

House Bill 197

By: Representatives Jacobs of the 80<sup>th</sup>, Willard of the 51<sup>st</sup>, Fleming of the 121<sup>st</sup>, Evans of the 42<sup>nd</sup>, Welch of the 110<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 12 of Title 9, Title 11, and Chapter 2 of Title 18 of the Official Code of  
2 Georgia Annotated, relating to verdict and judgment, the commercial code, and debtor and  
3 creditor relations, respectively, so as to change provisions in uniform Acts relating to debts  
4 and other obligations; to repeal the "Georgia Foreign Money Judgments Recognition Act"  
5 and enact the "Uniform Foreign-Country Money Judgments Recognition Act"; to provide for  
6 definitions; to provide for applicability; to provide for standards for recognition of  
7 foreign-country judgments; to provide for jurisdiction; to provide for procedure; to provide  
8 for the effect of recognition of foreign-country judgments; to provide for a stay of  
9 proceedings pending an appeal; to provide for a statute of limitations; to provide for  
10 uniformity; to provide for situations not covered by the "Uniform Foreign-Country Money  
11 Judgments Recognition Act"; to update and modernize various statutes in the commercial  
12 code relating to commercial transactions in order to maintain uniformity in this state's  
13 statutes governing commercial transactions as recommended by the National Conference of  
14 Commissioners on Uniform State Laws; to revise, add, and move defined terms; to  
15 reorganize Article 1, relating to general provisions, of the "Uniform Commercial Code"; to  
16 make conforming amendments to other articles of the "Uniform Commercial Code" to  
17 provide for accurate cross-references to the revised "Uniform Commercial Code"; to amend  
18 Titles 7, 10, 40, and 52 of the Official Code of Georgia Annotated, relating to banking and  
19 finance, commerce and trade, motor vehicles and traffic, and waters of the state, ports, and  
20 watercraft, respectively, so as to make conforming cross-references to the revised "Uniform  
21 Commercial Code"; to revise the "Uniform Fraudulent Transfers Act" and enact the  
22 "Uniform Voidable Transactions Act"; to reform terminology and revise and add definitions;  
23 to provide the allocation of the burden of proof and define the standard of proof with respect  
24 to claims and defenses; to provide for governing law; to provide for the application to a series  
25 organization; to provide for uniformity of application and construction; to amend Article 3  
26 of Chapter 3 of Title 9 and Code Section 17-14-17 of the Official Code of Georgia  
27 Annotated, relating to limitations on recovery for deficiencies connected with improvements  
28 to realty and resulting injuries and fraudulent transfers, respectively, so as to correct

29 cross-references to the "Uniform Voidable Transactions Act"; to provide for a short title; to  
 30 provide for related matters; to provide for effective dates and applicability; to repeal  
 31 conflicting laws; and for other purposes.

32 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

33 **PART I**  
 34 **SHORT TITLE**  
 35 **SECTION 1-1.**

36 This Act shall be known and may be cited as the "Debtor-Creditor Uniform Law  
 37 Modernization Act of 2015."

38 **PART II**  
 39 **"UNIFORM FOREIGN-COUNTRY**  
 40 **MONEY JUDGMENTS RECOGNITION ACT"**  
 41 **SECTION 2-1.**

42 Chapter 12 of Title 9 of the Official Code of Georgia Annotated, relating to verdict and  
 43 judgment, is amended by revising Article 5, relating to the "Georgia Foreign Money  
 44 Judgments Recognition Act," as follows:

45 **"ARTICLE 5**

46 9-12-110.

47 This article shall be known and may be cited as the 'Uniform Foreign-Country Georgia  
 48 Foreign Money Judgments Recognition Act.'

49 9-12-111.

50 As used in this article, the term:

51 (1) 'Foreign country' means a government other than:

52 (A) The United States;

53 (B) Any state, district, commonwealth, territory, or insular possession of the United  
 54 States; or

55 (C) Any other government with regard to which the decision in this state as to whether  
 56 to recognize a judgment of such government's court is initially subject to determination  
 57 under the Full Faith and Credit Clause of the United States Constitution.

58 ~~(1)(2) 'Foreign-country judgment' 'Foreign judgment' means any judgment of a foreign~~  
 59 ~~state granting or denying recovery of a sum of money other than a judgment for taxes, a~~  
 60 ~~fine or other penalty, or a judgment for support in matrimonial or family matters court of~~  
 61 ~~a foreign country.~~

62 ~~(2) 'Foreign state' means any governmental unit other than:~~

63 ~~(A) The United States;~~

64 ~~(B) Any state, district, commonwealth, territory, or insular possession of the United~~  
 65 ~~States; or~~

66 ~~(C) The Trust Territory of the Pacific Islands.~~

67 9-12-112.

68 ~~(a) Except as otherwise provided in subsection (b) of this Code section, this~~ This article  
 69 ~~applies to any foreign foreign-country judgment to the extent that such judgment:~~

70 ~~(1) Grants or denies recovery of a sum of money; and~~

71 ~~(2) Under the law of the foreign country where rendered, is final, conclusive, and~~  
 72 ~~enforceable where rendered even though an appeal therefrom is pending or it is subject~~  
 73 ~~to appeal.~~

74 ~~(b) This article shall not apply to a foreign-country judgment, even if such judgment grants~~  
 75 ~~or denies recovery of a sum of money, to the extent that such judgment is:~~

76 ~~(1) A judgment for taxes;~~

77 ~~(2) A fine or other penalty; or~~

78 ~~(3) A judgment for divorce, support, or maintenance, or any other judgment rendered in~~  
 79 ~~connection with domestic relations.~~

80 ~~(c) A party seeking recognition of a foreign-country judgment has the burden of~~  
 81 ~~establishing that this article applies to such foreign-country judgment.~~

82 9-12-113.

83 ~~(a) Except as otherwise provided in Code Sections 9-12-114 and 9-12-115, a foreign~~  
 84 ~~subsections (b) and (c) of this Code section, a court of this state shall recognize a~~  
 85 ~~foreign-country judgment meeting the requirements of Code Section 9-12-112 is~~  
 86 ~~conclusive between the parties to the extent that it grants or denies recovery of a sum of~~  
 87 ~~money. The foreign judgment is enforceable in the same manner as the judgment of a~~  
 88 ~~sister state which is entitled to full faith and credit.~~

89 9-12-114.

90 ~~(b) A court of this state shall not recognize a foreign-country judgment A foreign judgment~~  
 91 ~~shall not be recognized if:~~

- 92 (1) The judgment was rendered under a judicial system ~~which~~ that does not provide  
 93 impartial tribunals or procedures compatible with the requirements of due process of law;  
 94 (2) The foreign court did not have personal jurisdiction over the defendant; or  
 95 (3) The foreign court did not have jurisdiction over the subject matter; ;  
 96 (c) A court of this state may not recognize a foreign-country judgment if:  
 97 ~~(4)~~(1) The defendant in the proceedings in the foreign court did not receive notice of the  
 98 proceedings in sufficient time to enable ~~him~~ the defendant to defend;  
 99 ~~(5)~~(2) The judgment was obtained by fraud that deprived the losing party of an adequate  
 100 opportunity to present its case;  
 101 ~~(6)~~(3) The judgment or cause of action on which the judgment is based is repugnant to  
 102 the public policy of this state or of the United States;  
 103 ~~(7)~~(4) The judgment conflicts with another final and conclusive judgment;  
 104 ~~(8)~~(5) The proceedings in the foreign court were contrary to an agreement between the  
 105 parties under which the dispute in question was to be ~~settled~~ determined otherwise than  
 106 by proceedings in ~~that~~ such foreign court;  
 107 ~~(9)~~(6) In the case of jurisdiction based only on personal service, the foreign court was  
 108 a seriously inconvenient forum for the trial of the action; ~~or~~  
 109 ~~(10) The party seeking to enforce the judgment fails to demonstrate that judgments of~~  
 110 ~~courts of the United States and of states thereof of the same type and based on~~  
 111 ~~substantially similar jurisdictional grounds are recognized and enforced in the courts of~~  
 112 ~~the foreign state.~~  
 113 (7) The judgment was rendered in circumstances that raise substantial doubt about the  
 114 integrity of the rendering court with respect to such judgment; or  
 115 (8) The specific proceeding in the foreign court leading to the judgment was not  
 116 compatible with the requirements of due process of law.  
 117 (d) A party resisting recognition of a foreign-country judgment has the burden of  
 118 establishing that a ground for nonrecognition stated in subsection (b) or (c) of this Code  
 119 section exists.

120 9-12-115. 9-12-114.

- 121 (a) A ~~foreign~~ foreign-country judgment shall not be refused recognition for lack of  
 122 personal jurisdiction if:  
 123 (1) The defendant was served personally in the foreign ~~state~~ country;  
 124 (2) The defendant voluntarily appeared in the proceedings other than for the purpose of  
 125 protecting property seized or threatened with seizure in the proceedings or of contesting  
 126 the jurisdiction of the court over ~~him~~ the defendant;

127 (3) Prior to the commencement of the proceedings, the defendant had agreed expressly  
 128 ~~in writing~~ to submit to the jurisdiction of the foreign court, with respect to the subject  
 129 matter involved ~~in such proceedings, in an action by the party seeking to enforce the~~  
 130 ~~judgment;~~

131 (4) The defendant was domiciled in the foreign ~~state~~ country when the proceedings were  
 132 instituted or, ~~being a body corporate, then was a corporation or other form of business~~  
 133 ~~organization that had its principal place of business in or was incorporated in organized~~  
 134 ~~under the laws of the foreign state~~ country;

135 (5) The defendant had a business office in the foreign ~~state~~ country and the proceedings  
 136 in the foreign court involved a cause of action arising out of business done by the  
 137 defendant through that office in the foreign state; ~~provided, however, that a business~~  
 138 ~~office in the foreign state which it maintained for the transaction of business by a~~  
 139 ~~subsidiary corporation of the defendant but which is not held out as a business office of~~  
 140 ~~the defendant shall not be deemed to be a business office of the defendant~~ country; or

141 (6) The defendant operated a motor vehicle or airplane in the foreign ~~state~~ country and  
 142 the proceedings involved a cause of action arising out of such operation.

143 (b) The courts of this state may recognize other bases of personal jurisdiction; ~~provided,~~  
 144 ~~however, that if the proceedings in the foreign court involved a cause of action arising out~~  
 145 ~~of business activities in the foreign state, the judgment shall not be recognized unless there~~  
 146 ~~is a basis for personal jurisdiction as specified other than those listed~~ in subsection (a) of  
 147 this Code section.

148 9-12-115.

149 (a) If recognition of a foreign-country judgment is sought as an original matter, the issue  
 150 of recognition shall be raised by filing an action seeking recognition of such  
 151 foreign-country judgment.

152 (b) If recognition of a foreign-country judgment is sought in a pending action, the issue  
 153 of recognition may be raised by counterclaim or cross-claim.

154 (c) Chapter 11 of this title shall apply to any claim, counterclaim, or cross-claim for  
 155 recognition of a foreign-country judgment.

156 9-12-116.

157 If the court in a proceeding under Code Section 9-12-115 finds that the foreign-country  
 158 judgment is entitled to recognition under this article then, to the extent that the  
 159 foreign-country judgment grants or denies recovery of a sum of money, the foreign-country  
 160 judgment is:

161 (1) Conclusive between the parties to the same extent as the judgment of a sister state  
 162 entitled to full faith and credit in this state would be conclusive; and  
 163 (2) Enforceable in the same manner and to the same extent as a judgment rendered in this  
 164 state.

165 ~~9-12-116.~~ 9-12-117.

