

The House Committee on Judiciary offers the following substitute to SB 65:

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 uniformity; to provide for situations not  
10 covered by the "Uniform Foreign-Country Money Judgments Recognition Act"; to update  
11 and modernize various statutes in the commercial code relating to commercial transactions  
12 in order to maintain uniformity in this state's statutes governing commercial transactions as  
13 recommended by the National Conference of Commissioners on Uniform State Laws; to  
14 revise, add, and move defined terms; to reorganize Article 1, relating to general provisions,  
15 of the "Uniform Commercial Code"; to make conforming amendments to other articles of  
16 the "Uniform Commercial Code" to provide for accurate cross-references to the revised  
17 "Uniform Commercial Code"; to amend Titles 7, 10, 40, and 52 of the Official Code of  
18 Georgia Annotated, relating to banking and finance, commerce and trade, motor vehicles and  
19 traffic, and waters of the state, ports, and watercraft, respectively, so as to make conforming  
20 cross-references to the revised "Uniform Commercial Code"; to repeal Article 6 of the  
21 Uniform Commercial Code, relating to bulk transfers, and make a conforming  
22 cross-reference; to revise the "Uniform Fraudulent Transfers Act" and enact the "Uniform  
23 Voidable Transactions Act"; to reform terminology and revise and add definitions; to provide  
24 the allocation of the burden of proof and define the standard of proof with respect to claims  
25 and defenses; to provide for governing law; to provide for the application to a series  
26 organization; to provide for uniformity of application and construction; to amend Article 3  
27 of Chapter 3 of Title 9 and Code Section 17-14-17 of the Official Code of Georgia  
28 Annotated, relating to limitations on recovery for deficiencies connected with improvements

29 to realty and resulting injuries and fraudulent transfers, respectively, so as to correct  
 30 cross-references to the "Uniform Voidable Transactions Act"; to amend Article 6 of Chapter  
 31 12 of Title 9 of the Official Code of Georgia Annotated, relating to the "Uniform  
 32 Enforcement of Foreign Judgments Law," so as to provide for applicability of certain  
 33 provisions in Chapter 11 of Title 9, the "Georgia Civil Practice Act"; to amend Code Section  
 34 44-13-100 of the Official Code of Georgia Annotated, relating to exemptions for the  
 35 purposes of bankruptcy and intestate insolvent estates, so as to change provisions relating to  
 36 an exemption; to provide for a short title; to provide for legislative intent; to provide for  
 37 related matters; to provide for effective dates and applicability; to repeal conflicting laws;  
 38 and for other purposes.

39 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

40 **PART I**  
 41 **SHORT TITLE**  
 42 **SECTION 1-1.**

43 (a) This Act shall be known and may be cited as the "Debtor-Creditor Uniform Law  
 44 Modernization Act of 2015."

45 (b) To promote consistency among the states, it is the intent of the General Assembly to  
 46 modernize certain existing uniform laws promulgated by the Uniform Law Commission  
 47 affecting debtor and creditor rights, responsibilities, and relationships and other federally  
 48 recognized laws affecting such rights, responsibilities, and relationships.

49 **PART II**  
 50 **"UNIFORM FOREIGN-COUNTRY**  
 51 **MONEY JUDGMENTS RECOGNITION ACT"**  
 52 **SECTION 2-1.**

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

## 56 "ARTICLE 5

57 9-12-110.

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

60 9-12-111.

61 As used in this article, the term:

62 (1) 'Foreign country' means a government other than:63 (A) The United States;64 (B) Any state, district, commonwealth, territory, or insular possession of the United  
65 States; or66 (C) Any other government with regard to which the decision in this state as to whether  
67 to recognize a judgment of such government's court is initially subject to determination  
68 under the Full Faith and Credit Clause of the United States Constitution.69 ~~(1)~~(2) 'Foreign-country judgment' 'Foreign judgment' means any judgment of a foreign  
70 state granting or denying recovery of a sum of money other than a judgment for taxes, a  
71 fine or other penalty, or a judgment for support in matrimonial or family matters court of  
72 a foreign country.73 ~~(2)~~ 'Foreign state' means any governmental unit other than:74 (A) The United States;75 (B) Any state, district, commonwealth, territory, or insular possession of the United  
76 States; or77 (C) The Trust Territory of the Pacific Islands.

78 9-12-112.

79 (a) Except as otherwise provided in subsection (b) of this Code section, this ~~This~~ article  
80 applies to any foreign foreign-country judgment to the extent that such judgment:81 (1) Grants or denies recovery of a sum of money; and82 (2) Under the law of the foreign country where rendered, is final, conclusive, and  
83 enforceable ~~where rendered even though an appeal therefrom is pending or it is subject~~  
84 to appeal.85 (b) This article shall not apply to a foreign-country judgment, even if such judgment grants  
86 or denies recovery of a sum of money, to the extent that such judgment is:87 (1) A judgment for taxes;88 (2) A fine or other penalty; or

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

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

93 9-12-113.

94 (a) Except as otherwise provided in Code Sections 9-12-114 and 9-12-115, a foreign  
 95 subsection (b) of this Code section, a court of this state shall recognize a foreign-country  
 96 judgment meeting the requirements of Code Section 9-12-112 is conclusive between the  
 97 parties to the extent that it grants or denies recovery of a sum of money. The foreign  
 98 judgment is enforceable in the same manner as the judgment of a sister state which is  
 99 entitled to full faith and credit.

