 ~~secured party and instructing the custodian to comply with instructions originated by~~
 1957 ~~the debtor; and~~

1958 ~~(C) Take appropriate action to enable the debtor or its designated custodian to make~~
 1959 ~~copies of or revisions to the authoritative copy which add or change an identified~~
 1960 ~~assignee of the authoritative copy without the consent of the secured party;~~

1961 (3) A secured party, other than a buyer, having control under Code Section 11-9-105 of
 1962 an authoritative electronic copy of a record evidencing chattel paper shall transfer control
 1963 of the electronic copy to the debtor or a person designated by the debtor;

- 1964 (4) A secured party having control of investment property under paragraph (2) of
 1965 subsection (d) of Code Section 11-8-106 or subsection (b) of Code Section 11-9-106 shall
 1966 send to the securities intermediary or commodity intermediary with which the security
 1967 entitlement or commodity contract is maintained ~~an authenticated~~ a signed record that
 1968 releases the securities intermediary or commodity intermediary from any further
 1969 obligation to comply with entitlement orders or directions originated by the secured party;
- 1970 (5) A secured party having control of a letter of credit right under Code Section 11-9-107
 1971 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of
 1972 the letter of credit to the secured party ~~an authenticated~~ a signed release from any further
 1973 obligation to pay or deliver proceeds of the letter of credit to the secured party; ~~and~~
- 1974 ~~(6) A secured party having control of an electronic document shall:~~
- 1975 ~~(A) Give control of the electronic document to the debtor or its designated custodian;~~
 1976 ~~(B) If the debtor designates a custodian that is the designated custodian with which the~~
 1977 ~~authoritative copy of the electronic document is maintained for the secured party,~~
 1978 ~~communicate to the custodian an authenticated record releasing the designated~~
 1979 ~~custodian from any further obligation to comply with instructions originated by the~~
 1980 ~~secured party and instructing the custodian to comply with instructions originated by~~
 1981 ~~the debtor; and~~
- 1982 ~~(C) Take appropriate action to enable the debtor or its designated custodian to make~~
 1983 ~~copies of or revisions to the authenticated copy which add or change an identified~~
 1984 ~~assignee of the authoritative copy without the consent of the secured party.~~
- 1985 (6) A secured party having control under Code Section 11-7-106 of an authoritative
 1986 electronic copy of an electronic document shall transfer control of the electronic copy to
 1987 the debtor or a person designated by the debtor;
- 1988 (7) A secured party having control under Code Section 11-9-105A of electronic money
 1989 shall transfer control of the electronic money to the debtor or a person designated by the
 1990 debtor; and

1991 (8) A secured party having control under Code Section 11-12-105 of a controllable
 1992 electronic record, other than a buyer of a controllable account or controllable payment
 1993 intangible evidenced by the controllable electronic record, shall transfer control of the
 1994 controllable electronic record to the debtor or a person designated by the debtor."

1995 **SECTION 5-50.**

1996 Said title is further amended by revising Code Section 11-9-209, relating to duties of a
 1997 secured party if account debtor has been notified of assignment, as follows:

1998 "11-9-209. **Duties of secured party if account debtor has been notified of assignment.**

1999 (a) **Applicability of Code section.** Except as otherwise provided in subsection (c) of this
 2000 Code section, this Code section applies if:

2001 (1) There is no outstanding secured obligation; and

2002 (2) The secured party is not committed to make advances, incur obligations, or otherwise
 2003 give value.

2004 (b) **Duties of secured party after receiving demand from debtor.** Within ten days after
 2005 receiving ~~an authenticated~~ a signed demand by the debtor, a secured party shall send to an
 2006 account debtor that has received notification under subsection (a) of Code Section 11-9-406
 2007 or subsection (b) of Code Section 11-12-106 of an assignment to the secured party as
 2008 assignee ~~under subsection (a) of Code Section 11-9-406~~ an authenticated a signed record
 2009 that releases the account debtor from any further obligation to the secured party.

2010 (c) **Inapplicability to sales.** This Code section does not apply to an assignment
 2011 constituting the sale of an account, chattel paper, or payment intangible."

2012 **SECTION 5-51.**

2013 Said title is further amended by revising Code Section 11-9-301, relating to law governing
 2014 perfection and priority of security interests, as follows:

2015 "11-9-301. **Law governing perfection and priority of security interests.**

2016 Except as otherwise provided in Code Sections 11-9-303 through ~~11-9-306~~ 11-9-306B, the
 2017 following rules determine the law governing perfection, the effect of perfection or
 2018 nonperfection, and the priority of a security interest in collateral:

2019 (1) Except as otherwise provided in this Code section, while a debtor is located in a
 2020 jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection
 2021 or nonperfection, and the priority of a security interest in collateral;

2022 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs
 2023 perfection, the effect of perfection or nonperfection, and the priority of a possessory
 2024 security interest in that collateral;

2025 (3) Except as otherwise provided in paragraph (4) of this Code section, while ~~tangible~~
 2026 negotiable tangible documents, goods, instruments, or tangible money, or tangible chattel
 2027 paper is located in a jurisdiction, the local law of that jurisdiction governs:

2028 (A) Perfection of a security interest in the goods by filing a fixture filing;

2029 (B) Perfection of a security interest in timber to be cut;

2030 (C) Perfection of a security interest in crops; and

2031 (D) The effect of perfection or nonperfection and the priority of a nonpossessory
 2032 security interest in the collateral; and

2033 (4) The local law of the jurisdiction in which the wellhead or minehead is located
 2034 governs perfection, the effect of perfection or nonperfection, and the priority of a security
 2035 interest in as-extracted collateral."

2036 **SECTION 5-52.**

2037 Said title is further amended in Code Section 11-9-304, relating to law governing perfection
 2038 and priority of security interests in deposit accounts, by revising subsection (a) as follows:

2039 "(a) **Law of bank's jurisdiction governs.** The local law of a bank's jurisdiction governs
 2040 perfection, the effect of perfection or nonperfection, and the priority of a security interest

2041 in a deposit account maintained with that bank even if the transaction does not bear any
2042 relation to the bank's jurisdiction."

2043 **SECTION 5-53.**

2044 Said title is further amended in subsection (a) of Code Section 11-9-305, relating to law
2045 governing perfection and priority of security interests in investment property, by deleting
2046 "and" at the end of paragraph (3), by substituting "; and" for the period at the end of
2047 paragraph (4), and by adding a new paragraph to read as follows:

2048 "(5) Paragraphs (2), (3), and (4) of this subsection apply even if the transaction does not
2049 bear any relation to the jurisdiction."

2050 **SECTION 5-54.**

2051 Said title is further amended by adding new Code Section 11-9-306A, relating to law
2052 governing perfection and priority of security interests in chattel paper, as follows:

2053 "11-9-306A. Law governing perfection and priority of security interests in chattel
2054 paper.

2055 (a) Chattel paper evidenced by authoritative electronic copy. Except as provided in
2056 subsection (d) of this Code section, if chattel paper is evidenced only by an authoritative
2057 electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and
2058 an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs
2059 perfection, the effect of perfection or nonperfection, and the priority of a security interest
2060 in the chattel paper, even if the transaction does not bear any relation to the chattel paper's
2061 jurisdiction.