166 ~~If the defendant satisfies the court either a party establishes that an appeal from a~~  
 167 ~~foreign-country judgment is pending or that he is entitled and intends to appeal from the~~  
 168 ~~foreign judgment will be taken, the court may stay the proceedings with regard to the~~  
 169 ~~foreign-country judgment until the time for appeal expires or the appellant has had~~  
 170 ~~sufficient time been determined or until the expiration of a period of time sufficient to~~  
 171 ~~enable the defendant to prosecute the appeal and has failed to do so.~~

172 9-12-118.

173 An action to recognize a foreign-country judgment shall be commenced within the earlier  
 174 of the time during which the foreign-country judgment is effective in the foreign country  
 175 or 15 years from the date that the foreign-country judgment became effective in the foreign  
 176 country.

177 9-12-119.

178 In applying and construing this article, consideration shall be given to the need to promote  
 179 uniformity of the law with respect to its subject matter among states that enact the 'Uniform  
 180 Foreign-Country Money Judgments Recognition Act.'

181 ~~9-12-117.~~ 9-12-120.

182 This article does not prevent the recognition under principles of comity or otherwise of a  
 183 ~~foreign~~ foreign-country judgment ~~in situations not covered by~~ not within the scope of this  
 184 article."

185 **PART IIIA**  
 186 **NATIONAL CONFERENCE OF**  
 187 **COMMISSIONERS ON UNIFORM STATE LAWS**  
 188 **RECOMMENDED CHANGES TO THE COMMERCIAL CODE**  
 189 **SECTION 3A-1.**

190 Title 11 of the Official Code of Georgia Annotated, relating to the commercial code, is  
 191 amended by revising Article 1, relating to general provisions, as follows:

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"ARTICLE 1  
GENERAL PROVISIONS  
Part 1  
~~Short Title, Construction, Application, and Subject Matter of Title~~  
General Provisions

11-1-101. **Short title titles.**

(a) This Title 11 shall be known as and may be cited as the 'Uniform Commercial Code.'

~~(b) This article shall be known as and may be cited as the 'Uniform Commercial Code –~~  
General Provisions.'

11-1-102. Scope of article.

This article shall apply to a transaction to the extent that it is governed by another article of this title.

~~11-1-102.~~ 11-1-103. Rules of construction to promote purposes and policies; applicability of supplemental principles of law. Purposes; rules of construction; variation by agreement.

~~(1)(a)~~ (a) This title shall be liberally construed and applied to promote its underlying purposes and policies:

~~(2)~~ Underlying purposes and policies of this title which are:

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

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

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

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

~~(3)~~ The effect of provisions of this title may be varied by agreement, except as otherwise provided in this title and except that the obligations of good faith, diligence, reasonableness, and care prescribed by this title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

~~(4)~~ The presence in certain provisions of this title of the words 'unless otherwise agreed' or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3) of this Code section.

226 ~~(5) In this title unless the context otherwise requires:~~

227 ~~(a) Words in the singular number include the plural, and in the plural include the~~  
 228 ~~singular;~~

229 ~~(b) Words of the masculine gender include the feminine and the neuter, and when the~~  
 230 ~~sense so indicates words of the neuter gender may refer to any gender.~~

231 ~~11-1-103. **Supplementary general principles of law applicable.**~~

232 ~~Unless displaced by the particular provisions of this title, the principles of law and equity,~~  
 233 ~~including the law merchant and the law relative to capacity to contract, principal and agent,~~  
 234 ~~estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other~~  
 235 ~~validating or invalidating cause shall supplement its provisions.~~

236 11-1-104. **Construction against implicit repeal.**

237 This title being a general act intended as a unified coverage of its subject matter, no part  
 238 of it shall be deemed to be impliedly repealed by subsequent legislation if such  
 239 construction can reasonably be avoided.

240 11-1-105. **Severability.** ~~**Territorial application of the title; parties' power to choose**~~  
 241 ~~**applicable law.**~~

242 ~~If any provision or clause of this title or application thereof to any person or circumstances~~  
 243 ~~is held invalid, such invalidity shall not affect other provisions or applications of this title~~  
 244 ~~which can be given effect without the invalid provision or application, and to this end the~~  
 245 ~~provisions of this title are declared to be severable.~~

246 ~~(1) Except as provided hereafter in this Code section, when a transaction bears a~~  
 247 ~~reasonable relation to this state and also to another state or nation the parties may agree~~  
 248 ~~that the law either of this state or of such other state or nation shall govern their rights and~~  
 249 ~~duties. Failing such agreement this title applies to transactions bearing an appropriate~~  
 250 ~~relation to this state.~~

251 ~~(2) Where one of the following provisions of this title specifies the applicable law, that~~  
 252 ~~provision governs and a contrary agreement is effective only to the extent permitted by~~  
 253 ~~the law (including the conflict of laws rules) so specified:~~

254 ~~Rights of creditors against sold goods. Code Section 11-2-402.~~

255 ~~Applicability of the article of this title on leases (Article 2A of this title). Code Sections~~  
 256 ~~11-2A-105 and 11-2A-106.~~

257 ~~Applicability of the article of this title on bank deposits and collections (Article 4 of this~~  
 258 ~~title). Code Section 11-4-102.~~

259 ~~Bulk transfers subject to the article of this title on bulk transfers (Article 6 of this title).~~  
 260 ~~Code Section 11-6-102.~~  
 261 ~~Applicability of the article of this title on investment securities (Article 8 of this title).~~  
 262 ~~Code Section 11-8-110.~~  
 263 ~~Law governing perfection, the effect of perfection or nonperfection, and the priority of~~  
 264 ~~security interests and agricultural liens. Code Sections 11-9-301 through 11-9-307.~~  
 265 ~~Governing law in the article on funds transfers (Article 4A of this title). Code Section~~  
 266 ~~11-4A-507.~~

267 11-1-106. **Use of singular and plural; gender. Remedies to be liberally administered.**  
 268 In this title unless the statutory context otherwise requires:

269 (1) Words in the singular number include the plural, and in the plural include the  
 270 singular; and ~~The remedies provided by this title shall be liberally administered to the end~~  
 271 ~~that the aggrieved party may be put in as good a position as if the other party had fully~~  
 272 ~~performed but neither consequential or special nor penal damages may be had except as~~  
 273 ~~specifically provided in this title or by other rule of law.~~

274 (2) Words of any gender also refer to any other gender. ~~Any right or obligation declared~~  
 275 ~~by this title is enforceable by action unless the provision declaring it specifies a different~~  
 276 ~~and limited effect.~~

277 11-1-107. **Section captions. Waiver or renunciation of claim or right after breach.**  
 278 Section captions are parts of this title. ~~Any claim or right arising out of an alleged breach~~  
 279 ~~can be discharged in whole or in part without consideration by a written waiver or~~  
 280 ~~renunciation signed and delivered by the aggrieved party.~~

281 11-1-108. **Relation to electronic signatures in Global and National Commerce Act.**  
 282 **Severability.**

283 ~~If any provision or clause of this title or application thereof to any person or circumstances~~  
 284 ~~is held invalid, such invalidity shall not affect other provisions or applications of the title~~  
 285 ~~which can be given effect without the invalid provision or application, and to this end the~~  
 286 ~~provisions of this title are declared to be severable.~~

287 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and  
 288 National Commerce Act, 15 U.S.C. Section 7001, et seq., but shall not modify, limit, or  
 289 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic  
 290 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section  
 291 7003(b).

292 ~~11-1-109. Section captions.~~

293 ~~Section captions are parts of this title.~~

294 Part 2

295 General Definitions and Principles of Interpretation

296 11-1-201. **General definitions.**

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

300 (b) Subject to additional definitions contained in the subsequent articles of this title which  
 301 that are applicable to specific articles or parts thereof, and unless the context otherwise  
 302 requires, in this title:

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

305 (2) 'Aggrieved party' means a party entitled to resort to a remedy.

306 (3) 'Agreement,' as distinguished from 'contract,' 'Agreement' means the bargain of the  
 307 parties in fact as found in their language or by implication inferred from other  
 308 circumstances including course of performance, course of dealing, or usage of trade or  
 309 course of performance as provided in this title (Code Sections 11-1-205 and 11-2-208).  
 310 ~~Whether an agreement has legal consequences is determined by the provisions of this~~  
 311 ~~title, if applicable; otherwise by the law of contracts (Code Section 11-1-103) Code~~  
 312 ~~Section 11-1-303.~~

313 (4) 'Bank' means any a person engaged in the business of banking. ~~Wherever the word~~  
 314 ~~'branch' is used in this title, with reference to a bank, it shall mean 'branch office' as that~~  
 315 ~~term is defined in Code Section 7-1-600 and includes a savings bank, savings and loan~~  
 316 ~~association, credit union, or trust company.~~

317 (5) 'Bearer' means a person in control of a negotiable electronic instrument, document  
 318 of title, ~~or a person in possession of an instrument, a negotiable tangible document of~~  
 319 ~~title, or a certificated security payable to bearer or indorsed in blank.~~

320 (6) 'Bill of lading' means a document ~~of title~~ evidencing the receipt of goods for  
 321 shipment issued by a person engaged in the business of ~~directly or indirectly~~ transporting  
 322 or forwarding goods. ~~The term does not include a warehouse receipt.~~

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

324 (8) 'Burden of establishing' a fact means the burden of persuading the ~~triers~~ trier of fact  
 325 that the existence of the fact is more probable than its nonexistence.

326 (9) 'Buyer in ordinary course of business' means a person that buys goods in good faith  
 327 without knowledge that the sale violates the rights of another person in the goods, and in  
 328 the ordinary course from a person, other than a pawnbroker, in the business of selling  
 329 goods of that kind. A person buys goods in the ordinary course if the sale to the person  
 330 comports with the usual or customary practices in the kind of business in which the seller  
 331 is engaged or with the seller's own usual or customary practices. A person that sells oil,  
 332 gas, or other minerals at the wellhead or minehead is a person in the business of selling  
 333 goods of that kind. A buyer in the ordinary course of business may buy for cash, by  
 334 exchange of other property, or on secured or unsecured credit, and may acquire goods or  
 335 documents of title under a preexisting contract for sale. Only a buyer that takes  
 336 possession of the goods or has a right to recover the goods from the seller under Article 2  
 337 of this title may be a buyer in ordinary course of business. A person that acquires goods  
 338 in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is  
 339 not a buyer in ordinary course of business.

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

- 344 (A) A heading in capitals equal to or greater in size than the surrounding text, or in  
 345 contrasting type, font, or color to the surrounding text of the same or lesser size; and
- 346 (B) Language in the body of a record or display in larger type than the surrounding  
 347 text, or in contrasting type, font, or color to the surrounding text of the same size, or set  
 348 off from the surrounding text of the same size by symbols or other marks that call  
 349 attention to the language.

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

352 ~~(11)~~(12) 'Contract,' as distinguished from 'agreement,' means the total legal obligation  
 353 which that results from the parties' agreement as ~~affected~~ determined by this title and any  
 354 other applicable ~~rules of~~ law.

355 ~~(12)~~(13) 'Creditor' includes a general creditor, a secured creditor, a lien creditor and any  
 356 representative of creditors, including an assignee for the benefit of creditors, a trustee in  
 357 bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's  
 358 or assignor's estate.

359 ~~(13)~~(14) 'Defendant' includes a person in the position of defendant in ~~a cross-action or~~  
 360 counterclaim, cross-claim, or third-party claim.