100 ~~9-12-114.~~

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

103 (1) The judgment was rendered under a judicial system ~~which~~ that does not provide  
 104 impartial tribunals or procedures compatible with the requirements of due process of law;

105 (2) The foreign court did not have personal jurisdiction over the defendant; or

106 (3) The foreign court did not have jurisdiction over the subject matter; ;

107 (4) The defendant in the proceedings in the foreign court did not receive notice of the  
 108 proceedings in sufficient time to enable ~~him~~ the defendant to defend;

109 (5) The judgment was obtained by fraud that deprived the losing party of an adequate  
 110 opportunity to present its case;

111 (6) The judgment or cause of action on which the judgment is based is repugnant to the  
 112 public policy of this state or of the United States;

113 (7) The judgment conflicts with another final and conclusive judgment;

114 (8) The proceedings in the foreign court were contrary to an agreement between the  
 115 parties under which the dispute in question was to be ~~settled~~ determined otherwise than  
 116 by proceedings in ~~that~~ such foreign court;

117 (9) In the case of jurisdiction based only on personal service, the foreign court was a  
 118 seriously inconvenient forum for the trial of the action; or

119 ~~The party seeking to enforce the judgment fails to demonstrate that judgments of~~  
 120 ~~courts of the United States and of states thereof of the same type and based on~~  
 121 ~~substantially similar jurisdictional grounds are recognized and enforced in the courts of~~  
 122 ~~the foreign state. The judgment was rendered in circumstances that raise substantial~~  
 123 doubt about the integrity of the rendering court with respect to such judgment; or

124 (11) The specific proceeding in the foreign court leading to the judgment was not  
 125 compatible with the requirements of due process of law.

126 (c) A party resisting recognition of a foreign-country judgment has the burden of  
 127 establishing that a ground for nonrecognition stated in subsection (b) of this Code section  
 128 exists.

129 ~~9-12-115.~~ 9-12-114.

130 (a) A ~~foreign~~ foreign-country judgment shall not be refused recognition for lack of  
 131 personal jurisdiction if:

132 (1) The defendant was served personally in the foreign state country;

133 (2) The defendant voluntarily appeared in the proceedings other than for the purpose of  
 134 protecting property seized or threatened with seizure in the proceedings or of contesting  
 135 the jurisdiction of the court over ~~him~~ the defendant;

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

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

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

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

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

157 9-12-115.

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

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

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

165 9-12-116.

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

170 (1) Conclusive between the parties to the same extent as the judgment of a sister state  
 171 entitled to full faith and credit in this state would be conclusive; and

172 (2) Enforceable in the same manner and to the same extent as a judgment rendered in this  
 173 state.

174 ~~9-12-116.~~ 9-12-117.

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

181 9-12-118.

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

185 ~~9-12-117.~~ 9-12-119.

186 This article does not prevent the recognition under principles of comity or otherwise of a  
 187 foreign foreign-country judgment in situations not covered by not within the scope of this  
 188 article."

189 **PART IIIA**  
 190 **NATIONAL CONFERENCE OF**  
 191 **COMMISSIONERS ON UNIFORM STATE LAWS**  
 192 **RECOMMENDED CHANGES TO THE COMMERCIAL CODE**  
 193 **SECTION 3A-1.**

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

196 "ARTICLE 1  
 197 GENERAL PROVISIONS  
 198 Part 1  
 199 ~~Short Title, Construction, Application, and Subject Matter of Title~~  
 200 General Provisions

201 11-1-101. **Short title titles.**

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

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

205 11-1-102. **Scope of article.**

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

208 ~~11-1-102.~~ 11-1-103. **Rules of construction to promote purposes and policies;**  
 209 **applicability of supplemental principles of law. Purposes; rules of construction;**  
 210 **variation by agreement.**

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

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

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

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

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

218 (b) Unless displaced by the particular provisions of this title, the principles of law and  
 219 equity, including the law merchant and the law relative to capacity to contract, principal

220 and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and  
 221 other validating or invalidating cause shall supplement its provisions.

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

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

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

231 ~~(a) Words in the singular number include the plural, and in the plural include the~~  
 232 ~~singular;~~

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

235 ~~11-1-103. **Supplementary general principles of law applicable.**~~

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

240 11-1-104. **Construction against implicit repeal.**

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

244 11-1-105. **Severability. Territorial application of the title; parties' power to choose**  
 245 **applicable law.**

246 If any provision or clause of this title or application thereof to any person or circumstance  
 247 is held invalid, such invalidity shall not affect other provisions or applications of this title  
 248 which can be given effect without the invalid provision or application, and to this end the  
 249 provisions of this title are declared to be severable.

250 ~~(1) Except as provided hereafter in this Code section, when a transaction bears a~~  
 251 ~~reasonable relation to this state and also to another state or nation the parties may agree~~  
 252 ~~that the law either of this state or of such other state or nation shall govern their rights and~~

253 ~~duties. Failing such agreement this title applies to transactions bearing an appropriate~~  
 254 ~~relation to this state.~~

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

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

259 ~~Applicability of the article of this title on leases (Article 2A of this title). Code Sections~~  
 260 ~~11-2A-105 and 11-2A-106.~~

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

263 ~~Bulk transfers subject to the article of this title on bulk transfers (Article 6 of this title).~~  
 264 ~~Code Section 11-6-102.~~

265 ~~Applicability of the article of this title on investment securities (Article 8 of this title).~~  
 266 ~~Code Section 11-8-110.~~

267 ~~Law governing perfection, the effect of perfection or nonperfection, and the priority of~~  
 268 ~~security interests and agricultural liens. Code Sections 11-9-301 through 11-9-307.~~

269 ~~Governing law in the article on funds transfers (Article 4A of this title). Code Section~~  
 270 ~~11-4A-507.~~

271 11-1-106. **Use of singular and plural; gender. Remedies to be liberally administered.**  
 272 **In this title unless the statutory context otherwise requires:**

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

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

281 11-1-107. **Section captions. Waiver or renunciation of claim or right after breach.**  
 282 **Section captions are parts of this title. Any claim or right arising out of an alleged breach**  
 283 **can be discharged in whole or in part without consideration by a written waiver or**  
 284 **renunciation signed and delivered by the aggrieved party.**

285 11-1-108. **Relation to electronic signatures in Global and National Commerce Act.**

286 **Severability.**

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

291 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and  
 292 National Commerce Act, 15 U.S.C. Section 7001, et seq., but shall not modify, limit, or  
 293 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic  
 294 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section  
 295 7003(b).

296 ~~11-1-109. **Section captions.**~~

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

298 Part 2

299 General Definitions and Principles of Interpretation

300 11-1-201. **General definitions.**

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

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

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

309 (2) 'Aggrieved party' means a party entitled to ~~resort to~~ pursue a remedy.