2062 (b) Chattel paper's jurisdiction. The following rules determine the chattel paper's
2063 jurisdiction under this Code section:

2064 (1) If the authoritative electronic copy of the record evidencing chattel paper, or a record
2065 attached to or logically associated with the electronic copy and readily available for

2066 review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction
2067 for purposes of this part, this article, or this title, that jurisdiction is the chattel paper's
2068 jurisdiction;

2069 (2) If paragraph (1) of this subsection does not apply and the rules of the system in which
2070 the authoritative electronic copy is recorded are readily available for review and expressly
2071 provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this
2072 part, this article, or this title, that jurisdiction is the chattel paper's jurisdiction;

2073 (3) If paragraphs (1) and (2) of this subsection do not apply and the authoritative
2074 electronic copy, or a record attached to or logically associated with the electronic copy
2075 and readily available for review, expressly provides that the chattel paper is governed by
2076 the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction;

2077 (4) If paragraphs (1), (2), and (3) of this subsection do not apply and the rules of the
2078 system in which the authoritative electronic copy is recorded are readily available for
2079 review and expressly provide that the chattel paper or the system is governed by the law
2080 of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction; and

2081 (5) If paragraphs (1) through (4) of this subsection do not apply, the chattel paper's
2082 jurisdiction is the jurisdiction in which the debtor is located.

2083 (c) **Chattel paper evidenced by authoritative tangible copy.** If an authoritative tangible
2084 copy of a record evidences chattel paper and the chattel paper is not evidenced by an
2085 authoritative electronic copy, while the authoritative tangible copy of the record evidencing
2086 chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

2087 (1) Perfection of a security interest in the chattel paper by possession under Code Section
2088 11-9-314A; and

2089 (2) The effect of perfection or nonperfection and the priority of a security interest in the
2090 chattel paper.

2091 (d) When perfection governed by law of jurisdiction where debtor located. The local
2092 law of the jurisdiction in which the debtor is located governs perfection of a security
2093 interest in chattel paper by filing."

2094 **SECTION 5-55.**

2095 Said title is further amended by adding new Code Section 11-9-306B, relating to law
2096 governing perfection and priority of security interests in controllable accounts, controllable
2097 electronic records, and controllable payment intangibles, as follows:

2098 "11-9-306B. Law governing perfection and priority of security interests in
2099 controllable accounts, controllable electronic records, and controllable
2100 payment intangibles.

2101 (a) Governing law: general rules. Except as provided in subsection (b) of this Code
2102 section, the local law of the controllable electronic record's jurisdiction specified in
2103 subsections (c) and (d) of Code Section 11-12-107 governs perfection, the effect of
2104 perfection or nonperfection, and the priority of a security interest in a controllable
2105 electronic record and a security interest in a controllable account or controllable payment
2106 intangible evidenced by the controllable electronic record.

2107 (b) When perfection governed by law of jurisdiction where debtor located. The local
2108 law of the jurisdiction in which the debtor is located governs:

2109 (1) Perfection of a security interest in a controllable account, controllable electronic
2110 record, or controllable payment intangible by filing; and

2111 (2) Automatic perfection of a security interest in a controllable payment intangible
2112 created by a sale of the controllable payment intangible."

SECTION 5-56.

2113
2114 Said title is further amended in Code Section 11-9-310, relating to when filing is required to
2115 perfect security interest or agricultural lien and security interests and agricultural liens to
2116 which filing provisions do not apply, by revising subsection (b) as follows:

2117 **"(b) Exceptions; filing not necessary.** The filing of a financing statement is not necessary
2118 to perfect a security interest:

2119 (1) That is perfected under subsection (d), (e), (f), or (g) of Code Section 11-9-308;

2120 (2) That is perfected under Code Section 11-9-309 when it attaches;

2121 (3) In property subject to a statute, regulation, or treaty described in subsection (a) of
2122 Code Section 11-9-311;

2123 (4) In goods in possession of a bailee which is perfected under paragraph (1) or (2) of
2124 subsection (d) of Code Section 11-9-312;

2125 (5) In certificated securities, documents, goods, or instruments which is perfected
2126 without filing, control, or possession under subsection (e), (f), or (g) of Code Section
2127 11-9-312;

2128 (6) In collateral in the secured party's possession under Code Section 11-9-313;

2129 (7) In a certificated security which is perfected by delivery of the security certificate to
2130 the secured party under Code Section 11-9-313;

2131 (8) In controllable accounts, controllable electronic records, controllable payment
2132 intangibles, deposit accounts, ~~electronic chattel paper~~, electronic documents, investment
2133 property, or letter of credit rights which is perfected by control under Code Section
2134 11-9-314;

2135 (8.1) In chattel paper which is perfected by possession and control under Code Section
2136 11-9-314A;

2137 (9) In proceeds which is perfected under Code Section 11-9-315; or

2138 (10) That is perfected under Code Section 11-9-316."

2139 **SECTION 5-57.**

2140 Said title is further amended by revising Code Section 11-9-312, relating to perfection of
 2141 security interests in chattel paper, deposit accounts, documents, goods covered by
 2142 documents, instruments, investment property, letter of credit rights, and money; perfection
 2143 by permissive filing; and temporary perfection without filing or transfer of possession, as
 2144 follows:

2145 "11-9-312. **Perfection of security interests in chattel paper, controllable accounts,**
 2146 **controllable electronic records, controllable payment intangibles, deposit**
 2147 **accounts, negotiable documents, goods covered by documents,**
 2148 **instruments, investment property, letter of credit rights, and money;**
 2149 **perfection by permissive filing; temporary perfection without filing or**
 2150 **transfer of possession.**

2151 (a) **Perfection by filing permitted.** A security interest in chattel paper, ~~negotiable~~
 2152 ~~documents,~~ controllable accounts, controllable electronic records, controllable payment
 2153 intangibles, instruments, ~~or investment property, or negotiable documents~~ may be perfected
 2154 by filing.

2155 (b) **Control or possession of certain collateral.** Except as otherwise provided in
 2156 subsections (c) and (d) of Code Section 11-9-315 for proceeds:

2157 (1) A security interest in a deposit account may be perfected only by control under Code
 2158 Section 11-9-314;

2159 (2) Except as otherwise provided in subsection (d) of Code Section 11-9-308, a security
 2160 interest in a letter of credit right may be perfected only by control under Code Section
 2161 11-9-314; ~~and~~

2162 (3) A security interest in tangible money may be perfected only by the secured party's
 2163 taking possession under Code Section 11-9-313; and

2164 (4) A security interest in electronic money may be perfected only by control under Code
 2165 Section 11-9-314.

- 2166 (c) **Goods covered by negotiable document.** While goods are in the possession of a
2167 bailee that has issued a negotiable document covering the goods:
- 2168 (1) A security interest in the goods may be perfected by perfecting a security interest in
2169 the document; and
- 2170 (2) A security interest perfected in the document has priority over any security interest
2171 that becomes perfected in the goods by another method during that time.
- 2172 (d) **Goods covered by nonnegotiable document.** While goods are in the possession of
2173 a bailee that has issued a nonnegotiable document covering the goods, a security interest
2174 in the goods may be perfected by:
- 2175 (1) Issuance of a document in the name of the secured party;
- 2176 (2) The bailee's receipt of notification of the secured party's interest; or
- 2177 (3) Filing as to the goods.
- 2178 (e) **Temporary perfection; new value.** A security interest in certificated securities,
2179 negotiable documents, or instruments is perfected without filing or the taking of possession
2180 or control for a period of 20 days from the time it attaches to the extent that it arises for
2181 new value given under ~~an authenticated~~ a signed security agreement.
- 2182 (f) **Temporary perfection; goods or documents made available to debtor.** A perfected
2183 security interest in a negotiable document or goods in possession of a bailee, other than one
2184 that has issued a negotiable document for the goods, remains perfected for 20 days without
2185 filing if the secured party makes available to the debtor the goods or documents
2186 representing the goods for the purpose of:
- 2187 (1) Ultimate sale or exchange; or
- 2188 (2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or
2189 otherwise dealing with them in a manner preliminary to their sale or exchange.
- 2190 (g) **Temporary perfection; delivery of security certificate or instrument to debtor.**
2191 A perfected security interest in a certificated security or instrument remains perfected for

2192 20 days without filing if the secured party delivers the security certificate or instrument to
 2193 the debtor for the purpose of:

2194 (1) Ultimate sale or exchange; or

2195 (2) Presentation, collection, enforcement, renewal, or registration of transfer.