361 ~~(14)~~(15) 'Delivery' with respect to an ~~electronic instrument,~~ document of title, or chattel  
 362 paper means voluntary transfer of ~~control and with respect to instruments, tangible~~

363 ~~documents of title, chattel paper, or certificated securities means voluntary transfer of~~  
 364 ~~possession.~~

365 ~~(15)(16) 'Document of title' means a record (a) that in the regular course of business or~~  
 366 ~~financing is treated as adequately evidencing that the person in possession or control of~~  
 367 ~~the record is entitled to receive, control, hold, and dispose of the record and the goods the~~  
 368 ~~record covers and (b) that purports to be issued by or addressed to a bailee and to cover~~  
 369 ~~goods in the bailee's possession which are either identified or are fungible portions of an~~  
 370 ~~identified mass. The term includes a bill of lading, transport document, dock warrant,~~  
 371 ~~dock receipt, warehouse receipt, and or order for delivery of goods. An electronic~~  
 372 ~~document of title means a document of title evidenced by a record consisting of~~  
 373 ~~information stored in an electronic medium. A tangible document of title means a~~  
 374 ~~document of title evidenced by a record consisting of information that is inscribed on a~~  
 375 ~~tangible medium and any other document which in the regular course of business or~~  
 376 ~~financing is treated as adequately evidencing that the person in possession of it is entitled~~  
 377 ~~to receive, hold, and dispose of the document and the goods it covers. To be a document~~  
 378 ~~of title, a document must purport to be issued by or addressed to a bailee and purport to~~  
 379 ~~cover goods in the bailee's possession which are either identified or are fungible portions~~  
 380 ~~of an identified mass.~~

381 ~~(16)(17) 'Fault' means a default, breach, or wrongful act; or omission; or breach.~~

382 ~~(17)(18) 'Fungible goods' with respect to goods or securities means goods or securities:~~  
 383 ~~(A) Goods of which any unit is, by nature or usage of trade, the equivalent of any other~~  
 384 ~~like unit; or~~  
 385 ~~(B) Goods which are not fungible shall be deemed fungible for the purposes of this title~~  
 386 ~~to the extent that under a particular by agreement or document unlike units are treated~~  
 387 ~~as equivalents equivalent.~~

388 ~~(18)(19) 'Genuine' means free of forgery or counterfeiting.~~

389 ~~(19)(20) 'Good faith,' except as otherwise provided in Article 5 of this title, means~~  
 390 ~~honesty in fact in the conduct or transaction concerned and the observance of reasonable~~  
 391 ~~commercial standards of fair dealing.~~

392 ~~(20)(21) 'Holder' means:~~

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

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

397 ~~(c) The person in control of a negotiable electronic document of title.~~

398 ~~(21) To 'honor' is to pay or to accept and pay, or where a credit so engages to purchase~~  
 399 ~~or discount a draft complying with the terms of the credit.~~

400 (22) 'Insolvency ~~proceedings~~ proceeding' includes any assignment for the benefit of  
 401 creditors or other ~~proceedings~~ proceeding intended to liquidate or rehabilitate the estate  
 402 of the person involved.

403 (23) 'Insolvent' means:

404 (A) Having generally A person is 'insolvent' who either has ceased to pay his debts in  
 405 the ordinary course of business other than as a result of bona fide dispute; or cannot pay  
 406 his

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

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

409 (24) 'Money' means a medium of exchange authorized or adopted by a domestic or  
 410 foreign government and includes a monetary unit of account established by an  
 411 intergovernmental organization or by agreement between two or more ~~nations~~ countries.

412 ~~(25) Subject to subsection (27) of this Code section, a person has 'notice' of a fact if the~~  
 413 ~~person:~~

414 ~~(a) Has actual knowledge of it;~~

415 ~~(b) Has received a notice or notification of it; or~~

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

418 A person 'knows' or has 'knowledge' of a fact when the person has actual knowledge of  
 419 it. 'Discover' or 'learn' or a word or phrase of similar import refers to knowledge rather  
 420 than to reason to know. The time and circumstances under which a notice or notification  
 421 may cease to be effective are not determined by this title.

422 ~~(26) A person 'notifies' or 'gives' a notice or notification to another person by taking such~~  
 423 ~~steps as may be reasonably required to inform the other person in ordinary course,~~  
 424 ~~whether or not the other person actually comes to know of it. Subject to subsection (27)~~  
 425 ~~of this Code section, a person 'receives' a notice or notification when:~~

426 ~~(a) It comes to that person's attention; or~~

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

430 ~~(27) Notice, knowledge, or a notice or notification received by an organization is~~  
 431 ~~effective for a particular transaction from the time when it is brought to the attention of~~  
 432 ~~the individual conducting that transaction, and in any event, from the time when it would~~  
 433 ~~have been brought to the individual's attention if the organization had exercised due~~  
 434 ~~diligence. An organization exercises due diligence if it maintains reasonable routines for~~  
 435 ~~communicating significant information to the person conducting the transaction and there~~  
 436 ~~is reasonable compliance with the routines. Due diligence does not require an individual~~

437 ~~acting for the organization to communicate information unless such communication is~~  
 438 ~~part of the individual's regular duties or the individual has reason to know of the~~  
 439 ~~transaction and that the transaction would be materially affected by the information.~~

440 ~~(28)(25) 'Organization' includes a corporation, government or governmental subdivision~~  
 441 ~~or agency, business trust, estate, trust, partnership or association, two or more persons~~  
 442 ~~having a joint or common interest, or any other legal or commercial entity means a person~~  
 443 ~~other than an individual.~~

444 ~~(29)(26) 'Party,' as distinct from 'third party,' means a person who has engaged in a~~  
 445 ~~transaction or made an agreement within subject to this title.~~

446 ~~(30)(27) 'Person' includes means an individual, ~~or an organization (see Code~~  
 447 ~~Section 11-1-102) corporation, business trust, estate, trust, partnership, limited liability~~  
 448 ~~company, association, joint venture, government, governmental subdivision, agency, or~~  
 449 ~~instrumentality, public corporation, or any other legal or commercial entity.~~~~

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

455 ~~(31) 'Presumption' or 'presumed' means that the trier of fact must find the existence of~~  
 456 ~~the fact presumed unless and until evidence is introduced which would support a finding~~  
 457 ~~of its nonexistence.~~

458 ~~(31.1) 'Public sale' means a sale:~~

459 ~~(A) Held at a place reasonably available to persons who might desire to attend and~~  
 460 ~~submit bids; and~~

461 ~~(B) At which those attending shall be given the opportunity to bid on a competitive~~  
 462 ~~basis; and~~

463 ~~(C) At which the sale, if made, shall be made to the highest and best bidder; and~~

464 ~~(D) Except as otherwise provided in this title for advertising or dispensing with the~~  
 465 ~~advertising of public sales, of which notice is given by advertisement once a week for~~  
 466 ~~two weeks in the newspaper in which the sheriff's advertisements are published in the~~  
 467 ~~county where the sale is to be held, and which notice shall state the day and hour,~~  
 468 ~~between 10:00 A.M. and 4:00 P.M., and the place of sale and shall briefly identify the~~  
 469 ~~goods to be sold.~~

470 ~~The provisions of this paragraph shall not be in derogation of any additional requirements~~  
 471 ~~relating to notice of and conduct of any such public sale as may be contained in other~~  
 472 ~~provisions of this title but shall be supplementary thereto.~~

473 ~~(32)~~(29) 'Purchase' ~~includes~~ means taking by sale, discount, negotiation, mortgage,  
 474 pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction  
 475 creating an interest in property.

476 ~~(33)~~(30) 'Purchaser' means a person who takes by purchase.

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

479 ~~(34)~~(32) 'Remedy' means any remedial right to which an aggrieved party is entitled with  
 480 or without resort to a tribunal.

481 ~~(35)~~(33) 'Representative' means a person empowered to act for another, including  
 482 includes an agent, an officer of a corporation or association, and a trustee, executor or  
 483 administrator of an estate, ~~or any other person empowered to act for another.~~

484 ~~(36)~~(34) 'Rights' includes remedies.

485 ~~(37)~~(35) 'Security interest' means an interest in personal property or fixtures which  
 486 secures payment or performance of an obligation. The term also includes any interest of  
 487 a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory  
 488 note in a transaction that is subject to Article 9 of this title. The term does not include the  
 489 special property interest of a buyer of goods on identification of those goods to a contract  
 490 for sale under Code Section 11-2-401, is not a 'security interest,' but a buyer may also  
 491 acquire a 'security interest' by complying with Article 9 of this title. Except as otherwise  
 492 provided in Code Section 11-2-505, the right of a seller or lessor of goods under Article 2  
 493 or 2A of this title to retain or acquire possession of the goods is not a 'security interest,'  
 494 but a seller or lessor may also acquire a 'security interest' by complying with Article 9 of  
 495 this title. The retention or reservation of title by a seller of goods notwithstanding  
 496 shipment or delivery to the buyer ~~(under Code Section 11-2-401)~~ is limited in effect to  
 497 a reservation of a 'security interest.'

498 Whether a transaction creates in the form of a lease or creates a 'security interest' is shall  
 499 be determined pursuant to Code Section 11-1-203. ~~by the facts of each case; however, a~~  
 500 ~~transaction creates a security interest if the consideration the lessee is to pay the lessor~~  
 501 ~~for the right to possession and use of the goods is an obligation for the term of the lease~~  
 502 ~~not subject to termination by the lessee, and~~

503 ~~(a) The original term of the lease is equal to or greater than the remaining economic life~~  
 504 ~~of the goods;~~

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

507 ~~(c) The lessee has an option to renew the lease for the remaining economic life of the~~  
 508 ~~goods for no additional consideration or nominal additional consideration upon~~  
 509 ~~compliance with the lease agreement, or~~

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

513 ~~A transaction does not create a security interest merely because it provides that~~

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

517 ~~(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing,~~  
 518 ~~recording, or registration fees, or service or maintenance costs with respect to the goods,~~

519 ~~(c) The lessee has an option to renew the lease or to become the owner of the goods,~~

520 ~~(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater~~  
 521 ~~than the reasonably predictable fair market rent for the use of the goods for the term of~~  
 522 ~~the renewal at the time the option is to be performed, or~~

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

526 ~~For purposes of this subsection (37):~~

527 ~~(x) Additional consideration is not nominal if (i) when the option to renew the lease is~~  
 528 ~~granted to the lessee the rent is stated to be the fair market rent for the use of the goods~~  
 529 ~~for the term of the renewal determined at the time the option is to be performed, or (ii)~~  
 530 ~~when the option to become the owner of the goods is granted to the lessee the price is~~  
 531 ~~stated to be the fair market value of the goods determined at the time the option is to be~~  
 532 ~~performed. Additional consideration is nominal if it is less than the lessee's reasonably~~

533 ~~predictable cost of performing under the lease agreement if the option is not exercised;~~  
 534 ~~(y) 'Reasonably predictable' and 'remaining economic life of the goods' are to be~~  
 535 ~~determined with reference to the facts and circumstances at the time the transaction is~~  
 536 ~~entered into; and~~

537 ~~(z) 'Present value' means the amount as of a date certain of one or more sums payable in~~  
 538 ~~the future, discounted to the date certain. The discount is determined by the interest rate~~  
 539 ~~specified by the parties if the rate is not manifestly unreasonable at the time the~~  
 540 ~~transaction is entered into; otherwise, the discount is determined by a commercially~~  
 541 ~~reasonable rate that takes into account the facts and circumstances of each case at the~~  
 542 ~~time the transaction was entered into.~~

543 ~~(38)(36)~~ 'Send' in connection with a writing, record, or notice means:

544 ~~(a)(A)~~ To deposit in the mail or deliver for transmission by any other usual means of  
 545 communication with postage or cost of transmission provided for and properly

546 addressed and, in the case of an instrument, to an address specified thereon or otherwise  
 547 agreed, or if there be none to any address reasonable under the circumstances; or  
 548 ~~(b)(B)~~ In any other way to cause to be received any record or notice within the time it  
 549 would have arrived if properly sent.

550 ~~(39)~~(37) 'Signed' includes using any symbol executed or adopted ~~by a party~~ with present  
 551 intention to ~~authenticate~~ adopt or accept a writing.