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

317 (4) 'Bank' means any a person engaged in the business of banking. ~~Wherever the word~~  
 318 ~~'branch' is used in this title, with reference to a bank, it shall mean 'branch office' as that~~

319 ~~term is defined in Code Section 7-1-600~~ and includes a savings bank, savings and loan  
 320 association, credit union, or trust company.

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

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

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

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

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

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

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

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

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

356 ~~(11)~~(12) 'Contract,' as distinguished from 'agreement,' means the total legal obligation  
 357 which that results from the parties' agreement as ~~affected~~ determined by this title and any  
 358 other applicable ~~rules~~ of law.

359 ~~(12)~~(13) 'Creditor' includes a general creditor, a secured creditor, a lien creditor and any  
 360 representative of creditors, including an assignee for the benefit of creditors, a trustee in  
 361 bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's  
 362 or assignor's estate.

363 ~~(13)~~(14) 'Defendant' includes a person in the position of defendant in a ~~cross-action or~~  
 364 counterclaim, cross-claim, or third-party claim.

365 ~~(14)~~(15) 'Delivery' with respect to an ~~electronic instrument, document of title, or chattel~~  
 366 paper means voluntary transfer of control ~~and with respect to instruments, tangible~~  
 367 ~~documents of title, chattel paper, or certificated securities~~ means voluntary transfer of  
 368 possession.

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

385 ~~(16)~~(17) 'Fault' means a default, breach, or wrongful act, or omission, or breach.

386 ~~(17)~~(18) 'Fungible goods' ~~with respect to goods or securities~~ means goods or securities:

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

389 (B) Goods which are not fungible shall be deemed fungible for the purposes of this title  
 390 to the extent that under a particular by agreement or document unlike units are treated  
 391 as equivalents equivalent.

392 ~~(18)~~(19) 'Genuine' means free of forgery or counterfeiting.

393 ~~(19)~~(20) 'Good faith,' except as otherwise provided in Article 5 of this title, means  
 394 honesty in fact ~~in the conduct or transaction concerned~~ and the observance of reasonable  
 395 commercial standards of fair dealing.

396 ~~(20)~~(21) 'Holder' means:

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

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

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

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

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

407 (23) 'Insolvent' means:

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

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

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

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

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

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

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

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

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

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

- 430 (a) ~~It comes to that person's attention; or~~
- 431 (b) ~~It is duly delivered in a form reasonable under the circumstances at the place of~~
- 432 ~~business through which the contract was made or at another location held out by that~~
- 433 ~~person as the place for receipt of such communications.~~
- 434 ~~(27) Notice, knowledge, or a notice or notification received by an organization is~~
- 435 ~~effective for a particular transaction from the time when it is brought to the attention of~~
- 436 ~~the individual conducting that transaction, and in any event, from the time when it would~~
- 437 ~~have been brought to the individual's attention if the organization had exercised due~~
- 438 ~~diligence. An organization exercises due diligence if it maintains reasonable routines for~~
- 439 ~~communicating significant information to the person conducting the transaction and there~~
- 440 ~~is reasonable compliance with the routines. Due diligence does not require an individual~~
- 441 ~~acting for the organization to communicate information unless such communication is~~
- 442 ~~part of the individual's regular duties or the individual has reason to know of the~~
- 443 ~~transaction and that the transaction would be materially affected by the information.~~
- 444 ~~(28)(25) 'Organization' includes a corporation, government or governmental subdivision~~
- 445 ~~or agency, business trust, estate, trust, partnership or association, two or more persons~~
- 446 ~~having a joint or common interest, or any other legal or commercial entity means a person~~
- 447 ~~other than an individual.~~
- 448 ~~(29)(26) 'Party,' as distinct from 'third party,' means a person who has engaged in a~~
- 449 ~~transaction or made an agreement within subject to this title.~~
- 450 ~~(30)(27) 'Person' includes means an individual, ~~or an organization (see Code~~~~
- 451 ~~Section 11-1-102) corporation, business trust, estate, trust, partnership, limited liability~~
- 452 ~~company, association, joint venture, government, governmental subdivision, agency, or~~
- 453 ~~instrumentality, public corporation, or any other legal or commercial entity.~~
- 454 ~~(28) 'Present value' means the amount as of a date certain of one or more sums payable~~
- 455 ~~in the future, discounted to the date certain by use of either an interest rate specified by~~
- 456 ~~the parties if that rate is not manifestly unreasonable at the time the transaction is entered~~
- 457 ~~into or, if an interest rate is not so specified, a commercially reasonable rate that takes~~
- 458 ~~into account the facts and circumstances at the time the transaction is entered into.~~
- 459 ~~(31) 'Presumption' or 'presumed' means that the trier of fact must find the existence of~~
- 460 ~~the fact presumed unless and until evidence is introduced which would support a finding~~
- 461 ~~of its nonexistence.~~
- 462 ~~(31.1) 'Public sale' means a sale:~~
- 463 ~~(A) Held at a place reasonably available to persons who might desire to attend and~~
- 464 ~~submit bids; and~~
- 465 ~~(B) At which those attending shall be given the opportunity to bid on a competitive~~
- 466 ~~basis; and~~

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

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

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

477 ~~(32)(29)~~ 'Purchase' includes means taking by sale, discount, negotiation, mortgage,  
 478 pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction  
 479 creating an interest in property.

480 ~~(33)(30)~~ 'Purchaser' means a person who takes by purchase.

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

483 ~~(34)(32)~~ 'Remedy' means any remedial right to which an aggrieved party is entitled with  
 484 or without resort to a tribunal.

485 ~~(35)(33)~~ 'Representative' means a person empowered to act for another, including  
 486 includes an agent, an officer of a corporation or association, and a trustee, executor or  
 487 administrator of an estate, ~~or any other person empowered to act for another.~~

488 ~~(36)(34)~~ 'Rights' includes remedies.