2196 (h) **Expiration of temporary perfection.** After the 20 day period specified in
 2197 subsection (e), (f), or (g) of this Code section expires, perfection depends upon compliance
 2198 with this article."

2199 **SECTION 5-58.**

2200 Said title is further amended in Code Section 11-9-313, relating to when possession by or
 2201 delivery to a secured party perfects security interest without filing, by revising subsections
 2202 (a), (c), and (d) as follows:

2203 "(a) **Perfection by possession or delivery.** Except as otherwise provided in subsection
 2204 (b) of this Code section, a secured party may perfect a security interest in ~~tangible~~
 2205 ~~negotiable documents,~~ goods, instruments, negotiable tangible documents, or tangible
 2206 ~~money, or tangible chattel paper~~ by taking possession of the collateral. A secured party
 2207 may perfect a security interest in certificated securities by taking delivery of the certificated
 2208 securities under Code Section 11-8-301."

2209 "(c) **Collateral in possession of person other than debtor.** With respect to collateral
 2210 other than certificated securities and goods covered by a document, a secured party takes
 2211 possession of collateral in the possession of a person other than the debtor, the secured
 2212 party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's
 2213 business, when:

2214 (1) The person in possession ~~authenticates~~ signs a record acknowledging that it holds
 2215 possession of the collateral for the secured party's benefit; or

2216 (2) The person takes possession of the collateral after having ~~authenticated~~ signed a
 2217 record acknowledging that it will hold possession of the collateral for the secured party's
 2218 benefit.

2219 (d) **Time of perfection by possession; continuation of perfection.** If perfection of a
 2220 security interest depends upon possession of the collateral by a secured party, perfection
 2221 occurs ~~no~~ not earlier than the time the secured party takes possession and continues only
 2222 while the secured party retains possession."

2223 **SECTION 5-59.**

2224 Said title is further amended by revising Code Section 11-9-314, relating to perfection by
 2225 control, as follows:

2226 "11-9-314. **Perfection by control.**

2227 (a) **Perfection by control.** A security interest in ~~investment property, deposit accounts,~~
 2228 ~~letter of credit rights, electronic chattel paper, or electronic documents~~ controllable
 2229 accounts, controllable electronic records, controllable payment intangibles, deposit
 2230 accounts, electronic documents, electronic money, investment property, or letter of credit
 2231 rights may be perfected by control of the collateral under Code Section 11-7-106, 11-9-104,
 2232 ~~11-9-105, 11-9-105A, 11-9-106, or 11-9-107, or 11-9-107A.~~

2233 (b) **Specified collateral; time of perfection by control; continuation of perfection.** A
 2234 security interest in ~~deposit accounts, electronic chattel paper, letter of credit rights, or~~
 2235 ~~electronic documents~~ controllable accounts, controllable electronic records, controllable
 2236 payment intangibles, deposit accounts, electronic documents, electronic money, or letter
 2237 of credit rights is perfected by control under Code Section 11-7-106, 11-9-104, ~~11-9-105,~~
 2238 ~~11-9-105A, or 11-9-107, or 11-9-107A~~ when not earlier than the time the secured party
 2239 obtains control and remains perfected by control only while the secured party retains
 2240 control.

- 2241 (c) **Investment property; time of perfection by control; continuation of perfection.**
 2242 A security interest in investment property is perfected by control under Code
 2243 Section 11-9-106 from not earlier than the time the secured party obtains control and
 2244 remains perfected by control until:
- 2245 (1) The secured party does not have control; and
 - 2246 (2) One of the following occurs:
 - 2247 (A) If the collateral is a certificated security, the debtor has or acquires possession of
 - 2248 the security certificate;
 - 2249 (B) If the collateral is an uncertificated security, the issuer has registered or registers
 - 2250 the debtor as the registered owner; or
 - 2251 (C) If the collateral is a security entitlement, the debtor is or becomes the entitlement
 - 2252 holder."

2253 **SECTION 5-60.**

2254 Said title is further amended by adding new Code Section 11-9-314A, relating to perfection
 2255 by possession and control of chattel paper, as follows:

2256 "11-9-314A. **Perfection by possession and control of chattel paper.**

2257 (a) **Perfection by possession and control.** A secured party may perfect a security interest
 2258 in chattel paper by taking possession of each authoritative tangible copy of the record
 2259 evidencing the chattel paper and obtaining control of each authoritative electronic copy of
 2260 the electronic record evidencing the chattel paper.

2261 (b) **Time of perfection; continuation of perfection.** A security interest is perfected under
 2262 subsection (a) of this Code section not earlier than the time the secured party takes
 2263 possession and obtains control and remains perfected under subsection (a) of this Code
 2264 section only while the secured party retains possession and control.

2265 **(c) Application of Code Section 11-9-313 to perfection by possession of chattel paper.**
 2266 Subsections (c) and (f) through (i) of Code Section 11-9-313 apply to perfection by
 2267 possession of an authoritative tangible copy of a record evidencing chattel paper."

2268 **SECTION 5-61.**

2269 Said title is further amended in Code Section 11-9-316, relating to effect of change in
 2270 governing law, by revising subsection (a) and (f) as follows:

2271 **"(a) General rule; effect on perfection of change in governing law.** A security interest
 2272 perfected pursuant to the law of the jurisdiction designated in paragraph (1) of Code
 2273 Section 11-9-301, ~~or~~ subsection (c) of Code Section 11-9-305, subsection (d) of Code
 2274 Section 11-9-306A, or subsection (b) of Code Section 11-9-306B remains perfected until
 2275 the earliest of:

- 2276 (1) The time perfection would have ceased under the law of that jurisdiction;
 2277 (2) The expiration of four months after a change of the debtor's location to another
 2278 jurisdiction; or
 2279 (3) The expiration of one year after a transfer of collateral to a person that thereby
 2280 becomes a debtor and is located in another jurisdiction."

2281 **"(f) Change in jurisdiction of chattel paper, controllable electronic record, bank,**
 2282 **issuer, nominated person, securities intermediary, or commodity intermediary.** A
 2283 security interest in chattel paper, controllable accounts, controllable electronic records,
 2284 controllable payment intangibles, deposit accounts, letter of credit rights, or investment
 2285 property which is perfected under the law of the chattel paper's jurisdiction, the controllable
 2286 electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction, a nominated
 2287 person's jurisdiction, the securities intermediary's jurisdiction, or the commodity
 2288 intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

- 2289 (1) The time the security interest would have become unperfected under the law of that
 2290 jurisdiction; or

2291 (2) The expiration of four months after a change of the applicable jurisdiction to another
 2292 jurisdiction."

2293 **SECTION 5-62.**

2294 Said title is further amended by revising Code Section 11-9-317, relating to interests that take
 2295 priority over or take free of security interest or agricultural lien, as follows:

2296 "11-9-317. **Interests that take priority over or take free of security interest or**
 2297 **agricultural lien.**

2298 (a) **Conflicting security interests and rights of lien creditors.** A security interest or
 2299 agricultural lien is subordinate to the rights of:

2300 (1) A person entitled to priority under Code Section 11-9-322; and

2301 (2) Except as otherwise provided in subsection (e) of this Code section, a person that
 2302 becomes a lien creditor before the earlier of the time:

2303 (A) The security interest or agricultural lien is perfected; or

2304 (B) A financing statement covering the collateral is filed.