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

555 ~~(40)~~(39) 'Surety' includes a guarantor or other secondary obligor.

556 ~~(41) 'Telegram' includes a message transmitted by radio, teletype, cable, any mechanical~~  
 557 ~~method of transmission, or the like.~~

558 ~~(42)~~(40) 'Term' means that portion of an agreement ~~which~~ that relates to a particular  
 559 matter.

560 ~~(43)~~(41) 'Unauthorized' signature' means ~~one~~ a signature made without actual, implied,  
 561 or apparent authority. The term ~~and~~ includes a forgery.

562 ~~(44) 'Value': Except as otherwise provided with respect to negotiable instruments and~~  
 563 ~~bank collections (Code Sections 11-3-303, 11-4-208, and 11-4-209) a person gives 'value'~~  
 564 ~~for rights if he acquires them:~~

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

568 ~~(b) As security for or in total or partial satisfaction of a preexisting claim; or~~

569 ~~(c) By accepting delivery pursuant to a preexisting contract for purchase; or~~

570 ~~(d) Generally, in return for any consideration sufficient to support a simple contract.~~

571 ~~(45)~~(42) 'Warehouse receipt' means a ~~document of title~~ receipt issued by a person  
 572 engaged in the business of storing goods for hire.

573 ~~(46)~~(43) 'Written' or 'writing' includes printing, typewriting, or any other intentional  
 574 reduction to tangible form.

575 11-1-202. **Notice; knowledge. Prima-facie evidence by third party documents:**

576 A document in due form purporting to be a bill of lading, policy or certificate of insurance,  
 577 ~~official weigher's or inspector's certificate, consular invoice, or any other document~~  
 578 ~~authorized or required by the contract to be issued by a third party shall be prima-facie~~  
 579 ~~evidence of its own authenticity and genuineness and of the facts stated in the document~~  
 580 ~~by the third party.~~

581 (a) Subject to subsection (f) of this Code section, a person has 'notice' of a fact if the  
 582 person:

583 (1) Has actual knowledge of it;

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

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

587 (b) 'Knows' or 'knowledge' means actual knowledge.

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

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

593 (e) Subject to subsection (f) of this Code section, a person 'receives' a notice or notification  
 594 when:

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

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

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

609 11-1-203. **Lease distinguished from security interest. Obligation of good faith.**

610 ~~Every contract or duty within this title imposes an obligation of good faith in its~~  
 611 ~~performance or enforcement.~~

612 (a) Whether a transaction in the form of a lease creates a security interest is determined by  
 613 the facts of each case.

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

- 617 (1) The original term of the lease is equal to or greater than the remaining economic life  
618 of the goods;
- 619 (2) The lessee is bound to renew the lease for the remaining economic life of the goods  
620 or is bound to become the owner of the goods;
- 621 (3) The lessee has an option to renew the lease for the remaining economic life of the  
622 goods for no additional consideration or nominal additional consideration upon  
623 compliance with the lease agreement; or
- 624 (4) The lessee has an option to become the owner of the goods for no additional  
625 consideration or nominal additional consideration upon compliance with the lease  
626 agreement.
- 627 (c) A transaction in the form of a lease does not create a security interest merely because:
- 628 (1) The present value of the consideration the lessee is obligated to pay the lessor for the  
629 right to possession and use of the goods is substantially equal to or is greater than the fair  
630 market value of the goods at the time the lease is entered into;
- 631 (2) The lessee assumes risk of loss of the goods;
- 632 (3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording,  
633 or registration fees, or service or maintenance costs;
- 634 (4) The lessee has an option to renew the lease or to become the owner of the goods;
- 635 (5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater  
636 than the reasonably predictable fair market rent for the use of the goods for the term of  
637 the renewal at the time the option is to be performed; or
- 638 (6) The lessee has an option to become the owner of the goods for a fixed price that is  
639 equal to or greater than the reasonably predictable fair market value of the goods at the  
640 time the option is to be performed.
- 641 (d) Additional consideration is nominal if it is less than the lessee's reasonably predictable  
642 cost of performing under the lease agreement if the option is not exercised. Additional  
643 consideration is not nominal if:
- 644 (1) When the option to renew the lease is granted to the lessee, the rent is stated to be the  
645 fair market rent for the use of the goods for the term of the renewal determined at the time  
646 the option is to be performed; or
- 647 (2) When the option to become the owner of the goods is granted to the lessee, the price  
648 is stated to be the fair market value of the goods determined at the time the option is to  
649 be performed.
- 650 (e) The 'remaining economic life of the goods' and 'reasonably predictable' fair market  
651 rent, fair market value, or cost of performing under the lease agreement must be determined  
652 with reference to the facts and circumstances at the time the transaction is entered into.

653 11-1-204. Value.

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

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

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

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

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

662 ~~11-1-204.~~ 11-1-205. Reasonable time; seasonableness. Time; reasonable time;  
 663 'seasonably.'

664 ~~(1) Whenever this title requires any action to be taken within a reasonable time, any time~~  
 665 ~~which is not manifestly unreasonable may be fixed by agreement.~~

666 ~~(2) What is a reasonable~~

667 (a) Whether a time for taking any action required by this title is reasonable depends on the  
 668 nature, purpose, and circumstances of such action.

669 ~~(3)(b)~~ An action is taken 'seasonably' when it is taken at or within the time agreed, or if no  
 670 time is agreed, at or within a reasonable time.

671 ~~11-1-205. Course of dealing and usage of trade.~~

672 ~~(1) A course of dealing is a sequence of previous conduct between the parties to a~~  
 673 ~~particular transaction which is fairly to be regarded as establishing a common basis of~~  
 674 ~~understanding for interpreting their expressions and other conduct.~~

675 ~~(2) A usage of trade is any practice or method of dealing having such regularity of~~  
 676 ~~observance in a place, vocation, or trade as to justify an expectation that it will be observed~~  
 677 ~~with respect to the transaction in question. The existence and scope of such a usage are to~~  
 678 ~~be proved as facts. If it is established that such a usage is embodied in a written trade code~~  
 679 ~~or similar writing the interpretation of the writing is for the court.~~

680 ~~(3) A course of dealing between parties and any usage of trade in the vocation or trade in~~  
 681 ~~which they are engaged or of which they are or should be aware give particular meaning~~  
 682 ~~to and supplement or qualify terms of an agreement.~~

683 ~~(4) The express terms of an agreement and an applicable course of dealing or usage of~~  
 684 ~~trade shall be construed wherever reasonable as consistent with each other; but when such~~  
 685 ~~construction is unreasonable express terms control both course of dealing and usage of~~  
 686 ~~trade and course of dealing controls usage of trade.~~

687 ~~(5) An applicable usage of trade in the place where any part of performance is to occur~~  
 688 ~~shall be used in interpreting the agreement as to that part of the performance.~~

689 ~~(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and~~  
 690 ~~until he has given the other party such notice as the court finds sufficient to prevent unfair~~  
 691 ~~surprise to the latter.~~

692 11-1-206. **Presumptions.** ~~Statute of frauds for kinds of personal property not~~  
 693 ~~otherwise covered.~~

694 Whenever this title creates a 'presumption' with respect to a fact, or provides that a fact is  
 695 'presumed,' the trier of fact must find the existence of the fact presumed unless and until  
 696 evidence is introduced that supports a finding of its nonexistence.

697 ~~(1) Except in the cases described in subsection (2) of this Code section a contract for the~~  
 698 ~~sale of personal property is not enforceable by way of action or defense beyond \$5,000.00~~  
 699 ~~in amount or value of remedy unless there is some writing which indicates that a contract~~  
 700 ~~for sale has been made between the parties at a defined or stated price, reasonably identifies~~  
 701 ~~the subject matter, and is signed by the party against whom enforcement is sought or by his~~  
 702 ~~authorized agent.~~

703 ~~(2) Subsection (1) of this Code section does not apply to contracts for the sale of goods~~  
 704 ~~(Code Section 11-2-201) nor of securities (Code Section 11-8-113) nor to security~~  
 705 ~~agreements (Code Section 11-9-203).~~

706 11-1-207. **Performance or acceptance under reservation of rights.**

707 ~~(1) A party who, with explicit reservation of rights, performs or promises performance or~~  
 708 ~~assents to performance in a manner demanded or offered by the other party does not~~  
 709 ~~thereby prejudice the rights reserved. Such words as 'without prejudice,' 'under protest' or~~  
 710 ~~the like are sufficient.~~

711 ~~(2) Subsection (1) of this Code section does not apply to an accord and satisfaction.~~

712 11-1-208. **Option to accelerate at will.**

713 ~~A term providing that one party or his successor in interest may accelerate payment or~~  
 714 ~~performance or require collateral or additional collateral 'at will' or 'when he deems himself~~  
 715 ~~insecure' or in words of similar import shall be construed to mean that he shall have power~~  
 716 ~~to do so only if he in good faith believes that the prospect of payment or performance is~~  
 717 ~~impaired. The burden of establishing lack of good faith is on the party against whom the~~  
 718 ~~power has been exercised.~~

719 ~~11-1-209. **Subordinated obligations.**~~

720 ~~An obligation may be issued as subordinated to payment of another obligation of the~~  
 721 ~~person obligated, or a creditor may subordinate his right to payment of an obligation by~~  
 722 ~~agreement with either the person obligated or another creditor of the person obligated.~~  
 723 ~~Such a subordination does not create a security interest as against either the common debtor~~  
 724 ~~or a subordinated creditor. This Code section shall be construed as declaring the law as it~~  
 725 ~~existed prior to the enactment of this Code section and not as modifying it.~~

726 Part 3

727 Territorial Applicability and General Rules

728 11-1-301. **Territorial applicability; parties' power to choose applicable law.**

729 (a) Except as otherwise provided in this Code section, when a transaction bears a  
 730 reasonable relation to this state and also to another state or nation the parties may agree that  
 731 the law either of this state or of such other state or nation shall govern their rights and  
 732 duties.

733 (b) In the absence of an agreement under subsection (a) of this Code section, and except  
 734 as provided in subsection (c) of this Code section, this title applies to transactions bearing  
 735 an appropriate relation to this state.

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

- 739 (1) Code Section 11-2-402;  
 740 (2) Code Sections 11-2A-105 and 11-2A-106;  
 741 (3) Code Section 11-4-102;  
 742 (4) Code Section 11-4A-507;  
 743 (5) Code Section 11-5-116;  
 744 (6) Code Section 11-6-103;  
 745 (7) Code Section 11-8-110; or  
 746 (8) Code Sections 11-9-301 through 11-9-307.

747 11-1-302. **Variation by agreement.**

748 (a) Except as otherwise provided in subsection (b) of this Code section or elsewhere in this  
 749 title, the effect of provisions of this title may be varied by agreement.

750 (b) The obligations of good faith, diligence, reasonableness, and care prescribed by this  
 751 title may not be disclaimed by agreement. The parties may by agreement determine the  
 752 standards by which the performance of such obligations is to be measured if such standards

753 are not manifestly unreasonable. Whenever this title requires an action to be taken within  
754 a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.  
755 (c) The presence in certain provisions of this title of the phrase 'unless otherwise agreed'  
756 or words of similar import does not imply that the effect of other provisions may not be  
757 varied by agreement under this Code section.

758 **11-1-303. Course of performance, course of dealing, and usage of trade.**

759 (a) A 'course of performance' is a sequence of conduct between the parties to a particular  
760 transaction that exists if:

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

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

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

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

773 (d) A course of performance or course of dealing between the parties or usage of trade in  
774 the vocation or trade in which they are engaged or of which they are or should be aware is  
775 relevant in ascertaining the meaning of the parties' agreement, may give particular meaning  
776 to specific terms of the agreement, and may supplement or qualify the terms of the  
777 agreement. A usage of trade applicable in the place in which part of the performance under  
778 the agreement is to occur may be so utilized as to that part of the performance.

