

House Bill 1253 (AM)

By: Representatives Reichert of the 126th, Jenkins of the 110th, Bordeaux of the 151st, Stokes of the 92nd, Squires of the 78th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 11 of the Official Code of Georgia Annotated, the "Uniform Commercial
2 Code," so as to enact a new Article 5 relating to letters of credit; to strike former Article 5
3 in its entirety and replace it with a new article; to define terms; to provide for general matters
4 relating to letters of credit; to provide for the rights of parties to letters of credit; to provide
5 for penalties and remedies; to provide for transfer of letters of credit; to provide for
6 assignment of proceeds of letters of credit; to provide for a statute of limitations; to provide
7 for choice of law and forum of proceedings; to provide for subrogation; to make conforming
8 changes; to amend Article 9 of said Title 11, relating to secured transactions, so as to change
9 various definitions in various Code sections and to amend a nonuniform provision; to amend
10 Article 2 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, the "Motor
11 Vehicle Sales Finance Act," to correct gender references and to correct references to other
12 statutes; to provide for related matters; to provide an effective date and applicability; to
13 repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Title 11 of the Official Code of Georgia Annotated, the "Uniform Commercial Code," is
17 amended by striking in its entirety Article 5, relating to letters of credit, and inserting in its
18 place a new Article 5 to read as follows:

19 style="text-align:center">"ARTICLE 5
20 style="text-align:center">LETTERS OF CREDIT

21 11-5-101. **Short title.**

22 This article may be cited as 'Uniform Commercial Code—Letters of Credit.'

23 11-5-102. **Definitions.**

1 (a) As used in this article, the term:

2 (1) 'Adviser' means a person who at the request of the issuer, a confirmer, or another
3 adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit
4 has been issued, confirmed, or amended.

5 (2) 'Applicant' means a person at whose request or for whose account a letter of credit
6 is issued. The term includes a person who requests an issuer to issue a letter of credit on
7 behalf of another if the person making the request undertakes an obligation to reimburse
8 the issuer.

9 (3) 'Beneficiary' means a person who under the terms of a letter of credit is entitled to
10 have its complying presentation honored. The term includes a person to whom drawing
11 rights have been transferred under a transferable letter of credit.

12 (4) 'Confirmer ' means a nominated person who undertakes, at the request or with the
13 consent of the issuer, to honor a presentation under a letter of credit issued by another.

14 (5) 'Dishonor' of a letter of credit means failure timely to honor or to take an interim
15 action such as acceptance of a draft that may be required by the letter of credit.

16 (6) 'Document' means a draft or other demand, document of title, investment security,
17 certificate, invoice, or other record, statement or representation of fact, law, right, or
18 opinion:

19 (A) Which is presented in a written or other medium permitted by the letter of credit
20 or, unless prohibited by the letter of credit, by the standard practice referred to in
21 subsection (e) of Code Section 11-5-108; and

22 (B) Which is capable of being examined for compliance with the terms and conditions
23 of the letter of credit. A document may not be oral.

24 (7) 'Good faith' means honesty in fact in the conduct or transaction.

25 (8) 'Honor' of a letter of credit means performance of the issuer's undertaking in the
26 letter of credit to pay or deliver an item of value. Unless the letter of credit provides
27 otherwise, 'honor' occurs:

28 (A) Upon payment;

29 (B) If the letter of credit provides for acceptance, upon acceptance of a draft and at
30 maturity, its payment; or

31 (C) If the letter of credit provides for incurring a deferred obligation, upon incurring
32 the obligation and, at maturity, its performance.

33 (9) 'Issuer' means a bank, entity, or other person that issues a letter of credit but does not
34 include an individual who makes an engagement for personal, family, or household
35 purposes.

36 (10) 'Letter of credit' means a definite undertaking that satisfies the requirements of Code
37 Section 11-5-104 by an issuer to a beneficiary at the request of or for the account of an

1 applicant or, in the case of a financial institution, to itself or for its own account, to honor
2 a documentary presentation by payment or delivery of an item of value.