2305 (b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this
 2306 Code section, a buyer, other than a secured party, of ~~tangible chattel paper, tangible~~
 2307 ~~documents~~, goods, instruments, tangible documents, or a certificated security takes free of
 2308 a security interest or agricultural lien if the buyer gives value and receives delivery of the
 2309 collateral without knowledge of the security interest or agricultural lien and before it is
 2310 perfected.

2311 (c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this
 2312 Code section, a lessee of goods takes free of a security interest or agricultural lien if the
 2313 lessee gives value and receives delivery of the collateral without knowledge of the security
 2314 interest or agricultural lien and before it is perfected.

2315 (d) **Licensees and buyers of certain collateral.** Subject to subsections (f) through (i) of
 2316 this Code section, a ~~A~~ licensee of a general intangible or a buyer, other than a secured

2317 party, of collateral other than ~~tangible chattel paper, tangible documents,~~ electronic money,
2318 goods, instruments, tangible documents, or a certificated security takes free of a security
2319 interest if the licensee or buyer gives value without knowledge of the security interest and
2320 before it is perfected.

2321 (e) **Purchase money security interest.** Except as otherwise provided in Code Sections
2322 11-9-320 and 11-9-321, if a person files a financing statement with respect to a purchase
2323 money security interest before or within 20 days after the debtor receives delivery of the
2324 collateral, the security interest takes priority over the rights of a buyer, lessee, or lien
2325 creditor which arise between the time the security interest attaches and the time of filing.

2326 (f) **Buyers of chattel paper.** A buyer, other than a secured party, of chattel paper takes
2327 free of a security interest if, without knowledge of the security interest and before it is
2328 perfected, the buyer gives value and:

2329 (1) Receives delivery of each authoritative tangible copy of the record evidencing the
2330 chattel paper; and

2331 (2) If each authoritative electronic copy of the record evidencing the chattel paper can
2332 be subjected to control under Code Section 11-9-105, obtains control of each
2333 authoritative electronic copy.

2334 (g) **Buyers of electronic documents.** A buyer of an electronic document takes free of a
2335 security interest if, without knowledge of the security interest and before it is perfected, the
2336 buyer gives value and, if each authoritative electronic copy of the document can be
2337 subjected to control under Code Section 11-7-106, obtains control of each authoritative
2338 electronic copy.

2339 (h) **Buyers of controllable electronic records.** A buyer of a controllable electronic
2340 record takes free of a security interest if, without knowledge of the security interest and
2341 before it is perfected, the buyer gives value and obtains control of the controllable
2342 electronic record.

2343 (i) **Buyers of controllable accounts and controllable payment intangibles.** A buyer,
 2344 other than a secured party, of a controllable account or a controllable payment intangible
 2345 takes free of a security interest if, without knowledge of the security interest and before it
 2346 is perfected, the buyer gives value and obtains control of the controllable account or
 2347 controllable payment intangible."

2348 **SECTION 5-63.**

2349 Said title is further amended in Code Section 11-9-323, relating to future advances, by
 2350 revising subsections (c) and (e) as follows:

2351 "(c) **Buyer of goods.** Except as otherwise provided in subsection (d) of this Code section,
 2352 a buyer of goods ~~other than a buyer in ordinary course of business~~ takes free of a security
 2353 interest to the extent that it secures advances made after the earlier of:

- 2354 (1) The time the secured party acquires knowledge of the buyer's purchase; or
 2355 (2) Forty-five days after the purchase."

2356 "(e) **Lessee of goods.** Except as otherwise provided in subsection (f) of this Code section,
 2357 a lessee of goods, ~~other than a lessee in ordinary course of business,~~ takes the leasehold
 2358 interest free of a security interest to the extent that it secures advances made after the
 2359 earlier of:

- 2360 (1) The time the secured party acquires knowledge of the lease; or
 2361 (2) Forty-five days after the lease contract becomes enforceable."

2362 **SECTION 5-64.**

2363 Said title is further amended by adding new Code Section 11-9-326A, relating to priority of
 2364 security interests in controllable accounts, controllable electronic records, and controllable
 2365 payment intangibles, as follows:

2366 "11-9-326A. Priority of security interest in controllable account, controllable
 2367 electronic record, and controllable payment intangible.

2368 A security interest in a controllable account, controllable electronic record, or controllable
 2369 payment intangible held by a secured party having control of the account, electronic record,
 2370 or payment intangible has priority over a conflicting security interest held by a secured
 2371 party that does not have control."

2372 **SECTION 5-65.**

2373 Said title is further amended by revising Code Section 11-9-330, relating to priority of
 2374 purchaser of chattel paper or instrument, as follows:

2375 **"11-9-330. Priority of purchaser of chattel paper or instrument.**

2376 (a) **Purchaser's priority; security interest claimed merely as proceeds.** A purchaser
 2377 of chattel paper has priority over a security interest in the chattel paper which is claimed
 2378 merely as proceeds of inventory subject to a security interest if:

2379 (1) In good faith and in the ordinary course of the purchaser's business, the purchaser
 2380 gives new value, ~~and~~ takes possession of each authoritative tangible copy of the record
 2381 evidencing the chattel paper, ~~or~~ and obtains control ~~of~~ under Code Section 11-9-105 of
 2382 each authoritative electronic copy of the record evidencing the chattel paper under Code
 2383 Section 11-9-105; and

2384 (2) ~~The chattel paper does~~ authoritative copies of the record evidencing the chattel paper
 2385 do not indicate that it the chattel paper has been assigned to an identified assignee other
 2386 than the purchaser.

2387 (b) **Purchaser's priority; other security interests.** A purchaser of chattel paper has
 2388 priority over a security interest in the chattel paper which is claimed other than merely as
 2389 proceeds of inventory subject to a security interest if the purchaser gives new value, ~~and~~
 2390 takes possession of each authoritative tangible copy of the record evidencing the chattel
 2391 paper, ~~or~~ and obtains control ~~of~~ under Code Section 11-9-105 of each authoritative

2392 electronic copy of the record evidencing the chattel paper ~~under Code Section 11-9-105~~ in
2393 good faith, in the ordinary course of the purchaser's business, and without knowledge that
2394 the purchase violates the rights of the secured party.

2395 (c) **Chattel paper purchaser's priority in proceeds.** Except as otherwise provided in
2396 Code Section 11-9-327, a purchaser having priority in chattel paper under subsection (a)
2397 or (b) of this Code section also has priority in proceeds of the chattel paper to the extent
2398 that:

2399 (1) Code Section 11-9-322 provides for priority in the proceeds; or

2400 (2) The proceeds consist of the specific goods covered by the chattel paper or cash
2401 proceeds of the specific goods, even if the purchaser's security interest in the proceeds is
2402 unperfected.

2403 (d) **Instrument purchaser's priority.** Except as otherwise provided in subsection (a) of
2404 Code Section 11-9-331, a purchaser of an instrument has priority over a security interest
2405 in the instrument perfected by a method other than possession if the purchaser gives value
2406 and takes possession of the instrument in good faith and without knowledge that the
2407 purchase violates the rights of the secured party.

2408 (e) **Holder of purchase money security interest gives new value.** For purposes of
2409 subsections (a) and (b) of this Code section, the holder of a purchase money security
2410 interest in inventory gives new value for chattel paper constituting proceeds of the
2411 inventory.