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

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

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

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

787 (f) Subject to Code Section 11-2-209, a course of performance is relevant to show a waiver  
788 or modification of any term inconsistent with the course of performance.

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

792 **11-1-304. Obligation of good faith.**

793 Every contract or duty within this title imposes an obligation of good faith in its  
 794 performance or enforcement.

795 **11-1-305. Remedies to be liberally administered.**

796 (a) The remedies provided by this title shall be liberally administered to the end that the  
 797 aggrieved party may be put in as good a position as if the other party had fully performed  
 798 but neither consequential, special, or penal damages may be had except as specifically  
 799 provided in this title or by other rule of law.

800 (b) Any right or obligation declared by this title shall be enforceable by action unless the  
 801 provision declaring it specifies a different and limited effect.

802 **11-1-306. Waiver or renunciation of claim or right after breach.**

803 A claim or right arising out of an alleged breach may be discharged in whole or in part  
 804 without consideration by agreement of the aggrieved party in an authenticated record.

805 **11-1-307. Prima-facie evidence by third party documents.**

806 A document in due form purporting to be a bill of lading, policy or certificate of insurance,  
 807 official weigher's or inspector's certificate, consular invoice, or any other document  
 808 authorized or required by the contract to be issued by a third party shall be prima-facie  
 809 evidence of its own authenticity and genuineness and of the facts stated in the document  
 810 by the third party.

811 **11-1-308. Performance or acceptance under reservation of rights.**

812 (a) A party who, with explicit reservation of rights, performs or promises performance or  
 813 assents to performance in a manner demanded or offered by the other party does not  
 814 thereby prejudice the rights reserved. Such words as 'without prejudice,' 'under protest,' or  
 815 the like are sufficient.

816 (b) Subsection (a) of this Code section shall not apply to an accord and satisfaction.

817 **11-1-309. Option to accelerate at will.**

818 A term providing that one party or that party's successor in interest may accelerate payment  
 819 or performance or require collateral or additional collateral 'at will' or when the party

820 'deems itself insecure' or words of similar import shall be construed to mean that the party  
 821 shall have power to do so only if that party in good faith believes that the prospect of  
 822 payment or performance is impaired. The burden of establishing lack of good faith is on  
 823 the party against whom the power has been exercised.

824 **11-1-310. Subordinated obligations.**

825 An obligation may be issued as subordinated to performance of another obligation of the  
 826 person obligated, or a creditor may subordinate its right to performance of an obligation  
 827 by agreement with either the person obligated or another creditor of the person obligated.  
 828 Such a subordination does not create a security interest as against either the common debtor  
 829 or a subordinated creditor."

### 830 PART IIIB

#### 831 CONFORMING CROSS-REFERENCES

#### 832 IN THE UCC TO PART IIIA

#### 833 SECTION 3B-1.

834 Said title is further amended by revising subsection (1) of Code Section 11-2-103, relating  
 835 to definitions and index of definitions, as follows:

836 "(1) In this article unless the context otherwise requires:

837 (a) 'Buyer' means a person who buys or contracts to buy goods.

838 (b) Reserved. ~~'Good faith' in the case of a merchant means honesty in fact and the~~  
 839 ~~observance of reasonable commercial standards of fair dealing in the trade.~~

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

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

#### 842 SECTION 3B-2.

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

845 "11-2-202. **Final written expression; parol or extrinsic evidence.**

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

851 (a) ~~By course of dealing or usage of trade (Code Section 11-1-205) or by course of~~  
 852 ~~performance, course of dealing, or usage of trade (Code Section 11-2-208 11-1-303); and~~

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

855 **SECTION 3B-3.**

856 Said title is further amended by revising Code Section 11-2-208, relating to course of  
857 performance or practical construction, as follows:

858 "11-2-208. ~~Course of performance or practical construction.~~

859 Reserved.

860 ~~(1) Where the contract for sale involves repeated occasions for performance by either party~~  
861 ~~with knowledge of the nature of the performance and opportunity for objection to it by the~~  
862 ~~other, any course of performance accepted or acquiesced in without objection shall be~~  
863 ~~relevant to determine the meaning of the agreement.~~

864 ~~(2) The express terms of the agreement and any such course of performance, as well as any~~  
865 ~~course of dealing and usage of trade, shall be construed whenever reasonable as consistent~~  
866 ~~with each other, but when such construction is unreasonable, express terms shall control~~  
867 ~~course of performance and course of performance shall control both course of dealing and~~  
868 ~~usage of trade (Code Section 11-1-205).~~

869 ~~(3) Subject to the provisions of Code Section 11-2-209 on modification and waiver, such~~  
870 ~~course of performance shall be relevant to show a waiver or modification of any term~~  
871 ~~inconsistent with such course of performance."~~

872 **SECTION 3B-4.**

873 Said title is further amended by revising subsection (3) of Code Section 11-2A-103, relating  
874 to definitions and index of definitions, as follows:

875 "(3) The following definitions in other articles of this title apply to this article:

876 'Account.' Code Section 11-9-102(a).

877 'Between merchants.' Code Section 11-2-104(3).

878 'Buyer.' Code Section 11-2-103(1)(a).

879 'Chattel paper.' Code Section 11-9-102(a).

880 'Consumer goods.' Code Section 11-9-102(a).

881 'Document.' Code Section 11-9-102(a).

882 'Entrusting.' Code Section 11-2-403(3).

883 'General intangible.' Code Section 11-9-102(a).

884 ~~'Good faith.' Code Section 11-2-103(1)(b).~~

885 'Instrument.' Code Section 11-9-102(a).

886 'Merchant.' Code Section 11-2-104(1).

887 'Mortgage.' Code Section 11-9-102(a).

888 'Pursuant to commitment.' Code Section 11-9-102(a).

889 'Receipt.' Code Section 11-2-103(1)(c).

890 'Sale.' Code Section 11-2-106(1).

891 'Sale on approval.' Code Section 11-2-326.

892 'Sale or return.' Code Section 11-2-326.

893 'Seller.' Code Section 11-2-103(1)(d)."

894 **SECTION 3B-5.**

895 Said title is further amended by revising Code Section 11-2A-207, relating to course of  
896 performance or practical construction, as follows:

897 "~~11-2A-207. **Course of performance or practical construction.**~~

898 Reserved.

899 ~~(1) If a lease contract involves repeated occasions for performance by either party with  
900 knowledge of the nature of the performance and opportunity for objection to it by the other,  
901 any course of performance accepted or acquiesced in without objection is relevant to  
902 determine the meaning of the lease agreement.~~

903 ~~(2) The express terms of a lease agreement and any course of performance, as well as any  
904 course of dealing and usage of trade, must be construed whenever reasonable as consistent  
905 with each other; but if that construction is unreasonable, express terms control course of  
906 performance, course of performance controls both course of dealing and usage of trade, and  
907 course of dealing controls usage of trade.~~

908 ~~(3) Subject to the provisions of Code Section 11-2A-208 on modification and waiver,  
909 course of performance is relevant to show a waiver or modification of any term  
910 inconsistent with the course of performance."~~

911 **SECTION 3B-6.**

912 Said title is further amended by revising subsection (4) of Code Section 11-2A-501, relating  
913 to default and procedure, as follows:

914 "~~(4) Except as otherwise provided in Code Section ~~11-1-106(1)~~ 11-1-305(a) or this article  
915 or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are  
916 cumulative."~~

917 **SECTION 3B-7.**

918 Said title is further amended by revising subsection (2) of Code Section 11-2A-518, relating  
919 to cover and substitute goods, as follows:

920 "(2) Except as otherwise provided with respect to damages liquidated in the lease  
921 agreement (Code Section 11-2A-504) or otherwise determined pursuant to agreement of

922 the parties (Code Sections ~~11-1-102(3)~~ 11-1-302 and 11-2A-503), if a lessee's cover is by  
 923 a lease agreement substantially similar to the original lease agreement and the new lease  
 924 agreement is made in good faith and in a commercially reasonable manner, the lessee may  
 925 recover from the lessor as damages (i) the present value, as of the date of the  
 926 commencement of the term of the new lease agreement, of the rent under the new lease  
 927 agreement applicable to that period of the new lease term which is comparable to the then  
 928 remaining term of the original lease agreement minus the present value as of the same date  
 929 of the total rent for the then remaining lease term of the original lease agreement, and (ii)  
 930 any incidental or consequential damages, less expenses saved in consequence of the lessor's  
 931 default."

932 **SECTION 3B-8.**

933 Said title is further amended by revising subsection (1) of Code Section 11-2A-519, relating  
 934 to lessee's damages for non-delivery, repudiation, default, and breach of warranty in regard  
 935 to accepted goods, as follows:

936 "(1) Except as otherwise provided with respect to damages liquidated in the lease  
 937 agreement (Code Section 11-2A-504) or otherwise determined pursuant to agreement of  
 938 the parties (Code Sections ~~11-1-102(3)~~ 11-1-302 and 11-2A-503), if a lessee elects not to  
 939 cover or a lessee elects to cover and the cover is by lease agreement that for any reason  
 940 does not qualify for treatment under Code Section 11-2A-518(2), or is by purchase or  
 941 otherwise, the measure of damages for non-delivery or repudiation by the lessor or for  
 942 rejection or revocation of acceptance by the lessee is the present value, as of the date of the  
 943 default, of the then market rent minus the present value as of the same date of the original  
 944 rent, computed for the remaining lease term of the original lease agreement, together with  
 945 incidental and consequential damages, less expenses saved in consequence of the lessor's  
 946 default."

947 **SECTION 3B-9.**

948 Said title is further amended by revising subsection (2) of Code Section 11-2A-527, relating  
 949 to lessor's rights to dispose of goods, as follows:

950 "(2) Except as otherwise provided with respect to damages liquidated in the lease  
 951 agreement (Code Section 11-2A-504) or otherwise determined pursuant to agreement of  
 952 the parties (Code Sections ~~11-1-102(3)~~ 11-1-302 and 11-2A-503), if the disposition is by  
 953 lease agreement substantially similar to the original lease agreement and the new lease  
 954 agreement is made in good faith and in a commercially reasonable manner, the lessor may  
 955 recover from the lessee as damages (i) accrued and unpaid rent as of the date of the  
 956 commencement of the term of the new lease agreement, (ii) the present value, as of the

957 same date, of the total rent for the then remaining lease term of the original lease agreement  
 958 minus the present value, as of the same date, of the rent under the new lease agreement  
 959 applicable to that period of the new lease term which is comparable to the then remaining  
 960 term of the original lease agreement, and (iii) any incidental damages allowed under Code  
 961 Section 11-2A-530, less expenses saved in consequence of the lessee's default."

962 **SECTION 3B-10.**

963 Said title is further amended by revising subsection (1) of Code Section 11-2A-528, relating  
 964 to lessor's damages for nonacceptance, failure to pay, repudiation, or other default, as  
 965 follows:

966 "(1) Except as otherwise provided with respect to damages liquidated in the lease  
 967 agreement (Code Section 11-2A-504) or otherwise determined pursuant to agreement of  
 968 the parties (Code Sections ~~11-1-102(3)~~ 11-1-302 and 11-2A-503), if a lessor elects to retain  
 969 the goods or a lessor elects to dispose of the goods and the disposition is by lease  
 970 agreement that for any reason does not qualify for treatment under Code Section  
 971 11-2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages  
 972 for a default of the type described in Code Section 11-2A-523(1) or 11-2A-523(3)(a), or,  
 973 if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default  
 974 if the lessee has never taken possession of the goods, or, if the lessee has taken possession  
 975 of the goods, as of the date the lessor repossesses the goods or an earlier date on which the  
 976 lessee makes a tender of the goods to the lessor, (ii) the present value as of the date  
 977 determined under clause (i) of the total rent for the then remaining lease term of the  
 978 original lease agreement minus the present value as of the same date of the market rent at  
 979 the place where the goods are located computed for the same lease term, and (iii) any  
 980 incidental damages allowed under Code Section 11-2A-530, less expenses saved in  
 981 consequence of the lessee's default."