3 (11) 'Nominated person' means a person whom the issuer:

4 (A) Designates or authorizes to pay, accept, negotiate, or otherwise give value under
5 a letter of credit; and

6 (B) Undertakes by agreement or custom and practice to reimburse.

7 (12) 'Presentation' means delivery of a document to an issuer or nominated person for
8 honor or giving of value under a letter of credit.

9 (13) 'Presenter' means a person making a presentation as or on behalf of a beneficiary or
10 nominated person.

11 (14) 'Record' means information that is inscribed on a tangible medium or which is
12 stored in an electronic or other medium and is retrievable in perceivable form.

13 (15) 'Successor of a beneficiary' means a person who succeeds to substantially all of the
14 rights of a beneficiary by operation of law, including a corporation with or into which a
15 beneficiary has merged or consolidated, an administrator, executor, personal
16 representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

17 (b) Other definitions applying to this article and the Code sections in which they appear
18 are:

19 'Accept' or 'acceptance.' Code Section 11-3-409.

20 'Value.' Code Section 11-3-303 and 11-4-211.

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

23 11-5-103. **Scope.**

24 (a) This article applies to letters of credit and to certain rights and obligations arising out
25 of transactions involving letters of credit.

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

29 (c) With the exception of subsections (a), (b), and (d) of this Code section, paragraphs (9)
30 and (10) of subsection (a) of Code Section 11-5-102, subsection (d) of Code Section
31 11-5-106, and subsection (d) of Code Section 11-5-114 and except to the extent prohibited
32 in subsection (3) of Code Section 11-1-102 and subsection (d) of Code Section 11-5-117,
33 the effect of this article may be varied by agreement or by a provision stated or
34 incorporated by reference in an undertaking. A term in an agreement or undertaking
35 generally excusing liability or generally limiting remedies for failure to perform obligations
36 is not sufficient to vary obligations prescribed by this article.

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

6 **11-5-104. Formal requirements.**

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

9 (1) By a signature; or

10 (2) In accordance with the agreement of the parties or the standard practice referred to
11 in subsection (e) of Code Section 11-5-108.

12 **11-5-105. Consideration.**

13 Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice,
14 or confirmation.

15 **11-5-106. Issuance, amendment, cancellation, and duration.**

16 (a) A letter of credit is issued and becomes enforceable according to its terms against the
17 issuer when the issuer sends or otherwise transmits it to the person requested to advise or
18 to the beneficiary. A letter of credit is revocable only if it provides that it is revocable.

19 (b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant,
20 confirmer, and issuer are not affected by an amendment or cancellation to which that
21 person has not consented except to the extent the letter of credit provides that it is
22 revocable or that the issuer may amend or cancel the letter of credit without that consent.

23 (c) If there is no stated expiration date or other provision that determines its duration, a
24 letter of credit expires one year after its stated date of issuance or, if none is stated, one
25 year after the date on which it is issued.

26 (d) A letter of credit that states that it is perpetual expires five years after its stated date of
27 issuance or, if none is stated, five years after the date on which it is issued.

28 **11-5-107. Confirmer, nominated person, and adviser.**

29 (a) A confirmer is directly obligated on a letter of credit and has the rights and obligations
30 of an issuer to the extent of its confirmation. The confirmer also has rights against and
31 obligations to the issuer as if the issuer were an applicant and the confirmer had issued the
32 letter of credit at the request of and for the account of the issuer.

1 (b) A nominated person who is not a confirmer is not obligated to honor or otherwise give
2 value for a presentation.

3 (c) A person required to advise may decline to act as an adviser. An adviser that is not a
4 confirmer is not obligated to honor or give value for a presentation. An adviser undertakes
5 to the issuer and to the beneficiary accurately to advise the terms of the letter of credit,
6 confirmation, amendment, or advice received by that person and undertakes to the
7 beneficiary to check the apparent authenticity of the requirement to advise. Even if the
8 advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as
9 issued.