2412 (f) **Indication of assignment gives knowledge.** For purposes of subsections (b) and (d)
2413 of this Code section, if the authoritative copies of the record evidencing chattel paper or an
2414 instrument ~~indicates~~ indicate that ~~it~~ the chattel paper or instrument has been assigned to an
2415 identified secured party other than the purchaser, a purchaser of the chattel paper or
2416 instrument has knowledge that the purchase violates the rights of the secured party."

2417 **SECTION 5-66.**

2418 Said title is further amended by revising Code Section 11-9-331, relating to priority of rights
2419 of purchasers of instruments, documents, and securities under other articles, and priority of
2420 interests in financial assets and security entitlements under Article 8 of this title, as follows:

2421 "11-9-331. **Priority of rights of purchasers of instruments, controllable accounts,**
2422 **controllable electronic records, controllable payment intangibles,**
2423 **documents, instruments, and securities under other articles; priority of**
2424 **interests in financial assets and security entitlements and protection**
2425 **against assertion of claim under Article Articles 8 and 12 of this title.**

2426 (a) **Rights under Articles 3, 7, and 8, and 12 of this title not limited.** This article does
2427 not limit the rights of a holder in due course of a negotiable instrument, a holder to which
2428 a negotiable document of title has been duly negotiated, or a protected purchaser of a
2429 security, or a qualifying purchaser of a controllable account, controllable electronic record,
2430 or controllable payment intangible. These holders or purchasers take priority over an
2431 earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8, and
2432 12 of this title.

2433 (b) **Protection under Article Articles 8 and 12 of this title.** This article does not limit
2434 the rights of or impose liability on a person to the extent that the person is protected against
2435 the assertion of a claim under Article 8 or 12 of this title.

2436 (c) **Filing not notice.** Filing under this article does not constitute notice of a claim or
2437 defense to the holders or purchasers or persons described in subsections (a) and (b) of this
2438 Code section."

2439 **SECTION 5-67.**

2440 Said title is further amended by revising Code Section 11-9-332, relating to transfers of
2441 money and transfers of funds from deposit account, as follows:

2442 "11-9-332. **Transfer of money; transfer of funds from deposit account.**

2443 (a) **Transferee of tangible money.** A transferee of tangible money takes the money free
2444 of a security interest ~~unless the transferee acts~~ if the transferee receives possession of the
2445 money without acting in collusion with the debtor in violating the rights of the secured
2446 party.

2447 (b) **Transferee of funds from deposit account.** A transferee of funds from a deposit
2448 account takes the funds free of a security interest in the deposit account ~~unless the~~
2449 ~~transferee acts~~ if the transferee receives the funds without acting in collusion with the
2450 debtor in violating the rights of the secured party.

2451 (c) **Transferee of electronic money.** A transferee of electronic money takes the money
2452 free of a security interest if the transferee obtains control of the money without acting in
2453 collusion with the debtor in violating the rights of the secured party."

2454 **SECTION 5-68.**

2455 Said title is further amended by revising Code Section 11-9-406, relating to discharges of
2456 account debtors, notifications of assignment, identification and proof of assignment, and
2457 restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory
2458 notes ineffective, as follows:

2459 "11-9-406. **Discharge of account debtor; notification of assignment; identification and**
2460 **proof of assignment; restrictions on assignment of accounts, chattel paper,**
2461 **payment intangibles, and promissory notes ineffective.**

2462 (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b)
2463 through (i) and (j) of this Code section, an account debtor on an account, chattel paper, or
2464 a payment intangible may discharge its obligation by paying the assignor until, but not
2465 after, the account debtor receives a notification, ~~authenticated~~ signed by the assignor or the
2466 assignee, that the amount due or to become due has been assigned and that payment is to
2467 be made to the assignee. After receipt of the notification, the account debtor may discharge

2468 its obligation by paying the assignee and may not discharge the obligation by paying the
2469 assignor.

2470 (b) **When notification ineffective.** Subject to ~~subsection~~ subsections (h) and (j) of this
2471 Code section, notification is ineffective under subsection (a) of this Code section:

2472 (1) If it does not reasonably identify the rights assigned;

2473 (2) To the extent that an agreement between an account debtor and a seller of a payment
2474 intangible limits the account debtor's duty to pay a person other than the seller and the
2475 limitation is effective under law other than this article; or

2476 (3) At the option of an account debtor, if the notification notifies the account debtor to
2477 make less than the full amount of any installment or other periodic payment to the
2478 assignee, even if:

2479 (A) Only a portion of the account, chattel paper, or payment intangible has been
2480 assigned to that assignee;

2481 (B) A portion has been assigned to another assignee; or

2482 (C) The account debtor knows that the assignment to that assignee is limited.

2483 (c) **Proof of assignment.** Subject to ~~subsection~~ subsections (h) and (j) of this Code
2484 section, if requested by the account debtor, an assignee shall seasonably furnish reasonable
2485 proof that the assignment has been made. Unless the assignee complies, the account debtor
2486 may discharge its obligation by paying the assignor, even if the account debtor has received
2487 a notification under subsection (a) of this Code section.

2488 (d) **Term restricting assignment generally ineffective.** In this subsection, the term
2489 'promissory note' includes a negotiable instrument that evidences chattel paper. Except as
2490 otherwise provided in subsection (e) of this Code section and Code Sections 11-2A-303,
2491 11-9-407, and 53-12-80 through 53-12-83 and subject to subsection (h) of this Code
2492 section, a term in an agreement between an account debtor and an assignor or in a
2493 promissory note ~~shall be~~ is ineffective to the extent that it:

2494 (1) Prohibits, restricts, or requires the consent of the account debtor or person obligated
2495 on the promissory note to the assignment or transfer of, or the creation, attachment,
2496 perfection, or enforcement of a security interest in, the account, chattel paper, payment
2497 intangible, or promissory note; or

2498 (2) Provides that the assignment, transfer, creation, attachment, perfection, or
2499 enforcement of the security interest may give rise to a default, breach, right of
2500 recoupment, claim, defense, termination, right of termination, or remedy under the
2501 account, chattel paper, payment intangible, or promissory note.

2502 (e) **Inapplicability of subsection (d) of this Code section to certain sales.**
2503 Subsection (d) of this Code section does not apply to the sale of a payment intangible or
2504 promissory note, other than a sale pursuant to a disposition under Code Section 11-9-610
2505 or an acceptance of collateral under Code Section 11-9-620.

2506 (f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided
2507 in Code Sections 11-2A-303 and 11-9-407 and subject to subsections (h) and (i) of this
2508 Code section, a rule of law, statute, or regulation that prohibits, restricts, or requires the
2509 consent of a government, governmental body or official, or account debtor to the
2510 assignment or transfer of, or creation of a security interest in, an account or chattel paper
2511 is ineffective to the extent that the rule of law, statute, or regulation:

2512 (1) Prohibits, restricts, or requires the consent of the government, governmental body or
2513 official, or account debtor to the assignment or transfer of, or the creation, attachment,
2514 perfection, or enforcement of a security interest, in the account or chattel paper; or

2515 (2) Provides that the assignment, transfer, creation, attachment, perfection, or
2516 enforcement of the security interest may give rise to a default, breach, right of
2517 recoupment, claim, defense, termination, right of termination, or remedy under the
2518 account or chattel paper.

2519 (g) **Paragraph (3) of subsection (b) not waivable.** Subject to ~~subsection~~ subsections (h)
 2520 and (j) of this Code section, an account debtor may not waive or vary its option under
 2521 paragraph (3) of subsection (b) of this Code section.

2522 (h) **Rule for individual under other law.** This Code section is subject to law other than
 2523 this article which establishes a different rule for an account debtor who is an individual and
 2524 who incurred the obligation primarily for personal, family, or household purposes.