982 **SECTION 3B-11.**

983 Said title is further amended by revising paragraphs (4) and (10) of subsection (a) of Code  
 984 Section 11-3-103, relating to definitions, as follows:

985 "(4) Reserved. ~~'Good faith' means honesty in fact and the observance of reasonable~~  
 986 ~~commercial standards of fair dealing."~~

987 "(10) 'Prove' with respect to a fact means to meet the burden of establishing the fact as  
 988 'burden of establishing' is defined in ~~subsection (8)~~ of Code Section 11-1-201(b)(8)."

989 **SECTION 3B-12.**

990 Said title is further amended by revising subsection (c) of Code Section 11-4-104, relating  
991 to definitions and index of definitions, as follows:

992 "(c) 'Control' as provided in Code Section 11-7-106 and the following definitions in other  
993 articles of this title apply to this article:

994 'Acceptance.' Code Section 11-3-409.

995 'Alteration.' Code Section 11-3-407.

996 'Cashier's check.' Code Section 11-3-104.

997 'Certificate of deposit.' Code Section 11-3-104.

998 'Certified check.' Code Section 11-3-409.

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

1000 ~~'Good faith.' Code Section 11-3-103.~~

1001 'Holder in due course.' Code Section 11-3-302.

1002 'Instrument.' Code Section 11-3-104.

1003 'Notice of dishonor.' Code Section 11-3-503.

1004 'Order.' Code Section 11-3-103.

1005 'Ordinary care.' Code Section 11-3-103.

1006 'Person entitled to enforce.' Code Section 11-3-301.

1007 'Presentment.' Code Section 11-3-501.

1008 'Promise.' Code Section 11-3-103.

1009 'Prove.' Code Section 11-3-103.

1010 'Teller's check.' Code Section 11-3-104.

1011 'Unauthorized signature.' Code Section 11-3-403."

1012 **SECTION 3B-13.**

1013 Said title is further amended by revising paragraphs (6) and (7) of subsection (a) of Code  
1014 Section 11-4A-105, relating to other definitions, as follows:

1015 "(6) Reserved. ~~'Good faith' means honesty in fact and the observance of reasonable~~  
1016 ~~commercial standards of fair dealing.~~

1017 (7) 'Prove' with respect to a fact means to meet the burden of establishing the fact (Code  
1018 Section 11-1-201(b)(8))."

1019 **SECTION 3B-14.**

1020 Said title is further amended by revising subsection (a) of Code Section 11-4A-106, relating  
1021 to time payment order is received, as follows:

1022 "(a) The time of receipt of a payment order or communication canceling or amending a  
1023 payment order is determined by the rules applicable to receipt of a notice stated in Code

1024 Section ~~11-1-201(27)~~ 11-1-202. A receiving bank may fix a cut-off time or times on a  
 1025 funds-transfer business day for the receipt and processing of payment orders and  
 1026 communications canceling or amending payment orders. Different cut-off times may apply  
 1027 to payment orders, cancellations, or amendments, or to different categories of payment  
 1028 orders, cancellations, or amendments. A cut-off time may apply to senders generally or  
 1029 different cut-off times may apply to different senders or categories of payment orders. If  
 1030 a payment order or communication canceling or amending a payment order is received  
 1031 after the close of a funds-transfer business day or after the appropriate cut-off time on a  
 1032 funds-transfer business day, the receiving bank may treat the payment order or  
 1033 communication as received at the opening of the next funds-transfer business day."

1034 **SECTION 3B-15.**

1035 Said title is further amended by revising subsection (b) of Code Section 11-4A-204, relating  
 1036 to refund of payment and duty of customer to report with respect to unauthorized payment  
 1037 order, as follows:

1038 "(b) Reasonable time under subsection (a) of this Code section may be fixed by agreement  
 1039 as stated in subsection (b) of Code Section ~~11-1-204(1)~~ 11-1-302, but the obligation of a  
 1040 receiving bank to refund payment as stated in subsection (a) of this Code section may not  
 1041 otherwise be varied by agreement."

1042 **SECTION 3B-16.**

1043 Said title is further amended by revising subsection (c) of Code Section 11-5-103, relating  
 1044 to scope, as follows:

1045 "(c) With the exception of subsections (a), (b), and (d) of this Code section, paragraphs (9)  
 1046 and (10) of subsection (a) of Code Section 11-5-102, subsection (d) of Code Section  
 1047 11-5-106, and subsection (d) of Code Section 11-5-114 and except to the extent prohibited  
 1048 in ~~subsection (3) of~~ Code Section ~~11-1-102~~ 11-1-302 and subsection (d) of Code Section  
 1049 11-5-117, the effect of this article may be varied by agreement or by a provision stated or  
 1050 incorporated by reference in an undertaking. A term in an agreement or undertaking  
 1051 generally excusing liability or generally limiting remedies for failure to perform obligations  
 1052 is not sufficient to vary obligations prescribed by this article."

1053 **SECTION 3B-17.**

1054 Said title is further amended by revising paragraph (10) of subsection (a) of Code Section  
 1055 11-8-102, relating to definitions, as follows:

1056 ~~"(10) Reserved. 'Good faith,' for purposes of the obligation of good faith in the~~  
 1057 ~~performance or enforcement of contracts or duties within this article, means honesty in~~  
 1058 ~~fact and the observance of reasonable commercial standards of fair dealing."~~

1059 **SECTION 3B-18.**

1060 Said title is further amended by revising paragraph (44) of subsection (a) of Code Section  
 1061 11-9-102, relating to definitions and index of definitions, as follows:

1062 ~~"(44) Reserved. 'Good faith' means honesty in fact and the observance of reasonable~~  
 1063 ~~commercial standards of fair dealing."~~

1064 **SECTION 3B-19.**

1065 Said title is further amended by revising Code Section 11-11-101, relating to effective date  
 1066 and definition, as follows:

1067 ~~"11-11-101. **Effective date; definitions.**~~

1068 ~~(1) This Act shall become effective at 12:01 A.M. on July 1, 1978.~~

1069 ~~(2) As used in this article:~~

1070 ~~(a) 'Old Article 9 of this title' means Code Sections 11-1-105, 11-1-201(9), 11-1-201(37),~~  
 1071 ~~11-2-107, 11-5-116, and Article 9 of this title, as they are in effect on June 30, 1978,~~  
 1072 ~~immediately prior to the effective date of this Act.~~

1073 ~~(b) 'Revised Article 9 of this title' means Code Sections 11-1-105, 11-1-201(9),~~  
 1074 ~~11-1-201(37), 11-1-209, 11-2-107, 11-5-116, and Article 9 of this title as said provisions~~  
 1075 ~~are enacted pursuant to this Act."~~

1076 **PART IIIC**

1077 **CONFORMING CROSS-REFERENCES**

1078 **IN THE CODE TO PART IIIA**

1079 **SECTION 3C-1.**

1080 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is  
 1081 amended by revising paragraph (29) of Code Section 7-1-4, relating to definitions, as  
 1082 follows:

1083 ~~"(29) 'Public sale' means a sale as defined in paragraph (31.1) of Code Section 11-1-201;~~

1084 ~~(A) Held at a place reasonably available to persons who might desire to attend and~~  
 1085 ~~submit bids;~~

1086 ~~(B) At which those attending shall be given the opportunity to bid on a competitive~~  
 1087 ~~basis;~~

1088 ~~(C) At which the sale, if made, shall be made to the highest and best bidder; and~~

1089 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the  
 1090 advertising of public sales, of which notice is given by advertisement once a week for  
 1091 two weeks in the newspaper in which the sheriff's advertisements are published in the  
 1092 county where the sale is to be held, and which notice shall state the day and hour,  
 1093 between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the  
 1094 goods to be sold."

1095 **SECTION 3C-2.**

1096 Said title is further amended by revising paragraph (23) of Code Section 7-1-680, relating  
 1097 to definitions, as follows:

1098 "(23) 'Signed' shall have the same meaning as provided in ~~paragraph (39) of Code~~  
 1099 Section 11-1-201."

1100 **SECTION 3C-3.**

1101 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
 1102 amended by revising paragraph (8) of Code Section 10-1-622, relating to definitions, as  
 1103 follows:

1104 "(8) 'Good faith' means honesty in fact and the observation of reasonable commercial  
 1105 standards of fair dealing in the trade as defined ~~and interpreted~~ in Code Section ~~11-1-203~~  
 1106 11-1-201."

1107 **SECTION 3C-4.**

1108 Said title is further amended by revising subsection (b) of Code Section 10-12-3, relating to  
 1109 the applicability to electronic records and signatures relating to a transaction, as follows:

1110 "(b) This chapter shall not apply to a transaction to the extent it is governed by:  
 1111 (1) A law governing the creation and execution of wills, codicils, or testamentary trusts;  
 1112 (2) Title 11 other than ~~Code Sections 11-1-107 and 11-1-206~~ Code Section 11-1-306,  
 1113 Article 2, and Article 2A; or  
 1114 (3) The Uniform Computer Information Transactions Act."

1115 **SECTION 3C-5.**

1116 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
 1117 amended by revising subsection (a) of Code Section 40-11-6, relating to sale of vehicle  
 1118 pursuant to foreclosure, as follows:

1119 "(a)(1) As used in this subsection, the term 'public sale' means a sale:  
 1120 (A) Held at a place reasonably available to persons who might desire to attend and  
 1121 submit bids;

- 1122 (B) At which those attending shall be given the opportunity to bid on a competitive  
 1123 basis;
- 1124 (C) At which the sale, if made, shall be made to the highest and best bidder; and
- 1125 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the  
 1126 advertising of public sales, of which notice is given by advertisement once a week for  
 1127 two weeks in the newspaper in which the sheriff's advertisements are published in the  
 1128 county where the sale is to be held, and which notice shall state the day and hour,  
 1129 between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the  
 1130 goods to be sold.
- 1131 (2) Upon order of the court, the person holding the lien on the abandoned motor vehicle  
 1132 shall be authorized to sell such motor vehicle at public sale, ~~as defined by Code Section~~  
 1133 ~~11-1-201."~~

1134 **SECTION 3C-6.**

1135 Title 52 of the Official Code of Georgia Annotated, relating to waters of the state, ports, and  
 1136 watercraft, is amended by revising subsection (a) of Code Section 52-7-75, relating to public  
 1137 sale of vessel and disposition of excess proceeds, as follows:

1138 "(a)(1) As used in this subsection, the term 'public sale' means a sale:

- 1139 (A) Held at a place reasonably available to persons who might desire to attend and  
 1140 submit bids;
- 1141 (B) At which those attending shall be given the opportunity to bid on a competitive  
 1142 basis;
- 1143 (C) At which the sale, if made, shall be made to the highest and best bidder; and
- 1144 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the  
 1145 advertising of public sales, of which notice is given by advertisement once a week for  
 1146 two weeks in the newspaper in which the sheriff's advertisements are published in the  
 1147 county where the sale is to be held, and which notice shall state the day and hour,  
 1148 between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the  
 1149 goods to be sold.
- 1150 (2) Upon order of the court, the person holding the lien on the abandoned vessel shall be  
 1151 authorized to sell such vessel at public sale, ~~as defined by Code Section 11-1-201."~~

1152 **PART IVA**  
 1153 **UNIFORM VOIDABLE TRANSACTIONS ACT**  
 1154 **SECTION 4A-1.**

1155 Chapter 2 of Title 18 of the Official Code of Georgia Annotated, relating to debtor and  
 1156 creditor relations, is amended by revising Article 4, relating to the "Uniform Fraudulent  
 1157 Transfers Act," as follows:

1158 "ARTICLE 4

1159 18-2-70.