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

502 Whether a transaction creates in the form of a lease or creates a 'security interest' is shall  
 503 be determined pursuant to Code Section 11-1-203. ~~by the facts of each case; however, a~~

504 ~~transaction creates a security interest if the consideration the lessee is to pay the lessor~~  
505 ~~for the right to possession and use of the goods is an obligation for the term of the lease~~  
506 ~~not subject to termination by the lessee, and~~

507 ~~(a) The original term of the lease is equal to or greater than the remaining economic life~~  
508 ~~of the goods,~~

509 ~~(b) The lessee is bound to renew the lease for the remaining economic life of the goods~~  
510 ~~or is bound to become the owner of the goods,~~

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

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

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

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

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

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

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

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

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

531 ~~(x) Additional consideration is not nominal if (i) when the option to renew the lease is~~  
532 ~~granted to the lessee the rent is stated to be the fair market rent for the use of the goods~~  
533 ~~for the term of the renewal determined at the time the option is to be performed, or (ii)~~

534 ~~when the option to become the owner of the goods is granted to the lessee the price is~~  
535 ~~stated to be the fair market value of the goods determined at the time the option is to be~~  
536 ~~performed. Additional consideration is nominal if it is less than the lessee's reasonably~~

537 ~~predictable cost of performing under the lease agreement if the option is not exercised;~~

538 ~~(y) 'Reasonably predictable' and 'remaining economic life of the goods' are to be~~  
539 ~~determined with reference to the facts and circumstances at the time the transaction is~~  
540 ~~entered into; and~~

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

547 ~~(38)(36)~~ 'Send' in connection with a writing, record, or notice means:

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

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

554 ~~(39)(37)~~ 'Signed' includes using any symbol executed or adopted ~~by a party~~ with present  
 555 intention to ~~authenticate~~ adopt or accept a writing.

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

559 ~~(40)(39)~~ 'Surety' includes a guarantor or other secondary obligor.

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

562 ~~(42)(40)~~ 'Term' means that portion of an agreement ~~which~~ that relates to a particular  
 563 matter.

564 ~~(43)(41)~~ 'Unauthorized' signature' means ~~one~~ a signature made without actual, implied,  
 565 or apparent authority. The term ~~and~~ includes a forgery.

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

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

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

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

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

575 ~~(45)(42)~~ 'Warehouse receipt' means a document of title receipt issued by a person  
 576 engaged in the business of storing goods for hire.

577 ~~(46)(43)~~ 'Written' or 'writing' includes printing, typewriting, or any other intentional  
578 reduction to tangible form.

579 11-1-202. **Notice; knowledge. Prima-facie evidence by third party documents.**

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

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

587 (1) Has actual knowledge of it;

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

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

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

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

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

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

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

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

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

613 11-1-203. **Lease distinguished from security interest. Obligation of good faith.**  
614 ~~Every contract or duty within this title imposes an obligation of good faith in its~~  
615 ~~performance or enforcement.~~  
616 (a) Whether a transaction in the form of a lease creates a security interest is determined by  
617 the facts of each case.  
618 (b) A transaction in the form of a lease creates a security interest if the consideration that  
619 the lessee is to pay to the lessor for the right to possession and use of the goods is an  
620 obligation for the term of the lease and is not subject to termination by the lessee, and:  
621 (1) The original term of the lease is equal to or greater than the remaining economic life  
622 of the goods;  
623 (2) The lessee is bound to renew the lease for the remaining economic life of the goods  
624 or is bound to become the owner of the goods;  
625 (3) The lessee has an option to renew the lease for the remaining economic life of the  
626 goods for no additional consideration or nominal additional consideration upon  
627 compliance with the lease agreement; or  
628 (4) The lessee has an option to become the owner of the goods for no additional  
629 consideration or nominal additional consideration upon compliance with the lease  
630 agreement.  
631 (c) A transaction in the form of a lease does not create a security interest merely because:  
632 (1) The present value of the consideration the lessee is obligated to pay the lessor for the  
633 right to possession and use of the goods is substantially equal to or is greater than the fair  
634 market value of the goods at the time the lease is entered into;  
635 (2) The lessee assumes risk of loss of the goods;  
636 (3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording,  
637 or registration fees, or service or maintenance costs;  
638 (4) The lessee has an option to renew the lease or to become the owner of the goods;  
639 (5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater  
640 than the reasonably predictable fair market rent for the use of the goods for the term of  
641 the renewal at the time the option is to be performed; or  
642 (6) The lessee has an option to become the owner of the goods for a fixed price that is  
643 equal to or greater than the reasonably predictable fair market value of the goods at the  
644 time the option is to be performed.  
645 (d) Additional consideration is nominal if it is less than the lessee's reasonably predictable  
646 cost of performing under the lease agreement if the option is not exercised. Additional  
647 consideration is not nominal if:

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

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

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

657 11-1-204. Value.

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

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

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

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

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

666 ~~11-1-204.~~ 11-1-205. Reasonable time; seasonableness. Time; reasonable time;  
 667 'seasonably.'

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

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

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

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

675 ~~11-1-205. Course of dealing and usage of trade.~~

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

679 ~~(2) A usage of trade is any practice or method of dealing having such regularity of~~  
 680 ~~observance in a place, vocation, or trade as to justify an expectation that it will be observed~~  
 681 ~~with respect to the transaction in question. The existence and scope of such a usage are to~~

682 ~~be proved as facts. If it is established that such a usage is embodied in a written trade code~~  
 683 ~~or similar writing the interpretation of the writing is for the court.~~

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

687 ~~(4) The express terms of an agreement and an applicable course of dealing or usage of~~  
 688 ~~trade shall be construed wherever reasonable as consistent with each other, but when such~~  
 689 ~~construction is unreasonable express terms control both course of dealing and usage of~~  
 690 ~~trade and course of dealing controls usage of trade.~~

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

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

696 11-1-206. **Presumptions. Statute of frauds for kinds of personal property not**  
 697 **otherwise covered.**

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

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

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

710 11-1-207. **Performance or acceptance under reservation of rights.**

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

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

716 ~~11-1-208. **Option to accelerate at will.**~~

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

723 ~~11-1-209. **Subordinated obligations.**~~

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

730 Part 3

731 Territorial Applicability and General Rules

732 11-1-301. **Territorial applicability; parties' power to choose applicable law.**

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

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

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

- 743 (1) Code Section 11-2-402;  
 744 (2) Code Sections 11-2A-105 and 11-2A-106;  
 745 (3) Code Section 11-4-102;  
 746 (4) Code Section 11-4A-507;  
 747 (5) Code Section 11-5-116;  
 748 (6) Code Section 11-6-103;  
 749 (7) Code Section 11-8-110; or

750 (8) Code Sections 11-9-301 through 11-9-307.