2525 (i) **Inapplicability to health care insurance receivable.** This Code section does not
 2526 apply to an assignment of a health care insurance receivable.

2527 (j) **Inapplicability of certain subsections.** Subsections (a), (b), (c), and (g) of this Code
 2528 section do not apply to a controllable account or controllable payment intangible."

2529 **SECTION 5-69.**

2530 Said title is further amended in Code Section 11-9-408, relating to restrictions on assignment
 2531 of promissory notes, health care insurance receivables, and certain general intangibles
 2532 ineffective, by adding a new subsection to read as follows:

2533 "(e) **'Promissory note.'** In this Code section, the term 'promissory note' includes a
 2534 negotiable instrument that evidences chattel paper."

2535 **SECTION 5-70.**

2536 Said title is further amended in Code Section 11-9-601, relating to rights after default,
 2537 judicial enforcement and consignors or buyers of accounts, chattel paper, payment
 2538 intangibles, or promissory notes, by revising subsection (b) as follows:

2539 "(b) **Rights and duties of secured party in possession or control.** A secured party in
 2540 possession of collateral or control of collateral under Code Section 11-7-106, 11-9-104,
 2541 11-9-105, 11-9-105A, 11-9-106, or 11-9-107, or 11-9-107A has the rights and duties
 2542 provided in Code Section 11-9-207."

SECTION 5-71.

2543

2544 Said title is further amended by revising Code Section 11-9-605, relating to unknown debtors
2545 or secondary obligors, as follows:

2546 "11-9-605. **Unknown debtor or secondary obligor.**

2547 (a) In general: no duty owed by secured party. Except as provided in subsection (b) of
2548 this Code section, a secured party does not owe a duty based on its status as secured
2549 party:

2550 (1) To a person that is a debtor or obligor, unless the secured party knows:

2551 (A) That the person is a debtor or obligor;

2552 (B) The identity of the person; and

2553 (C) How to communicate with the person; or

2554 (2) To a secured party or lienholder that has filed a financing statement against a person,
2555 unless the secured party knows:

2556 (A) That the person is a debtor; and

2557 (B) The identity of the person.

2558 (b) Exception: secured party owes duty to debtor or obligor. A secured party owes a
2559 duty based on its status as a secured party to a person if, at the time the secured party
2560 obtains control of collateral that is a controllable account, controllable electronic record,
2561 or controllable payment intangible or at the time the security interest attaches to the
2562 collateral, whichever is later:

2563 (1) The person is a debtor or obligor; and

2564 (2) The secured party knows that the information in subparagraphs (a)(1)(A), (a)(1)(B),
2565 or (a)(1)(C) of this Code section relating to the person is not provided by the collateral,
2566 a record attached to or logically associated with the collateral, or the system in which the
2567 collateral is recorded."

SECTION 5-72.

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Said title is further amended by revising Code Section 11-9-613, relating to consents and the form of notification before disposition of collateral, as follows:

"11-9-613. **Contents and form of notification before disposition of collateral; general.**

(a) Contents and form of notification. Except in a consumer goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made;

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) of this ~~Code section~~ subsection are nevertheless sufficient is a question of fact;

(3) The contents of a notification providing substantially the information specified in paragraph (1) of this ~~Code section~~ subsection are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading;

(4) A particular phrasing of the notification is not required; and

(5) The following form of notification and the form appearing in paragraph (3) of subsection (a) of Code Section 11-9-614, when completed in accordance with the instructions in subsection (b) of this Code section and subsection (b) of Code Section 11-9-614, each provides sufficient information:

2595 NOTIFICATION OF DISPOSITION OF COLLATERAL2596 To: (Name of debtor, obligor, or other person to which the notification is sent)2597 From: (Name, address, and telephone number of secured party)2598 Name of Debtor(s): (Include only if debtor(s) is (are) not an addressee)

2599 (For a public disposition:)

2600 We will sell (or lease or license, as applicable) the (describe collateral) to the highest
2601 qualified bidder in public as follows:

2602 Day and date: _____

2603 Time: _____

2604 Place: _____

2605 (For a private disposition:)

2606 We will sell (or lease or license, as applicable) the (describe collateral) privately
2607 sometime after (day and date).2608 You are entitled to an accounting of the unpaid indebtedness secured by the property
2609 that we intend to sell (or lease or license, as applicable) (for a charge of
2610 \$ _____). You may request an accounting by calling us at (telephone number).2611 NOTIFICATION OF DISPOSITION OF COLLATERAL2612 To: (Name of debtor, obligor, or other person to which the notification is sent)2613 From: (Name, address, and telephone number of secured party)2614 {1} Name of any debtor that is not an addressee: (Name of each debtor)2615 {2} We will sell (describe collateral) (to the highest qualified bidder) at public sale. A
2616 sale could include a lease or license. The sale will be held as follows:

2617 _____ (Date)

2618 _____ (Time)

2619 _____ (Place)
2620 {3} We will sell (describe collateral) at private sale sometime after (date). A sale could
2621 include a lease or license.
2622 {4} You are entitled to an accounting of the unpaid indebtedness secured by the property
2623 that we intend to sell or, as applicable, lease or license.
2624 {5} If you request an accounting you must pay a charge of \$ (amount).
2625 {6} You may request an accounting by calling us at (telephone number).'
2626 (b) **Instructions for form of notification.** The following instructions apply to the form
2627 of notification in paragraph (5) of subsection (a) of this Code section:
2628 (1) The instructions in this subsection refer to the numbers in braces before items in the
2629 form of notification in paragraph (5) of subsection (a) of this Code section. Do not
2630 include the numbers or braces in the notification. The numbers and braces are used only
2631 for the purpose of these instructions;
2632 (2) Include and complete item {1} only if there is a debtor that is not an addressee of the
2633 notification and list the name or names;
2634 (3) Include and complete either item {2}, if the notification relates to a public disposition
2635 of the collateral, or item {3}, if the notification relates to a private disposition of the
2636 collateral. If item {2} is included, include the words 'to the highest qualified bidder' only
2637 if applicable;
2638 (4) Include and complete items {4} and {6}; and
2639 (5) Include and complete item {5} only if the sender will charge the recipient for an
2640 accounting."

2641 **SECTION 5-73.**

2642 Said title is further amended by revising Code Section 11-9-614, relating to contents and the
2643 form of notification before disposition of collateral in a consumer goods transaction, as
2644 follows:

2645 "11-9-614. **Contents and form of notification before disposition of collateral;**
 2646 **consumer goods transaction.**

2647 **(a) Contents and form of notification.** In a consumer goods transaction, the following
 2648 rules apply:

2649 (1) A notification of disposition must provide the following information:

2650 (A) The information specified in paragraph (1) of subsection (a) of Code Section
 2651 11-9-613;

2652 (B) A description of any liability for a deficiency of the person to which the
 2653 notification is sent;

2654 (C) A telephone number from which the amount that must be paid to the secured party
 2655 to redeem the collateral under Code Section 11-9-623 is available; and

2656 (D) A telephone number or mailing address from which additional information
 2657 concerning the disposition and the obligation secured is available;

2658 (2) A particular phrasing of the notification is not required;

2659 (3) The following form of notification, when completed in accordance with the
 2660 instructions in subsection (b) of this Code section, provides sufficient information:

2661 (Name and address of secured party)

2662 (Date) _____

2663 ~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

2664 ~~(Name and address of any obligor who is also a debtor)~~

2665 ~~Subject: (Identification of transaction)~~

2666 ~~We have your (describe collateral), because you broke promises in our agreement.~~

2667 ~~(For a public disposition:)~~

2668 ~~We will sell (describe collateral) at public sale. A sale could include a lease or license.~~

2669 ~~The sale will be held as follows:~~

2670 Date: _____

2671 Time: _____

2672 Place: _____

2673 You may attend the sale and bring bidders if you want.

2674 (For a private disposition:)

2675 We will sell (describe collateral) at private sale sometime after (date). A sale could
2676 include a lease or license.