1160 This article, which was formerly known and cited as the 'Uniform Fraudulent Transfers  
 1161 Act,' shall be known and may be cited as the 'Uniform ~~Fraudulent Transfers~~ Voidable  
 1162 Transactions Act.'

1163 18-2-71.

1164 As used in this article, the term:

1165 (1) 'Affiliate' means:

1166 (A) A person who directly or indirectly owns, controls, or holds with power to vote,  
 1167 20 percent or more of the outstanding voting securities of the debtor, other than a  
 1168 person who holds the securities:

1169 (i) As a fiduciary or agent without sole discretionary power to vote the securities; or

1170 (ii) Solely to secure a debt, if the person has not exercised the power to vote;

1171 (B) A corporation 20 percent or more of whose outstanding voting securities are  
 1172 directly or indirectly owned, controlled, or held with power to vote by the debtor or a  
 1173 person who directly or indirectly owns, controls, or holds with power to vote 20 percent  
 1174 or more of the outstanding voting securities of the debtor, other than a person who  
 1175 holds the securities:

1176 (i) As a fiduciary or agent without sole power to vote the securities; or

1177 (ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

1178 (C) A person whose business is operated by the debtor under a lease or other  
 1179 agreement, or a person substantially all of whose assets are controlled by the debtor; or

1180 (D) A person who operates the debtor's business under a lease or other agreement or  
 1181 controls substantially all of the debtor's assets.

1182 (2) 'Asset' means property of a debtor, but the term does not include:

1183 (A) Property to the extent it is encumbered by a valid lien;

1184 (B) Property to the extent it is generally exempt under nonbankruptcy law; or

- 1185 (C) An interest in property held in tenancy by the entireties to the extent it is not  
1186 subject to process by a creditor holding a claim against only one tenant.
- 1187 (3) 'Claim,' except for claim for relief, means a right to payment, whether or not the right  
1188 is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,  
1189 disputed, undisputed, legal, equitable, secured, or unsecured.
- 1190 (4) 'Creditor' means a person who has a claim.
- 1191 (5) 'Debt' means liability on a claim.
- 1192 (6) 'Debtor' means a person who is liable on a claim.
- 1193 (7) 'Electronic' means relating to technology having electrical, digital, magnetic,  
1194 wireless, optical, electromagnetic, or similar capabilities.
- 1195 ~~(7)~~(8) 'Insider' includes:
- 1196 (A) If the debtor is an individual:
- 1197 (i) A relative of the debtor or of a general partner of the debtor;
- 1198 (ii) A partnership in which the debtor is a general partner;
- 1199 (iii) A general partner in a partnership described in division (ii) of this subparagraph;
- 1200 or
- 1201 (iv) A corporation of which the debtor is a director, officer, or person in control;
- 1202 (B) If the debtor is a corporation:
- 1203 (i) A director of the debtor;
- 1204 (ii) An officer of the debtor;
- 1205 (iii) A person in control of the debtor;
- 1206 (iv) A partnership in which the debtor is a general partner;
- 1207 (v) A general partner in a partnership described in division (iv) of this subparagraph;
- 1208 or
- 1209 (vi) A relative of a general partner, director, officer, or person in control of the  
1210 debtor;
- 1211 (C) If the debtor is a partnership:
- 1212 (i) A general partner in the debtor;
- 1213 (ii) A relative of a general partner in, or a general partner of, or a person in control  
1214 of the debtor;
- 1215 (iii) Another partnership in which the debtor is a general partner;
- 1216 (iv) A general partner in a partnership described in division (iii) of this subparagraph;
- 1217 or
- 1218 (v) A person in control of the debtor;
- 1219 (D) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- 1220 (E) A managing agent of the debtor.

1221 ~~(8)~~(9) 'Lien' means a charge against or an interest in property to secure payment of a debt  
 1222 or performance of an obligation and includes a security interest created by agreement, a  
 1223 judicial lien obtained by legal or equitable process or proceedings, a common-law lien,  
 1224 or a statutory lien.

1225 (10) 'Organization' means a person other than an individual.

1226 ~~(9)~~(11) 'Person' means an individual, partnership, public corporation, association,  
 1227 organization, government or governmental subdivision or agency or instrumentality,  
 1228 business trust or nonprofit entity, estate, trust, or any other legal or commercial entity.

1229 ~~(10)~~(12) 'Property' means anything that may be the subject of ownership.

1230 (13) 'Record' means information that is inscribed on a tangible medium or that is stored  
 1231 in an electronic or other medium and is retrievable in perceivable form.

1232 ~~(11)~~(14) 'Relative' means an individual related by consanguinity within the third degree  
 1233 as determined by the common law, a spouse, or an individual related to a spouse within  
 1234 the third degree as so determined and includes an individual in an adoptive relationship  
 1235 within the third degree.

1236 (15) 'Sign' means, with present intent to authenticate or adopt a record:

1237 (A) To execute or adopt a tangible symbol; or

1238 (B) To attach to or logically associate with the record an electronic symbol, sound, or  
 1239 process.

1240 ~~(12)~~(16) 'Transfer' means every mode, direct or indirect, absolute or conditional,  
 1241 voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset  
 1242 and includes payment of money, release, lease, and creation of a lien or other  
 1243 encumbrance.

1244 ~~(13)~~(17) 'Valid lien' means a lien that is effective against the holder of a judicial lien  
 1245 subsequently obtained by legal or equitable process or proceedings.

1246 18-2-72.

1247 (a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than  
 1248 ~~all of the~~ sum of the debtor's assets, ~~at a fair valuation~~.

1249 (b) A debtor who is generally not paying his or her debts as they become due other than  
 1250 as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes  
 1251 on the party against which the presumption is directed the burden of proving that the  
 1252 nonexistence of insolvency is more probable than its existence.

1253 ~~(c) A partnership is insolvent under subsection (a) of this Code section if the sum of the~~  
 1254 ~~partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair~~  
 1255 ~~valuation, and the sum of the excess of the value of each general partner's nonpartnership~~  
 1256 ~~assets over the partner's nonpartnership debts.~~

1257 ~~(d)~~(c) Assets under this Code section do not include property that has been transferred,  
 1258 concealed, or removed with intent to hinder, delay, or defraud creditors or that has been  
 1259 transferred in a manner making the transfer voidable under this article.

1260 ~~(e)~~(d) Debts under this Code section do not include an obligation to the extent it is secured  
 1261 by a valid lien on property of the debtor not included as an asset.

1262 18-2-73.

1263 (a) Value is given for a transfer or an obligation if, in exchange for the transfer or  
 1264 obligation, property is transferred or an antecedent debt is secured or satisfied, but value  
 1265 does not include an unperformed promise made otherwise than in the ordinary course of  
 1266 the promisor's business to furnish support to the debtor or another person.

1267 (b) For the purposes of paragraph (2) of subsection (a) of Code Section 18-2-74 and Code  
 1268 Section 18-2-75, a person gives a reasonably equivalent value if the person acquires an  
 1269 interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure  
 1270 sale or execution of a power of sale for the acquisition or disposition of the interest of the  
 1271 debtor upon default under a mortgage, deed of trust, or security agreement.

1272 (c) A transfer is made for present value if the exchange between the debtor and the  
 1273 transferee is intended by them to be contemporaneous and is in fact substantially  
 1274 contemporaneous.

1275 18-2-74.

1276 (a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a  
 1277 creditor, whether the creditor's claim arose before or after the transfer was made or the  
 1278 obligation was incurred, if the debtor made the transfer or incurred the obligation:

1279 (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

1280 (2) Without receiving a reasonably equivalent value in exchange for the transfer or  
 1281 obligation, and the debtor:

1282 (A) Was engaged or was about to engage in a business or a transaction for which the  
 1283 remaining assets of the debtor were unreasonably small in relation to the business or  
 1284 transaction; or

1285 (B) Intended to incur, or believed or reasonably should have believed that he or she  
 1286 would incur, debts beyond his or her ability to pay as they became due.

1287 (b) In determining actual intent under paragraph (1) of subsection (a) of this Code section,  
 1288 consideration may be given, among other factors, to whether:

1289 (1) The transfer or obligation was to an insider;

1290 (2) The debtor retained possession or control of the property transferred after the  
 1291 transfer;

- 1292 (3) The transfer or obligation was disclosed or concealed;
- 1293 (4) Before the transfer was made or obligation was incurred, the debtor had been sued  
1294 or threatened with suit;
- 1295 (5) The transfer was of substantially all the debtor's assets;
- 1296 (6) The debtor absconded;
- 1297 (7) The debtor removed or concealed assets;
- 1298 (8) The value of the consideration received by the debtor was reasonably equivalent to  
1299 the value of the asset transferred or the amount of the obligation incurred;
- 1300 (9) The debtor was insolvent or became insolvent shortly after the transfer was made or  
1301 the obligation was incurred;
- 1302 (10) The transfer occurred shortly before or shortly after a substantial debt was incurred;  
1303 and
- 1304 (11) The debtor transferred the essential assets of the business to a lienor who transferred  
1305 the assets to an insider of the debtor.
- 1306 (c) A creditor making a claim for relief under subsection (a) of this Code section has the  
1307 burden of proving the elements of the claim for relief by a preponderance of the evidence.

1308 18-2-75.

1309 (a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a  
1310 creditor whose claim arose before the transfer was made or the obligation was incurred if  
1311 the debtor made the transfer or incurred the obligation without receiving a reasonably  
1312 equivalent value in exchange for the transfer or obligation and the debtor was insolvent at  
1313 that time or the debtor became insolvent as a result of the transfer or obligation.

1314 (b) A transfer made by a debtor is ~~fraudulent~~ voidable as to a creditor whose claim arose  
1315 before the transfer was made if the transfer was made to an insider for an antecedent debt,  
1316 the debtor was insolvent at that time, and the insider had reasonable cause to believe that  
1317 the debtor was insolvent.

1318 (c) Subject to subsection (b) of Code Section 18-2-72, a creditor making a claim for relief  
1319 under subsection (a) or (b) of this Code section has the burden of proving the elements of  
1320 the claim for relief by a preponderance of the evidence.

1321 18-2-76.

1322 For the purposes of this article:

1323 (1) A transfer is made:

1324 (A) With respect to an asset that is real property other than a fixture, but including the  
1325 interest of a seller or purchaser under a contract for the sale of the asset, when the  
1326 transfer is so far perfected that a good faith purchaser of the asset from the debtor

- 1327 against whom applicable law permits the transfer to be perfected cannot acquire an  
 1328 interest in the asset that is superior to the interest of the transferee; and
- 1329 (B) With respect to an asset that is not real property or that is a fixture, when the  
 1330 transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial  
 1331 lien otherwise than under this article that is superior to the interest of the transferee;
- 1332 (2) If applicable law permits the transfer to be perfected as provided in paragraph (1) of  
 1333 this Code section and the transfer is not so perfected before the commencement of an  
 1334 action for relief under this article, the transfer is deemed made immediately before the  
 1335 commencement of the action;
- 1336 (3) If applicable law does not permit the transfer to be perfected as provided in  
 1337 paragraph (1) of this Code section, the transfer is made when it becomes effective  
 1338 between the debtor and the transferee;
- 1339 (4) A transfer is not made until the debtor has acquired rights in the asset transferred; and
- 1340 (5) An obligation is incurred:
- 1341 (A) If oral, when it becomes effective between the parties; or
- 1342 (B) If evidenced by a writing record, when the ~~writing executed~~ record signed by the  
 1343 obligor is delivered to or for the benefit of the obligee.

1344 18-2-77.