751 11-1-302. Variation by agreement.

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

754 (b) The obligations of good faith, diligence, reasonableness, and care prescribed by this  
 755 title may not be disclaimed by agreement. The parties may by agreement determine the  
 756 standards by which the performance of such obligations is to be measured if such standards  
 757 are not manifestly unreasonable. Whenever this title requires an action to be taken within  
 758 a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

759 (c) The presence in certain provisions of this title of the phrase 'unless otherwise agreed'  
 760 or words of similar import does not imply that the effect of other provisions may not be  
 761 varied by agreement under this Code section.

762 11-1-303. Course of performance, course of dealing, and usage of trade.

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

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

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

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

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

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

783 (e) Except as otherwise provided in subsection (f) of this Code section, the express terms  
 784 of an agreement and any applicable course of performance, course of dealing, or usage of

785 trade shall be construed whenever reasonable as consistent with each other. If such a  
 786 construction is unreasonable:

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

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

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

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

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

796 **11-1-304. Obligation of good faith.**

797 Every contract or duty within this title imposes an obligation of good faith in its  
 798 performance and enforcement.

799 **11-1-305. Remedies to be liberally administered.**

800 (a) The remedies provided by this title shall be liberally administered to the end that the  
 801 aggrieved party may be put in as good a position as if the other party had fully performed  
 802 but neither consequential or special damages nor penal damages may be had except as  
 803 specifically provided in this title or by other rule of law.

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

806 **11-1-306. Waiver or renunciation of claim or right after breach.**

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

809 **11-1-307. Prima-facie evidence by third party documents.**

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

815 11-1-308. Performance or acceptance under reservation of rights.

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

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

821 11-1-309. Option to accelerate at will.

822 A term providing that one party or that party's successor in interest may accelerate payment  
 823 or performance or require collateral or additional collateral 'at will' or when the party  
 824 'deems itself insecure' or words of similar import shall be construed to mean that the party  
 825 shall have power to do so only if that party in good faith believes that the prospect of  
 826 payment or performance is impaired. The burden of establishing lack of good faith is on  
 827 the party against whom the power has been exercised.

828 11-1-310. Subordinated obligations.

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

834 **PART IIIB**

835 **CONFORMING CROSS-REFERENCES**

836 **IN THE UCC TO PART IIIA**

837 **SECTION 3B-1.**

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

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

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

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

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

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

846 **SECTION 3B-2.**

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

849 "11-2-202. **Final written expression; parol or extrinsic evidence.**

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

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

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

859 **SECTION 3B-3.**

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

862 "11-2-208. ~~**Course of performance or practical construction.**~~

863 Reserved.

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

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

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

876 **SECTION 3B-4.**

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

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

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

881 'Between merchants.' Code Section 11-2-104(3).  
 882 'Buyer.' Code Section 11-2-103(1)(a).  
 883 'Chattel paper.' Code Section 11-9-102(a).  
 884 'Consumer goods.' Code Section 11-9-102(a).  
 885 'Document.' Code Section 11-9-102(a).  
 886 'Entrusting.' Code Section 11-2-403(3).  
 887 'General intangible.' Code Section 11-9-102(a).  
 888 ~~'Good faith.' Code Section 11-2-103(1)(b).~~  
 889 'Instrument.' Code Section 11-9-102(a).  
 890 'Merchant.' Code Section 11-2-104(1).  
 891 'Mortgage.' Code Section 11-9-102(a).  
 892 'Pursuant to commitment.' Code Section 11-9-102(a).  
 893 'Receipt.' Code Section 11-2-103(1)(c).  
 894 'Sale.' Code Section 11-2-106(1).  
 895 'Sale on approval.' Code Section 11-2-326.  
 896 'Sale or return.' Code Section 11-2-326.  
 897 'Seller.' Code Section 11-2-103(1)(d)."

898 **SECTION 3B-5.**

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

901 "~~11-2A-207. **Course of performance or practical construction.**~~

902 Reserved.

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

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

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

915 **SECTION 3B-6.**

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

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

921 **SECTION 3B-7.**

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

924 "(2) Except as otherwise provided with respect to damages liquidated in the lease  
925 agreement (Code Section 11-2A-504) or otherwise determined pursuant to agreement of  
926 the parties (Code Sections ~~11-1-102(3)~~ 11-1-302 and 11-2A-503), if a lessee's cover is by  
927 a lease agreement substantially similar to the original lease agreement and the new lease  
928 agreement is made in good faith and in a commercially reasonable manner, the lessee may  
929 recover from the lessor as damages (i) the present value, as of the date of the  
930 commencement of the term of the new lease agreement, of the rent under the new lease  
931 agreement applicable to that period of the new lease term which is comparable to the then  
932 remaining term of the original lease agreement minus the present value as of the same date  
933 of the total rent for the then remaining lease term of the original lease agreement, and (ii)  
934 any incidental or consequential damages, less expenses saved in consequence of the lessor's  
935 default."

936 **SECTION 3B-8.**

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

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

949 incidental and consequential damages, less expenses saved in consequence of the lessor's  
950 default."