10 (d) A person who notifies a transferee beneficiary of the terms of a letter of credit,
11 confirmation, amendment, or advice has the rights and obligations of an adviser under
12 subsection (c) of this Code section. The terms in the notice to the transferee beneficiary
13 may differ from the terms in any notice to the transferor beneficiary to the extent permitted
14 by the letter of credit, confirmation, amendment, or advice received by the person who so
15 notifies.

16 **11-5-108. Issuer's rights and obligations.**

17 (a) Except as otherwise provided in Code Section 11-5-109, an issuer shall honor a
18 presentation that, as determined by the standard practice referred to in subsection (e) of this
19 Code section, appears on its face strictly to comply with the terms and conditions of the
20 letter of credit. Except as otherwise provided in Code Section 11-5-113 and unless
21 otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not
22 appear to comply.

23 (b) An issuer has a reasonable time after presentation, but not beyond the end of the
24 seventh business day of the issuer after the day of its receipt of documents:

25 (1) To honor;

26 (2) If the letter of credit provides for honor to be completed more than seven business
27 days after presentation, to accept a draft or incur a deferred obligation; or

28 (3) To give notice to the presenter of discrepancies in the presentation.

29 (c) Except as otherwise provided in subsection (d) of this Code section, an issuer is
30 precluded from asserting as a basis for dishonor any discrepancy if timely notice is not
31 given or from asserting as a basis for dishonor any discrepancy not stated in the notice if
32 timely notice is given.

33 (d) Failure to give the notice specified in subsection (b) of this Code section or to mention
34 fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a
35 basis for dishonor, fraud, or forgery as described in subsection (a) of Code Section
36 11-5-109 or expiration of the letter of credit before presentation.

1 (e) An issuer shall observe the standard practice of financial institutions that regularly
 2 issue letters of credit. Determination of the issuer's observance of the standard practice is
 3 a matter of interpretation for the court. The court shall offer the parties a reasonable
 4 opportunity to present evidence of the standard practice.

5 (f) An issuer is not responsible for:

6 (1) The performance or nonperformance of the underlying contract, arrangement, or
 7 transaction;

8 (2) An act or omission of others; or

9 (3) Observance of knowledge of the usage of a particular trade other than the standard
 10 practice referred to in subsection (e) of this Code section.

11 (g) If an undertaking constituting a letter of credit under paragraph (10) of subsection (a)
 12 of Code Section 11-5-102 contains nondocumentary conditions, an issuer shall disregard
 13 the nondocumentary conditions and treat them as if they were not stated.

14 (h) An issuer that has dishonored a presentation shall return the documents to the presenter
 15 or hold the documents at the disposal of the presenter and send advice to that effect to the
 16 presenter.

17 (i) An issuer that has honored a presentation as permitted or required by this article:

18 (1) Is entitled to be reimbursed by the applicant in immediately available funds not later
 19 than the date of its payment of funds;

20 (2) Takes the documents free of claims of the beneficiary or presenter;

21 (3) Is precluded from asserting a right of recourse on a draft under Code Sections
 22 11-3-414 and 11-3-415;

23 (4) Except as otherwise provided in Code Sections 11-5-110 and 11-5-117, is precluded
 24 from restitution of money paid or other value given by mistake to the extent the mistake
 25 concerns discrepancies in the documents or tender which are apparent on the face of the
 26 presentation; and

27 (5) Is discharged to the extent of its performance under the letter of credit unless the
 28 issuer honored a presentation in which a required signature of a beneficiary was forged.