- 1345 (a) In an action for relief against a transfer or obligation under this article, a creditor,  
 1346 subject to the limitations in Code Section 18-2-78, may obtain:
- 1347 (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's  
 1348 claim;
- 1349 (2) An attachment or other provisional remedy against the asset transferred or other  
 1350 property of the transferee in accordance with the procedure prescribed by Chapter 3 of  
 1351 this title; and
- 1352 (3) Subject to applicable principles of equity and in accordance with applicable rules of  
 1353 civil procedure:
- 1354 (A) An injunction against further disposition by the debtor or a transferee, or both, of  
 1355 the asset transferred or of other property;
- 1356 (B) Appointment of a receiver to take charge of the asset transferred or of other  
 1357 property of the transferee; or
- 1358 (C) Any other relief the circumstances may require.
- 1359 (b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the  
 1360 court so orders, may levy execution on the asset transferred or its proceeds.

1361 18-2-78.

1362 (a) A transfer or obligation is not voidable under paragraph (1) of subsection (a) of Code  
1363 Section 18-2-74 against a person who took in good faith and for a reasonably equivalent  
1364 value or against any subsequent transferee or obligee.

1365 (b) To the extent a transfer is avoidable in an action by a creditor under paragraph (1) of  
1366 subsection (a) of Code Section 18-2-77, the following rules apply:

1367 ~~(1) Except as otherwise provided in this Code section, to the extent a transfer is voidable~~  
1368 ~~in an action by a creditor under paragraph (1) of subsection (a) of Code Section 18-2-77,~~  
1369 the creditor may recover judgment for the value of the asset transferred, as adjusted under  
1370 subsection (c) of this Code section, or the amount necessary to satisfy the creditor's claim,  
1371 whichever is less. The judgment may be entered against:

1372 ~~(1)(A) The first transferee of the asset or the person for whose benefit the transfer was~~  
1373 ~~made; or~~

1374 ~~(2) Any subsequent transferee other than a~~

1375 (B) An immediate or mediate transferee of the first transferee, other than:

1376 (i) A good faith transferee or obligee who took for value; or from any subsequent  
1377 transferee or obligee

1378 (ii) An immediate or mediate good faith transferee of a person described in  
1379 division (i) of this subparagraph.

1380 (2) Recovery pursuant to paragraph (1) of subsection (a) or subsection (b) of Code  
1381 Section 18-2-77 of or from the asset transferred or its proceeds, by levy or otherwise, is  
1382 available only against a person described in paragraph (1) of this subsection.

1383 (c) If the judgment under subsection (b) of this Code section is based upon the value of the  
1384 asset transferred, the judgment must be for an amount equal to the value of the asset at the  
1385 time of the transfer, subject to adjustment as the equities may require.

1386 (d) Notwithstanding voidability of a transfer or an obligation under this article, a good  
1387 faith transferee or obligee is entitled, to the extent of the value given the debtor for the  
1388 transfer or obligation, to:

1389 (1) A lien on or a right to retain any interest in the asset transferred;

1390 (2) Enforcement of any obligation incurred; or

1391 (3) A reduction in the amount of the liability on the judgment.

1392 (e) A transfer is not voidable under paragraph (2) of subsection (a) of Code Section  
1393 18-2-74 or Code Section 18-2-75 if the transfer results from:

1394 (1) Termination of a lease upon default by the debtor when the termination is pursuant  
1395 to the lease and applicable law; or

1396 (2) Enforcement of a security interest in compliance with Article 9 of the Uniform  
 1397 Commercial Code, other than acceptance of collateral in full or partial satisfaction of the  
 1398 obligation it secures.

1399 (f) A transfer is not voidable under subsection (b) of Code Section 18-2-75:

1400 (1) To the extent the insider gave new value to or for the benefit of the debtor after the  
 1401 transfer was made unless the new value was secured by a valid lien;

1402 (2) If made in the ordinary course of business or financial affairs of the debtor and the  
 1403 insider; or

1404 (3) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer  
 1405 secured the present value given for that purpose as well as an antecedent debt of the  
 1406 debtor.

1407 (g) The following rules determine the burden of proving matters referred to in this Code  
 1408 section:

1409 (1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this Code section has the  
 1410 burden of proving the applicability of that subsection;

1411 (2) Except as otherwise provided in paragraphs (3) and (4) of this subsection, the creditor  
 1412 has the burden of proving each applicable element of subsection (b) or (c) of this Code  
 1413 section;

1414 (3) The transferee has the burden of proving the applicability to the transferee of  
 1415 subparagraph (b)(1)(B) of this Code section; and

1416 (4) A party that seeks adjustment under subsection (c) of this Code section has the  
 1417 burden of proving the adjustment.

1418 (h) The standard of proof required to establish matters referred to in this Code section is  
 1419 preponderance of the evidence.

1420 18-2-79.

1421 A cause of action with respect to a fraudulent transfer or obligation under this article is  
 1422 extinguished unless action is brought:

1423 (1) Under paragraph (1) of subsection (a) of Code Section 18-2-74, within four years  
 1424 after the transfer was made or the obligation was incurred or, if later, within one year  
 1425 after the transfer or obligation was or could reasonably have been discovered by the  
 1426 claimant;

1427 (2) Under paragraph (2) of subsection (a) of Code Section 18-2-74 or subsection (a) of  
 1428 Code Section 18-2-75, within four years after the transfer was made or the obligation was  
 1429 incurred; or

1430 (3) Under subsection (b) of Code Section 18-2-75, within one year after the transfer was  
 1431 made or the obligation was incurred.

1432 18-2-80.

1433 (a) In this Code section, the following rules determine a debtor's location:

1434 (1) A debtor who is an individual is located at the individual's principal residence;

1435 (2) A debtor that is an organization and has only one place of business is located at its  
 1436 place of business; and

1437 (3) A debtor that is an organization and has more than one place of business is located  
 1438 at its chief executive office.

1439 (b) A cause of action in the nature of a claim for relief under this article is governed by the  
 1440 local law of the jurisdiction in which the debtor is located when the transfer is made or the  
 1441 obligation is incurred.

1442 18-2-81.

1443 (a) As used in this Code section, the term:

1444 (1) 'Protected series' means an arrangement, however denominated, created by a series  
 1445 organization that, pursuant to the law under which the series organization is organized,  
 1446 has the characteristics set forth in paragraph (2) of this subsection.

1447 (2) 'Series organization' means an organization that, pursuant to the law under which it  
 1448 is organized, has the following characteristics:

1449 (A) The organic record of the organization provides for creation by the organization  
 1450 of one or more protected series, however denominated, with respect to specified  
 1451 property of the organization, and for records to be maintained for each protected series  
 1452 that identify the property of or associated with the protected series;

1453 (B) Debt incurred or existing with respect to the activities of, or property of or  
 1454 associated with, a particular protected series is enforceable against the property of or  
 1455 associated with the protected series only, and not against the property of or associated  
 1456 with the organization or other protected series of the organization; or

1457 (C) Debt incurred or existing with respect to the activities or property of the  
 1458 organization is enforceable against the property of the organization only, and not  
 1459 against the property of or associated with a protected series of the organization.

1460 (b) A series organization and each protected series of the organization is a separate person  
 1461 for purposes of this article, even if for other purposes a protected series is not a person  
 1462 separate from the organization or other protected series of the organization.

1463 ~~18-2-80~~ 18-2-82.

1464 ~~(a)~~ Unless displaced by the provisions of this article, the principles of law and equity,  
 1465 including the law merchant and the law relating to principal and agent, estoppel, laches,

1466 fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or  
 1467 invalidating cause, supplement its provisions.

1468 ~~(b) The provisions of this article do not create a cause of action for a governmental entity~~  
 1469 ~~or its agent or assignee with respect to a transaction which may otherwise constitute a~~  
 1470 ~~fraudulent transfer or obligation under this article if the transaction complies with the~~  
 1471 ~~applicable state and federal laws concerning transfers of property in the determination of~~  
 1472 ~~eligibility for public benefits.~~

1473 18-2-83.

1474 This article shall be applied and construed to effectuate its general purpose to make  
 1475 uniform the law with respect to the subject of this article among states enacting the  
 1476 'Uniform Voidable Transactions Act.'

1477 18-2-84.

1478 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and  
 1479 National Commerce Act, 15 U.S.C. Section 7001, et seq., but shall not modify, limit, or  
 1480 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic  
 1481 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section  
 1482 7003(b).

1483 ~~18-2-81.~~ 18-2-85.

1484 (a) As used in this Code section, the term:

1485 (1) 'Charitable organization' means an organization which has qualified as tax-exempt  
 1486 under Section 501(c)(3) of the federal Internal Revenue Code of 1986 and has been so  
 1487 qualified for not less than two years preceding any transfer pursuant to this Code section,  
 1488 other than a private foundation or family trust.

1489 (2) 'Private foundation' shall have the same meaning as set forth in 26 U.S.C. Section  
 1490 509(a).

1491 (b) A transfer made to a charitable organization shall be considered complete unless it is  
 1492 established that a ~~fraudulent~~ voidable transfer has occurred as described in Code Section  
 1493 18-2-74 or 18-2-75, and such charitable organization had actual or constructive knowledge  
 1494 of the ~~fraudulent~~ voidable nature of the transfer.

1495 (c) The statute of limitations for a civil action with respect to a transfer to a charitable  
 1496 organization under this Code section shall be within two years after such transfer was  
 1497 made."

1498  
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1500  
1501

**PART IVB**  
**CONFORMING CROSS-REFERENCES TO**  
**THE UNIFORM VOIDABLE TRANSACTIONS ACT**  
**SECTION 4B-1.**

1502 Article 3 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to  
1503 limitations on recovery for deficiencies connected with improvements to realty and resulting  
1504 injuries, is amended by revising Code Section 9-3-35, relating to actions by creditors seeking  
1505 relief under Uniform Fraudulent Transfers Act, as follows:

1506 "9-3-35.

1507 An action by a creditor seeking relief under the provisions of Article 4 of Chapter 2 of Title  
1508 18, known as the 'Uniform ~~Fraudulent Transfers~~ Voidable Transactions Act,' shall be  
1509 brought within the applicable period set out in Code Section 18-2-79."

1510

**SECTION 4B-2.**

1511 Code Section 17-14-17 of the Official Code of Georgia Annotated, relating to fraudulent  
1512 transfers, is amended by revising subsection (a) as follows:

1513 "(a) The state or the victim of a crime may institute an action against an offender pursuant  
1514 to Article 4 of Chapter 2 of Title 18, the 'Uniform ~~Fraudulent Transfers~~ Voidable  
1515 Transactions Act,' to set aside a transfer of real, personal, or other property made  
1516 voluntarily by the offender on or after the date of the crime committed by the offender  
1517 against the victim with the intent to:

- 1518 (1) Conceal the crime or the fruits of the crime;  
1519 (2) Hinder, delay, or defraud any victim; or  
1520 (3) Avoid the payment of restitution."

1521

**PART V**

1522

**EFFECTIVE DATE;**

1523

**APPLICABILITY; AND REPEALER**

1524

**SECTION 5-1.**

1525 (a) This Act shall become effective on July 1, 2015.

1526 (b) Part 2 of this Act shall apply to all actions filed on or after July 1, 2015, in which the  
1527 recognition of a foreign-country judgment is raised.

1528 (c) The amendments made by Parts 4A and 4B of this Act shall:

- 1529 (1) Apply to a transfer made or obligation incurred on or after July 1, 2015;  
1530 (2) Not apply to a transfer made or obligation incurred before July 1, 2015;

- 1531 (3) Not apply to a right of action that has accrued before July 1, 2015; and  
1532 (4) For purposes of this subsection, a transfer is made and an obligation is incurred at the  
1533 time provided in Code Section 18-7-76.

1534

**SECTION 5-2.**

1535 All laws and parts of laws in conflict with this Act are repealed.