951 **SECTION 3B-9.**

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

954 "(2) Except as otherwise provided with respect to damages liquidated in the lease  
955 agreement (Code Section 11-2A-504) or otherwise determined pursuant to agreement of  
956 the parties (Code Sections ~~11-1-102(3)~~ 11-1-302 and 11-2A-503), if the disposition is by  
957 lease agreement substantially similar to the original lease agreement and the new lease  
958 agreement is made in good faith and in a commercially reasonable manner, the lessor may  
959 recover from the lessee as damages (i) accrued and unpaid rent as of the date of the  
960 commencement of the term of the new lease agreement, (ii) the present value, as of the  
961 same date, of the total rent for the then remaining lease term of the original lease agreement  
962 minus the present value, as of the same date, of the rent under the new lease agreement  
963 applicable to that period of the new lease term which is comparable to the then remaining  
964 term of the original lease agreement, and (iii) any incidental damages allowed under Code  
965 Section 11-2A-530, less expenses saved in consequence of the lessee's default."

966 **SECTION 3B-10.**

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

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

984 incidental damages allowed under Code Section 11-2A-530, less expenses saved in  
985 consequence of the lessee's default."

986 **SECTION 3B-11.**

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

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

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

994 **SECTION 3B-12.**

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

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

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

1000 'Alteration.' Code Section 11-3-407.

1001 'Cashier's check.' Code Section 11-3-104.

1002 'Certificate of deposit.' Code Section 11-3-104.

1003 'Certified check.' Code Section 11-3-409.

1004 'Check.' Code Section 11-3-104.

1005 ~~'Good faith.' Code Section 11-3-103.~~

1006 'Holder in due course.' Code Section 11-3-302.

1007 'Instrument.' Code Section 11-3-104.

1008 'Notice of dishonor.' Code Section 11-3-503.

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

1010 'Ordinary care.' Code Section 11-3-103.

1011 'Person entitled to enforce.' Code Section 11-3-301.

1012 'Presentment.' Code Section 11-3-501.

1013 'Promise.' Code Section 11-3-103.

1014 'Prove.' Code Section 11-3-103.

1015 'Teller's check.' Code Section 11-3-104.

1016 'Unauthorized signature.' Code Section 11-3-403."

**SECTION 3B-13.**

1017

1018 Said title is further amended by revising paragraphs (6) and (7) of subsection (a) of Code  
1019 Section 11-4A-105, relating to other definitions, as follows:

1020 "(6) Reserved. ~~'Good faith' means honesty in fact and the observance of reasonable~~  
1021 ~~commercial standards of fair dealing.~~

1022 (7) 'Prove' with respect to a fact means to meet the burden of establishing the fact (Code  
1023 Section 11-1-201(b)(8))."

**SECTION 3B-14.**

1024

1025 Said title is further amended by revising subsection (a) of Code Section 11-4A-106, relating  
1026 to time payment order is received, as follows:

1027 "(a) The time of receipt of a payment order or communication canceling or amending a  
1028 payment order is determined by the rules applicable to receipt of a notice stated in Code  
1029 Section ~~11-1-201(27)~~ 11-1-202. A receiving bank may fix a cut-off time or times on a  
1030 funds-transfer business day for the receipt and processing of payment orders and  
1031 communications canceling or amending payment orders. Different cut-off times may apply  
1032 to payment orders, cancellations, or amendments, or to different categories of payment  
1033 orders, cancellations, or amendments. A cut-off time may apply to senders generally or  
1034 different cut-off times may apply to different senders or categories of payment orders. If  
1035 a payment order or communication canceling or amending a payment order is received  
1036 after the close of a funds-transfer business day or after the appropriate cut-off time on a  
1037 funds-transfer business day, the receiving bank may treat the payment order or  
1038 communication as received at the opening of the next funds-transfer business day."

**SECTION 3B-15.**

1039

1040 Said title is further amended by revising subsection (b) of Code Section 11-4A-204, relating  
1041 to refund of payment and duty of customer to report with respect to unauthorized payment  
1042 order, as follows:

1043 "(b) Reasonable time under subsection (a) of this Code section may be fixed by agreement  
1044 as stated in subsection (b) of Code Section ~~11-1-204(1)~~ 11-1-302, but the obligation of a  
1045 receiving bank to refund payment as stated in subsection (a) of this Code section may not  
1046 otherwise be varied by agreement."

**SECTION 3B-16.**

1047

1048 Said title is further amended by revising subsection (c) of Code Section 11-5-103, relating  
1049 to scope, as follows:

1050 "(c) With the exception of subsections (a), (b), and (d) of this Code section, paragraphs (9)  
 1051 and (10) of subsection (a) of Code Section 11-5-102, subsection (d) of Code Section  
 1052 11-5-106, and subsection (d) of Code Section 11-5-114 and except to the extent prohibited  
 1053 in ~~subsection (3) of Code Section 11-1-102~~ 11-1-302 and subsection (d) of Code Section  
 1054 11-5-117, the effect of this article may be varied by agreement or by a provision stated or  
 1055 incorporated by reference in an undertaking. A term in an agreement or undertaking  
 1056 generally excusing liability or generally limiting remedies for failure to perform obligations  
 1057 is not sufficient to vary obligations prescribed by this article."

1058 **SECTION 3B-17.**

1059 Said title is further amended by revising paragraph (10) of subsection (a) of Code Section  
 1060 11-8-102, relating to definitions, as follows:

1061 "~~(10) Reserved. 'Good faith,' for purposes of the obligation of good faith in the~~  
 1062 ~~performance or enforcement of contracts or duties within this article, means honesty in~~  
 1063 ~~fact and the observance of reasonable commercial standards of fair dealing."~~

1064 **SECTION 3B-18.**

1065 Said title is further amended by revising paragraph (44) of subsection (a) of Code Section  
 1066 11-9-102, relating to definitions and index of definitions, as follows:

1067 "~~(44) Reserved. 'Good faith' means honesty in fact and the observance of reasonable~~  
 1068 ~~commercial standards of fair dealing."~~

1069 **SECTION 3B-19.**

1070 Said title is further amended by revising Code Section 11-11-101, relating to effective date  
 1071 and definition, as follows:

1072 "~~11-11-101. **Effective date; definitions.**~~

1073 ~~(1) This Act shall become effective at 12:01 A.M. on July 1, 1978.~~

1074 ~~(2) As used in this article:~~

1075 ~~(a) 'Old Article 9 of this title' means Code Sections 11-1-105, 11-1-201(9), 11-1-201(37),~~  
 1076 ~~11-2-107, 11-5-116, and Article 9 of this title, as they are in effect on June 30, 1978,~~  
 1077 ~~immediately prior to the effective date of this Act.~~