29 **11-5-109. Fraud and forgery.**

30 (a) If a presentation is made that appears on its face strictly to comply with the terms and
 31 conditions of the letter of credit, but a required document is forged or materially fraudulent,
 32 or honor of the presentation would facilitate a material fraud by the beneficiary on the
 33 issuer or applicant:

34 (1) The issuer shall honor the presentation, if honor is demanded by:

35 (A) A nominated person who has given value in good faith and without notice of
 36 forgery or material fraud;

1 (B) A confirmer who has honored its confirmation in good faith;

2 (C) A holder in due course of a draft drawn under the letter of credit which was taken
3 after acceptance by the issuer or nominated person; or

4 (D) An assignee of the issuer's or nominated person's deferred obligation that was
5 taken for value and without notice of forgery or material fraud after the obligation was
6 incurred by the issuer or nominated persons; and

7 (2) The issuer, acting in good faith, may honor or dishonor the presentation in any other
8 case.

9 (b) If an applicant claims that a required document is forged or materially fraudulent or
10 that honor of the presentation would facilitate a material fraud by the beneficiary on the
11 issuer or applicant, a court of competent jurisdiction may temporarily or permanently
12 enjoin the issuer from honoring a presentation or grant similar relief against the issuer or
13 other persons only if the court finds that:

14 (1) The relief is not prohibited under the law applicable to an accepted draft or deferred
15 obligation incurred by the issuer;

16 (2) A beneficiary, issuer, or nominated person who may be adversely affected is
17 adequately protected against loss that it may suffer because the relief is granted;

18 (3) All of the conditions to entitle a person to the relief under the law of this state have
19 been met; and

20 (4) On the basis of the information submitted to the court, the applicant is more likely
21 than not to succeed under its claim of forgery or material fraud and the person demanding
22 honor does not qualify for protection under paragraph (1) of subsection (a) of this Code
23 section.

24 **11-5-110. Warranties.**

25 (a) If its presentation is honored, the beneficiary warrants:

26 (1) To the issuer, any other person to whom presentation is made, and the applicant that
27 there is no fraud or forgery of the kind described in subsection (a) of Code Section
28 11-5-109; and

29 (2) To the applicant that the drawing does not violate any agreement between the
30 applicant and beneficiary or any other agreement intended by them to be augmented by
31 the letter of credit.

32 (b) The warranties in subsection (a) of this Code section are in addition to warranties
33 arising under Articles 3, 4, 7, and 8 of this title because of the presentation or transfer of
34 documents covered by any of those articles.

1 11-5-111. **Remedies.**

2 (a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a
3 letter of credit before presentation, the beneficiary, successor, or nominated person
4 presenting on its own behalf may recover from the issuer the amount that is the subject of
5 the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the
6 payment of money the claimant may obtain specific performance or at the claimant's
7 election recover an amount equal to the value of performance from the issuer. In either
8 case the claimant may also recover incidental damages but not consequential damages.
9 The claimant is not obligated to take action to avoid damages that might be due from the
10 issuer under this subsection. If, although not obligated to do so, the claimant avoids
11 damages, the claimant's recovery from the issuer must be reduced by the amount of
12 damages avoided. The issuer has the burden of proving the amount of damages avoided.
13 In the case of repudiation the claimant need not present any document.

14 (b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit
15 or honors a draft or demand in breach of its obligation to the applicant, the applicant may
16 recover damages resulting from the breach, including incidental damages but not
17 consequential damages, less any amount saved as a result of the breach.

18 (c) If an adviser or nominated person other than a confirmer breaches an obligation under
19 this article or an issuer breaches an obligation not covered in subsection (a) or (b) of this
20 Code section, a person to whom the obligation is owed may recover damages resulting
21 from the breach, including incidental damages but not consequential damages, less any
22 amount saved as a result of the breach. To the extent of the confirmation, a confirmer has
23 the liability of an issuer specified in this subsection and in subsections (a) and (b) of this
24 Code section.

25 (d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b),
26 or (c) of this Code section shall pay interest on the amount owed thereunder from the date
27 of wrongful dishonor or other appropriate date.

28 (e) Reasonable attorney's fees and other expenses of litigation shall be awarded to the
29 prevailing party in an action in which a remedy is sought under this article.

30 (f) Damages that would otherwise be payable by a party for breach of an obligation under
31 this article may be liquidated by agreement or undertaking but only in an amount or by a
32 formula that is reasonable in light of the harm anticipated.