2677 The money that we get from the sale (after paying our costs) will reduce the amount
2678 you owe. If we get less money than you owe, you (will or will not, as applicable) still
2679 owe us the difference. If we get more money than you owe, you will get the extra
2680 money, unless we must pay it to someone else.

2681 You can get the property back at any time before we sell it by paying us the full amount
2682 you owe (not just the past due payments), including our expenses. To learn the exact
2683 amount you must pay, call us at (telephone number).

2684 If you want us to explain to you in writing how we have figured the amount that you
2685 owe us, you may call us at (telephone number) or write us at (secured party's address)
2686 and request a written explanation. (We will charge you \$_____ for the
2687 explanation if we sent you another written explanation of the amount you owe us within
2688 the last six months.)

2689 If you need more information about the sale call us at (telephone number) or write us
2690 at (secured party's address).

2691 We are sending this notice to the following other people who have an interest in
2692 (describe collateral) or who owe money under your agreement:

2693 (Names of all other debtors and obligors, if any);

2694 '(Name and address of secured party) (Date)

2695 NOTICE OF OUR PLAN TO SELL PROPERTY

2696 (Name and address of any obligor who is also a debtor)

2697 Subject: (Identify transaction)

2698 We have your (describe collateral), because you broke promises in our agreement.

2699 {1} We will sell (describe collateral) at public sale. A sale could include a lease or
 2700 license. The sale will be held as follows:

2701 _____ (Date)

2702 _____ (Time)

2703 _____ (Place)

2704 You may attend the sale and bring bidders if you want.

2705 {2} We will sell (describe collateral) at private sale sometime after (date). A sale could
 2706 include a lease or license.

2707 {3} The money that we get from the sale, after paying our costs, will reduce the amount
 2708 you owe. If we get less money than you owe, you (will or will not, as applicable) still
 2709 owe us the difference. If we get more money than you owe, you will get the extra money,
 2710 unless we must pay it to someone else.

2711 {4} You can get the property back at any time before we sell it by paying us the full
 2712 amount you owe, not just the past due payments, including our expenses. To learn the
 2713 exact amount you must pay, call us at (telephone number).

2714 {5} If you want us to explain to you in (writing) (writing or in (description of electronic
 2715 record)) (description of electronic record) how we have figured the amount that you owe
 2716 us, {6} call us at (telephone number) (or) (write us at (secured party's address)) (or
 2717 contact us by (description of electronic communication method)) {7} and request (a

2718 written explanation) (a written explanation or an explanation in (description of electronic
 2719 record)) (an explanation in (description of electronic record)).

2720 {8} We will charge you \$(amount) for the explanation if we sent you another written
 2721 explanation of the amount you owe us within the last six months.

2722 {9} If you need more information about the sale (call us at (telephone number)) (or
 2723 (write us at (secured party's address)) (or contact us by (description of electronic
 2724 communication method)).

2725 {10} We are sending this notice to the following other people who have an interest in
 2726 (describe collateral) or who owe money under your agreement:

2727 (Names of all other debtors and obligors, if any)'

2728 (4) A notification in the form of paragraph (3) of this ~~Code section~~ subsection is
 2729 sufficient, even if additional information appears at the end of the form;

2730 (5) A notification in the form of paragraph (3) of this ~~Code section~~ subsection is
 2731 sufficient, even if it includes errors in information not required by paragraph (1) of this
 2732 ~~Code section~~ subsection, unless the error is misleading with respect to rights arising under
 2733 this article; and

2734 (6) If a notification under this Code section is not in the form of paragraph (3) of this
 2735 ~~Code section~~ subsection, law other than this article determines the effect of including
 2736 information not required by paragraph (1) of this ~~Code section~~ subsection.

2737 **(b) Instructions for form of notification.** The following instructions apply to the form
 2738 of notification in paragraph (3) of subsection (a) of this Code section:

2739 (1) The instructions in this subsection refer to the numbers in braces before items in the
 2740 form of notification in paragraph (3) of subsection (a) of this Code section. Do not
 2741 include the numbers or braces in the notification. The numbers and braces are used only
 2742 for the purpose of these instructions;

- 2743 (2) Include and complete either item {1}, if the notification relates to a public disposition
2744 of the collateral, or item {2}, if the notification relates to a private disposition of the
2745 collateral;
- 2746 (3) Include and complete items {3}, {4}, {5}, {6}, and {7};
- 2747 (4) In item {5}, include and complete any one of the three alternative methods for the
2748 explanation — writing, writing or electronic record, or electronic record;
- 2749 (5) In item {6}, include the telephone number. In addition, the sender may include and
2750 complete either or both of the two additional alternative methods of communication —
2751 writing or electronic communication — for the recipient of the notification to
2752 communicate with the sender. Neither of the two additional methods of communication
2753 is required to be included;
- 2754 (6) In item {7}, include and complete the method or methods for the explanation —
2755 writing, writing or electronic record, or electronic record — included in item {5};
- 2756 (7) Include and complete item {8} only if a written explanation is included in item {5}
2757 as a method for communicating the explanation and the sender will charge the recipient
2758 for another written explanation;
- 2759 (8) In item {9}, include either the telephone number or the address or both the telephone
2760 number and the address. In addition, the sender may include and complete the additional
2761 method of communication — electronic communication — for the recipient of the
2762 notification to communicate with the sender. The additional method of electronic
2763 communication is not required to be included; and
- 2764 (9) If item {10} does not apply, insert 'None' after 'agreement:'."

2765 **SECTION 5-74.**

2766 Said title is further amended by revising Code Section 11-9-616, relating to explanations of
2767 calculation of surplus or deficiency, as follows:

2768 "11-9-616. **Explanation of calculation of surplus or deficiency.**

2769 (a) **Definitions.** As used in this Code section, the term:

2770 (1) 'Explanation' means a ~~writing~~ record that:

2771 (A) States the amount of the surplus or deficiency;

2772 (B) Provides an explanation in accordance with subsection (c) of this Code section of
2773 how the secured party calculated the surplus or deficiency;

2774 (C) States, if applicable, that future debits, credits, charges, including additional credit
2775 service charges or interest, rebates, and expenses may affect the amount of the surplus
2776 or deficiency; and

2777 (D) Provides a telephone number or mailing address from which additional information
2778 concerning the transaction is available.

2779 (2) 'Request' means a record:

2780 (A) ~~Signed~~ Authenticated by a debtor or consumer obligor;

2781 (B) Requesting that the recipient provide an explanation; and

2782 (C) Sent after disposition of the collateral under Code Section 11-9-610.

2783 (b) **Explanation of calculation.** In a consumer goods transaction in which the debtor is
2784 entitled to a surplus or a consumer obligor is liable for a deficiency under Code Section
2785 11-9-615, the secured party shall:

2786 (1) Send an explanation to the debtor or consumer obligor, as applicable, after the
2787 disposition and:

2788 (A) Before or when the secured party accounts to the debtor and pays any surplus or
2789 first makes ~~written~~ demand in a record on the consumer obligor after the disposition for
2790 payment of the deficiency; and

2791 (B) Within 14 days after receipt of a request; or

2792 (2) In the case of a consumer obligor who is liable for a deficiency, within 14 days after
2793 receipt of a request, send to the consumer obligor a record waiving the secured party's
2794 right to a deficiency.