1078 ~~(b) 'Revised Article 9 of this title' means Code Sections 11-1-105, 11-1-201(9),~~  
 1079 ~~11-1-201(37), 11-1-209, 11-2-107, 11-5-116, and Article 9 of this title as said provisions~~  
 1080 ~~are enacted pursuant to this Act."~~

1081  
1082  
1083  
1084

**PART IIIC**  
**CONFORMING CROSS-REFERENCES**  
**IN THE CODE TO PART IIIA**  
**SECTION 3C-1.**

1085 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is  
1086 amended by revising paragraph (29) of Code Section 7-1-4, relating to definitions, as  
1087 follows:

1088 ~~“(29) 'Public sale' means a sale as defined in paragraph (31.1) of Code Section 11-1-201;~~

1089 (A) Held at a place reasonably available to persons who might desire to attend and  
1090 submit bids;

1091 (B) At which those attending shall be given the opportunity to bid on a competitive  
1092 basis;

1093 (C) At which the sale, if made, shall be made to the highest and best bidder; and

1094 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the  
1095 advertising of public sales, of which notice is given by advertisement once a week for  
1096 two weeks in the newspaper in which the sheriff's advertisements are published in the  
1097 county where the sale is to be held, and which notice shall state the day and hour,  
1098 between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the  
1099 goods to be sold.”

1100

**SECTION 3C-2.**

1101 Said title is further amended by revising paragraph (23) of Code Section 7-1-680, relating  
1102 to definitions, as follows:

1103 ~~“(23) 'Signed' shall have the same meaning as provided in paragraph (39) of Code~~  
1104 ~~Section 11-1-201.”~~

1105

**SECTION 3C-3.**

1106 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
1107 amended by revising paragraph (8) of Code Section 10-1-622, relating to definitions, as  
1108 follows:

1109 ~~“(8) 'Good faith' means honesty in fact and the observation of reasonable commercial~~  
1110 ~~standards of fair dealing in the trade as defined and interpreted in Code Section 11-1-203~~  
1111 ~~11-1-201.”~~

**SECTION 3C-4.**

1112  
 1113 Said title is further amended by revising subsection (b) of Code Section 10-12-3, relating to  
 1114 the applicability to electronic records and signatures relating to a transaction, as follows:

1115 "(b) This chapter shall not apply to a transaction to the extent it is governed by:

1116 (1) A law governing the creation and execution of wills, codicils, or testamentary trusts;

1117 (2) Title 11 other than ~~Code Sections 11-1-107 and 11-1-206~~ Code Section 11-1-306,  
 1118 Article 2, and Article 2A; or

1119 (3) The Uniform Computer Information Transactions Act."

**SECTION 3C-5.**

1120  
 1121 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
 1122 amended by revising subsection (a) of Code Section 40-11-6, relating to sale of vehicle  
 1123 pursuant to foreclosure, as follows:

1124 "(a)(1) As used in this subsection, the term 'public sale' means a sale:

1125 (A) Held at a place reasonably available to persons who might desire to attend and  
 1126 submit bids;

1127 (B) At which those attending shall be given the opportunity to bid on a competitive  
 1128 basis;

1129 (C) At which the sale, if made, shall be made to the highest and best bidder; and

1130 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the  
 1131 advertising of public sales, of which notice is given by advertisement once a week for  
 1132 two weeks in the newspaper in which the sheriff's advertisements are published in the  
 1133 county where the sale is to be held, and which notice shall state the day and hour,  
 1134 between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the  
 1135 goods to be sold.

1136 (2) Upon order of the court, the person holding the lien on the abandoned motor vehicle  
 1137 shall be authorized to sell such motor vehicle at public sale, as defined by Code Section  
 1138 11-1-201."

**SECTION 3C-6.**

1139  
 1140 Title 52 of the Official Code of Georgia Annotated, relating to waters of the state, ports, and  
 1141 watercraft, is amended by revising subsection (a) of Code Section 52-7-75, relating to public  
 1142 sale of vessel and disposition of excess proceeds, as follows:

1143 "(a)(1) As used in this subsection, the term 'public sale' means a sale:

1144 (A) Held at a place reasonably available to persons who might desire to attend and  
 1145 submit bids;

1146 (B) At which those attending shall be given the opportunity to bid on a competitive  
 1147 basis;

1148 (C) At which the sale, if made, shall be made to the highest and best bidder; and

1149 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the  
 1150 advertising of public sales, of which notice is given by advertisement once a week for  
 1151 two weeks in the newspaper in which the sheriff's advertisements are published in the  
 1152 county where the sale is to be held, and which notice shall state the day and hour,  
 1153 between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the  
 1154 goods to be sold.

1155 (2) Upon order of the court, the person holding the lien on the abandoned vessel shall be  
 1156 authorized to sell such vessel at public sale, as defined by Code Section 11-1-201."

1157 **PART IIID**

1158 **REPEAL OF ARTICLE 6 RELATING TO BULK TRANSFERS**

1159 **SECTION 3D-1.**

1160 Title 11 of the Official Code of Georgia Annotated, relating to the commercial code, is  
 1161 amended by repealing Article 6, relating to bulk transfers, and designating said article as  
 1162 reserved.

1163 **SECTION 3D-2.**

1164 Said title is further amended by revising Code Section 11-9-111, relating to applicability of  
 1165 bulk transfer laws, as follows:

1166 ~~"11-9-111. **Applicability of bulk transfer laws.**~~

1167 ~~The creation of a security interest is not a bulk transfer under Article 6 of this title (see~~  
 1168 ~~Code Section 11-6-103)."~~

1169 **PART IVA**

1170 **UNIFORM VOIDABLE TRANSACTIONS ACT**

1171 **SECTION 4A-1.**

1172 Chapter 2 of Title 18 of the Official Code of Georgia Annotated, relating to debtor and  
 1173 creditor relations, is amended by revising Article 4, relating to the "Uniform Fraudulent  
 1174 Transfers Act," as follows:

## 1175 "ARTICLE 4

1176 18-2-70.