33 11-5-112. **Transfer of letter of credit.**

34 (a) Except as otherwise provided in Code Section 11-5-113, unless a letter of credit
35 provides that it is transferable the right of a beneficiary to draw or otherwise demand
36 performance under a letter of credit may not be transferred.

1 (b) Even if a letter of credit provides that it is transferable, the issuer may refuse to
2 recognize or carry out a transfer if:

3 (1) The transfer would violate applicable law; or

4 (2) The transferor or transferee has failed to comply with any requirement stated in the
5 letter of credit or any other requirement relating to transfer imposed by the issuer which
6 is within the standard practice referred to in subsection (e) of Code Section 11-5-108 or
7 is otherwise reasonable under the circumstances.

8 **11-5-113. Transfer by operation of law.**

9 (a) A successor of a beneficiary may consent to amendments, sign and present documents,
10 and receive payment or other items of value in the name of the beneficiary without
11 disclosing its status as a successor.

12 (b) A successor of a beneficiary may consent to amendments, sign and present documents,
13 and receive payment or other items of value in its own name as the disclosed successor of
14 the beneficiary. Except as otherwise provided in subsection (e) of this Code section, an
15 issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full
16 substitution for its predecessor upon compliance with the requirements for recognition by
17 the issuer of a transfer of drawing rights by operation of law under the standard practice
18 referred to in subsection (e) of Code Section 11-5-108 or, in the absence of such a practice,
19 compliance with other reasonable procedures sufficient to protect the issuer.

20 (c) An issuer is not obliged to determine whether a purported successor is a successor of
21 a beneficiary or whether the signature of a purported successor is genuine or authorized.

22 (d) Honor of a purported successor's apparently complying presentation under subsection
23 (a) or (b) of this Code section has the consequences specified in subsection (i) of Code
24 Section 11-5-108 even if the purported successor is not the successor of a beneficiary.
25 Documents signed in the name of the beneficiary or of a disclosed successor by a person
26 who is neither the beneficiary nor the successor of the beneficiary are forged documents
27 for the purposes of Code Section 11-5-109.

28 (e) An issuer whose rights of reimbursement are not covered by subsection (d) of this
29 Code section or substantially similar law and any confirmer or nominated person may
30 decline to recognize a presentation under subsection (b) of this Code section.

31 (f) A beneficiary whose name is changed after the issuance of a letter of credit has the
32 same rights and obligations as a successor of a beneficiary under this Code section.

33 **11-5-114. Assignment of proceeds.**

34 (a) As used in this Code section, the term 'proceeds of a letter of credit' means the cash,
35 check, accepted draft, or other item of value paid or delivered upon honor or giving of

1 value by the issuer or any nominated person under the letter of credit. The term does not
2 include a beneficiary's drawing rights or documents presented by the beneficiary.

3 (b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The
4 beneficiary may do so before presentation as a present assignment of its right to receive
5 proceeds contingent upon its compliance with the terms and conditions of the letter of
6 credit.

7 (c) An issuer or nominated person need not recognize an assignment of proceeds of a letter
8 of credit until it consents to the assignment.

9 (d) An issuer or nominated person has no obligation to give or withhold its consent to an
10 assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld
11 if the assignee possesses and exhibits the letter of credit and presentation of the letter of
12 credit is a condition to honor.

13 (e) Rights of a transferee beneficiary or nominated person are independent of the
14 beneficiary's assignment of the proceeds of a letter of credit and are superior to the
15 assignee's right to the proceeds.

16 (f) Neither the rights recognized by this Code section between an assignee and an issuer,
17 transferee beneficiary, or nominated person nor the issuer's or nominated person's payment
18 of proceeds to an assignee or a third person affect the rights between the assignee and any
19 person other than the issuer, transferee beneficiary, or nominated person. The mode of
20 creating and perfecting a security interest in or granting an assignment of a beneficiary's
21 rights to proceeds is governed by Article 9 of this title or other law. Against persons other
22 than the issuer, transferee beneficiary, or nominated person, the rights and obligations
23 arising upon the creation of a security interest or other assignment of a beneficiary's right
24 to proceeds and its perfection are governed by Article 9 of this title or other law.