2795 (c) **Required information.** To comply with subparagraph (a)(1)(B) of this Code section,
2796 ~~a writing~~ an explanation must provide the following information in the following order:

2797 (1) The aggregate amount of obligations secured by the security interest under which the
2798 disposition was made, and, if the amount reflects a rebate of unearned interest or credit
2799 service charge, an indication of that fact, calculated as of a specified date:

2800 (A) If the secured party takes or receives possession of the collateral after default, not
2801 more than 35 days before the secured party takes or receives possession; or

2802 (B) If the secured party takes or receives possession of the collateral before default or
2803 does not take possession of the collateral, not more than 35 days before the disposition;

2804 (2) The amount of proceeds of the disposition;

2805 (3) The aggregate amount of the obligations after deducting the amount of proceeds;

2806 (4) The amount, in the aggregate or by type, and types of expenses, including expenses
2807 of retaking, holding, preparing for disposition, processing, and disposing of the collateral,
2808 and attorney's fees secured by the collateral which are known to the secured party and
2809 relate to the current disposition;

2810 (5) The amount, in the aggregate or by type, and types of credits, including rebates of
2811 interest or credit service charges, to which the obligor is known to be entitled and which
2812 are not reflected in the amount in paragraph (1) of this subsection; and

2813 (6) The amount of the surplus or deficiency.

2814 (d) **Substantial compliance.** A particular phrasing of the explanation is not required. An
2815 explanation complying substantially with the requirements of subsection (a) of this Code
2816 section is sufficient, even if it includes minor errors that are not seriously misleading.

2817 (e) **Charges for responses.** A debtor or consumer obligor is entitled without charge to
2818 one response to a request under this Code section during any six-month period in which the
2819 secured party did not send to the debtor or consumer obligor an explanation pursuant to
2820 paragraph (1) of subsection (b) of this Code section. The secured party may require
2821 payment of a charge not exceeding \$10.00 for each additional response."

2822 **SECTION 5-75.**

2823 Said title is further amended by revising Code Section 11-9-628, relating to nonliability and
2824 limitation on liability of secured parties and liability of secondary obligors, as follows:

2825 "11-9-628. **Nonliability and limitation on liability of secured party; liability of**
2826 **secondary obligor.**

2827 (a) **Limitation of liability of secured party for noncompliance with article.** Subject to
2828 subsection (f) of this Code section, unless ~~Unless~~ a secured party knows that a person is a
2829 debtor or obligor, knows the identity of the person, and knows how to communicate with
2830 the person:

2831 (1) The secured party is not liable to the person, or to a secured party or lienholder that
2832 has filed a financing statement against the person, for failure to comply with this article;
2833 and

2834 (2) The secured party's failure to comply with this article does not affect the liability of
2835 the person for a deficiency.

2836 (b) **Limitation of liability based on status as secured party.** Subject to subsection (f)
2837 of this Code section, a ~~A~~ secured party is not liable because of its status as secured party:

2838 (1) To a person that is a debtor or obligor, unless the secured party knows:

2839 (A) That the person is a debtor or obligor;

2840 (B) The identity of the person; and

2841 (C) How to communicate with the person; or

2842 (2) To a secured party or lienholder that has filed a financing statement against a person,
2843 unless the secured party knows:

2844 (A) That the person is a debtor; and

2845 (B) The identity of the person.

2846 (c) **Limitation of liability if reasonable belief that transaction not a consumer goods**
2847 **transaction or consumer transaction.** A secured party is not liable to any person, and a
2848 person's liability for a deficiency is not affected, because of any act or omission arising out

2849 of the secured party's reasonable belief that a transaction is not a consumer goods
2850 transaction or a consumer transaction or that goods are not consumer goods, if the secured
2851 party's belief is based on its reasonable reliance on:

2852 (1) A debtor's representation concerning the purpose for which collateral was to be used,
2853 acquired, or held; or

2854 (2) An obligor's representation concerning the purpose for which a secured obligation
2855 was incurred.

2856 (d) **Limitation of liability for statutory damages.** A secured party is not liable to any
2857 person under paragraph (2) of subsection (c) of Code Section 11-9-625 for its failure to
2858 comply with Code Section 11-9-616.

2859 (e) **Limitation of multiple liability for statutory damages.** A secured party is not liable
2860 under paragraph (2) of subsection (c) of Code Section 11-9-625 more than once with
2861 respect to any one secured obligation.

2862 **(f) Exception: limitation of liability under subsections (a) and (b) of this Code section**
2863 **does not apply.** Subsections (a) and (b) of this Code section do not apply to limit the
2864 liability of a secured party to a person if, at the time the secured party obtains control of
2865 collateral that is a controllable account, controllable electronic record, or controllable
2866 payment intangible or at the time the security interest attaches to the collateral, whichever
2867 is later:

2868 (1) The person is a debtor or obligor; and

2869 (2) The secured party knows that the information in subparagraph (b)(1)(A), (b)(1)(B),
2870 or (b)(1)(C) of this Code section relating to the person is not provided by the collateral,
2871 a record attached to or logically associated with the collateral, or the system in which the
2872 collateral is recorded."

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PART VI
ADDITIONAL CHANGES
SECTION 6-1.

2876 Said title is further amended by replacing "authenticated" with "signed", "authenticating"
2877 with "signing", and "an authenticated" with "a signed" wherever the phrases occur in:

- 2878 (1) Code Section 11-1-306, relating to waiver or renunciation of claim or right after breach;
- 2879 (2) Code Section 11-9-210, relating to request for accounting and request regarding list of
2880 collateral or statement of account;
- 2881 (3) Code Section 11-9-324, relating to priority of purchase money security interests;
- 2882 (4) Code Section 11-9-334, relating to priority of security interests in fixtures and crops;
- 2883 (5) Code Section 11-9-341, relating to a bank's rights and duties with respect to a deposit
2884 account;
- 2885 (6) Code Section 11-9-404, relating to rights acquired by assignee and claims and defenses
2886 against assignee;
- 2887 (7) Code Section 11-9-509, relating to persons entitled to file a record;
- 2888 (8) Code Section 11-9-513, relating to termination statement;
- 2889 (9) Code Section 11-9-608, relating to application of proceeds of collection or enforcement
2890 and liability for deficiency and right to surplus;
- 2891 (10) Code Section 11-9-611, relating to notification before disposition of collateral;
- 2892 (11) Code Section 11-9-615, relating to application of proceeds of disposition and liability
2893 for deficiency and right to surplus;
- 2894 (12) Code Section 11-9-619, relating to transfer of record or legal title;
- 2895 (13) Code Section 11-9-620, relating to acceptance of collateral in full or partial
2896 satisfaction of obligation and compulsory disposition of collateral;
- 2897 (14) Code Section 11-9-621, relating to notification of proposal to accept collateral; and
2898 (15) Code Section 11-9-624, relating to waiver.

2899

SECTION 6-2.

2900 Said title is further amended by replacing "writing" with "record" wherever the term occurs

2901 in:

2902 (1) Code Section 11-2-203, relating to seals inoperative;

2903 (2) Code Section 11-2-205, relating to firm offers;

2904 (3) Code Section 11-2A-201, relating to statute of frauds;

2905 (4) Code Section 11-2A-203, relating to seals inoperative;

2906 (5) Code Section 11-2A-205, relating to firm offers;

2907 (6) Code Section 11-3-106, relating to unconditional promise or order;

2908 (7) Code Section 11-4A-207, relating to misdescription of beneficiary; and

2909 (8) Code Section 11-4A-208, relating to misdescription of intermediary bank or

2910 beneficiary's bank.

2911

PART VII

2912

REPEALER

2913

SECTION 7-1.

2914 All laws and parts of laws in conflict with this Act are repealed.