25 **11-5-115. Statute of limitations.**

26 An action to enforce a right or obligation arising under this article must be commenced
27 within one year after the expiration date of the relevant letter of credit or one year after the
28 cause of action accrues, whichever occurs later. A cause of action accrues when the breach
29 occurs regardless of the aggrieved party's lack of knowledge of the breach.

30 **11-5-116. Choice of law and forum.**

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

1 transaction.

2 (b) Unless subsection (a) of this Code section applies, the liability of an issuer, nominated
 3 person, or adviser for any action or omission is governed by the law of the jurisdiction in
 4 which the person is located. The person is considered to be located at the address indicated
 5 in the person's undertaking. If more than one address is indicated, the person is
 6 considered to be located at the address from which the person's undertaking was issued.
 7 For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of
 8 credit, but not enforcement of a judgment, all branches of a bank are considered separate
 9 juridical entities and a bank is considered to be located at the place where its relevant
 10 branch is considered to be located under this subsection.

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

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

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

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

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

22 (d) If there is conflict between this article and Article 3, 4, 4A, or 9 of this title, this article
 23 governs.

24 (e) The forum for settling disputes arising out of an undertaking within this article may be
 25 chosen in the manner and with the binding effect that governing law may be chosen in
 26 accordance with subsection (a) of this Code section.

27 **11-5-117. Subrogation of issuer, applicant, and nominated person.**

28 (a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the
 29 beneficiary to the same extent as if the issuer were a secondary obligor of the underlying
 30 obligation owed to the beneficiary and of the applicant to the same extent as if the issuer
 31 were the secondary obligor of the underlying obligation owed to the applicant.

32 (b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against
 33 any beneficiary, presenter, or nominated person to the same extent as if the applicant were
 34 the secondary obligor of the obligations owed to the issuer and has the rights of subrogation
 35 of the issuer to the rights of the beneficiary stated in subsection (a) of this Code section.

36 (c) A nominated person who pays or gives value against a draft or demand presented under

1 a letter of credit is subrogated to the rights of:

2 (1) The issuer against the applicant to the same extent as if the nominated person were
3 a secondary obligor of the obligation owed to the issuer by the applicant;

4 (2) The beneficiary to the same extent as if the nominated person were a secondary
5 obligor of the underlying obligation owed to the beneficiary; and

6 (3) The applicant to the same extent as if the nominated person were a secondary obligor
7 of the underlying obligation owed to the applicant.

8 (d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated
9 in subsections (a) and (b) of this Code section do not arise until the issuer honors the letter
10 of credit or otherwise pays and the rights in subsection (c) of this Code section do not arise
11 until the nominated person pays or otherwise gives value. Until then the issuer, nominated
12 person, and the applicant do not derive under this Code section present or prospective
13 rights forming the basis of a claim, defense, or excuse.

14 11-5-118. **Security interest of issuer or nominated person.**

15 (a) An issuer or nominated person has a security interest in a document presented under
16 a letter of credit to the extent that the issuer or nominated person honors or gives value for
17 the presentation.

18 (b) So long as and to the extent that an issuer or nominated person has not been reimbursed
19 or has not otherwise recovered the value given with respect to a security interest in a
20 document under subsection (a) of this Code section, the security interest continues and is
21 subject to Article 9 of this title, but:

22 (1) A security agreement is not necessary to make the security interest enforceable under
23 paragraph (3) of subsection (b) of Code Section 11-9-203;

24 (2) If the document is presented in a medium other than a written or other tangible
25 medium, the security interest is perfected; and

26 (3) If the document is presented in a written or other tangible medium and is not a
27 certificated security, chattel paper, a document of title, an instrument, or a letter of credit,
28 the security interest is perfected and has priority over a conflicting security interest in the
29 document so long as the debtor does not have possession of the document."

30 **SECTION 2.**

31 Said title is further amended in Code Section 11-2-512, relating to payment by buyer before
32 inspection, by striking paragraph (b) of subsection (1) and inserting in lieu thereof the
33 following:

34 "(b) Despite tender of the required documents the circumstances would justify injunction
35 against honor under the provisions of this title (Code Section ~~11-5-114~~ 11-5-109)."

1 crops by planting or otherwise, even though the person giving new value had knowledge
2 of the earlier security interest or agricultural lien."

3 **SECTION 6.**

4 Said title is further amended in Code Section 11-9-501, relating to filing offices, by striking
5 in its entirety subparagraph (a)(1)(A), and inserting in lieu thereof the following:

6 "(A) The collateral is as-extracted collateral, growing crops, or timber to be cut; or".

7 **SECTION 7.**

8 Said title is further amended in Code Section 11-9-502, relating to contents of financing
9 statements, by striking in its entirety subsection (b), and inserting in lieu thereof the
10 following:

11 "(b) *Real property related financing statements.* Except as otherwise provided in
12 subsection (b) of Code Section 11-9-501, to be sufficient, a financing statement that covers
13 as-extracted collateral, growing crops, or timber to be cut, or which is filed as a fixture
14 filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this
15 Code section and also:

- 16 (1) Indicate that it covers this type of collateral;
17 (2) Indicate that it is to be filed for record in the real property records;
18 (3) Provide a description of the real property to which the collateral is related sufficient
19 to give constructive notice of a mortgage under the law of this state if the description
20 were contained in a record of the mortgage of the real property; and
21 (4) If the debtor does not have an interest of record in the real property, provide the name
22 of a record owner."

23 **SECTION 8.**

24 This Act shall become effective July 1, 2002, and shall apply to a letter of credit that is issued
25 on or after July 1, 2002. This Act does not apply to a transaction, event, obligation, or duty
26 arising out of or associated with a letter of credit that was issued before July 1, 2002.

27 **SECTION 9.**

28 Article 2 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, the "Motor
29 Vehicle Sales Finance Act," is amended by striking in its entirety Code Section 10-1-36,
30 relating to the disposition of a motor vehicle repossessed after default and the right to
31 recover a deficiency, and inserting in lieu thereof the following:

1 10-1-36

2 (a) When any motor vehicle has been repossessed after default in accordance with Part 5
3 6 of Article 9 of Title 11, the seller or holder shall not be entitled to recover a deficiency
4 against the buyer unless within ten days after the repossession he or she forwards by
5 registered or certified mail or statutory overnight delivery to the address of the buyer
6 shown on the contract or later designated by the buyer a notice of the seller's or holder's
7 intention to pursue a deficiency claim against the buyer. The notice shall also advise the
8 buyer of his or her rights of redemption, as well as his or her right to demand a public sale
9 of the repossessed motor vehicle. In the event the buyer exercises his or her right to
10 demand a public sale of the goods, he or she shall in writing so advise the seller or holder
11 of his or her election by registered or certified mail or statutory overnight delivery
12 addressed to the seller or holder at the address from which the seller's or holder's notice
13 emanated within ten days after the posting of the original seller's or holder's notice.

14 (b) In the event of election of such public sale by the buyer, the seller or holder shall
15 dispose of said repossessed motor vehicle at a public sale as provided by law, to be held
16 in the state and county where the original sale took place, or the state and county where the
17 motor vehicle was repossessed, or the state and county of the buyer's residence, at the
18 seller's election.

19 (c) This Code section is cumulative of Part 5 6 of Article 9 of Title 11 and provides
20 cumulative additional rights and remedies which must be fulfilled before any deficiency
21 claim will lie against a buyer, and nothing herein shall be deemed to repeal said part.

22

SECTION 10.

23 All laws and parts of laws in conflict with this Act are repealed.