1177 This article, which was formerly known and cited as the 'Uniform Fraudulent Transfers  
 1178 Act.' shall be known and may be cited as the 'Uniform ~~Fraudulent Transfers~~ Voidable  
 1179 Transactions Act.'

1180 18-2-71.

1181 As used in this article, the term:

1182 (1) 'Affiliate' means:

1183 (A) A person who directly or indirectly owns, controls, or holds with power to vote,  
 1184 20 percent or more of the outstanding voting securities of the debtor, other than a  
 1185 person who holds the securities:

1186 (i) As a fiduciary or agent without sole discretionary power to vote the securities; or

1187 (ii) Solely to secure a debt, if the person has not exercised the power to vote;

1188 (B) A corporation 20 percent or more of whose outstanding voting securities are  
 1189 directly or indirectly owned, controlled, or held with power to vote by the debtor or a  
 1190 person who directly or indirectly owns, controls, or holds with power to vote 20 percent  
 1191 or more of the outstanding voting securities of the debtor, other than a person who  
 1192 holds the securities:

1193 (i) As a fiduciary or agent without sole power to vote the securities; or

1194 (ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

1195 (C) A person whose business is operated by the debtor under a lease or other  
 1196 agreement, or a person substantially all of whose assets are controlled by the debtor; or

1197 (D) A person who operates the debtor's business under a lease or other agreement or  
 1198 controls substantially all of the debtor's assets.

1199 (2) 'Asset' means property of a debtor, but the term does not include:

1200 (A) Property to the extent it is encumbered by a valid lien;

1201 (B) Property to the extent it is generally exempt under nonbankruptcy law; or

1202 (C) An interest in property held in tenancy by the entirety to the extent it is not  
 1203 subject to process by a creditor holding a claim against only one tenant.

1204 (3) 'Claim,' except for claim for relief, means a right to payment, whether or not the right  
 1205 is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,  
 1206 disputed, undisputed, legal, equitable, secured, or unsecured.

1207 (4) 'Creditor' means a person who has a claim, regardless of when the person acquired  
 1208 the claim, together with any successors or assigns.

1209 (5) 'Debt' means liability on a claim.

- 1210 (6) 'Debtor' means a person who is liable on a claim.
- 1211 (7) 'Electronic' means relating to technology having electrical, digital, magnetic,
- 1212 wireless, optical, electromagnetic, or similar capabilities.
- 1213 ~~(7)~~(8) 'Insider' includes:
- 1214 (A) If the debtor is an individual:
- 1215 (i) A relative of the debtor or of a general partner of the debtor;
- 1216 (ii) A partnership in which the debtor is a general partner;
- 1217 (iii) A general partner in a partnership described in division (ii) of this subparagraph;
- 1218 or
- 1219 (iv) A corporation of which the debtor is a director, officer, or person in control;
- 1220 (B) If the debtor is a corporation:
- 1221 (i) A director of the debtor;
- 1222 (ii) An officer of the debtor;
- 1223 (iii) A person in control of the debtor;
- 1224 (iv) A partnership in which the debtor is a general partner;
- 1225 (v) A general partner in a partnership described in division (iv) of this subparagraph;
- 1226 or
- 1227 (vi) A relative of a general partner, director, officer, or person in control of the
- 1228 debtor;
- 1229 (C) If the debtor is a partnership:
- 1230 (i) A general partner in the debtor;
- 1231 (ii) A relative of a general partner in, or a general partner of, or a person in control
- 1232 of the debtor;
- 1233 (iii) Another partnership in which the debtor is a general partner;
- 1234 (iv) A general partner in a partnership described in division (iii) of this subparagraph;
- 1235 or
- 1236 (v) A person in control of the debtor;
- 1237 (D) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- 1238 (E) A managing agent of the debtor.
- 1239 ~~(8)~~(9) 'Lien' means a charge against or an interest in property to secure payment of a debt
- 1240 or performance of an obligation and includes a security interest created by agreement, a
- 1241 judicial lien obtained by legal or equitable process or proceedings, a common-law lien,
- 1242 or a statutory lien.
- 1243 (10) 'Organization' means a person other than an individual.
- 1244 ~~(9)~~(11) 'Person' means an individual, partnership, public corporation, association,
- 1245 organization, government or governmental subdivision or agency or instrumentality,
- 1246 business trust or nonprofit entity, estate, trust, or any other legal or commercial entity.

- 1247 ~~(10)~~(12) 'Property' means anything that may be the subject of ownership.
- 1248 (13) 'Record' means information that is inscribed on a tangible medium or that is stored
- 1249 in an electronic or other medium and is retrievable in perceivable form.
- 1250 ~~(11)~~(14) 'Relative' means an individual related by consanguinity within the third degree
- 1251 as determined by the common law, a spouse, or an individual related to a spouse within
- 1252 the third degree as so determined and includes an individual in an adoptive relationship
- 1253 within the third degree.
- 1254 (15) 'Sign' means, with present intent to authenticate or adopt a record:
- 1255 (A) To execute or adopt a tangible symbol; or
- 1256 (B) To attach to or logically associate with the record an electronic symbol, sound, or
- 1257 process.
- 1258 ~~(12)~~(16) 'Transfer' means every mode, direct or indirect, absolute or conditional,
- 1259 voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset
- 1260 and includes payment of money, release, lease, and creation of a lien or other
- 1261 encumbrance.
- 1262 ~~(13)~~(17) 'Valid lien' means a lien that is effective against the holder of a judicial lien
- 1263 subsequently obtained by legal or equitable process or proceedings.
- 1264 18-2-72.
- 1265 (a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than
- 1266 ~~all of the sum of the~~ debtor's assets, ~~at a fair valuation~~.
- 1267 (b) A debtor who is generally not paying his or her debts as they become due other than
- 1268 as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes
- 1269 on the party against which the presumption is directed the burden of proving that the
- 1270 nonexistence of insolvency is more probable than its existence.
- 1271 ~~(c) A partnership is insolvent under subsection (a) of this Code section if the sum of the~~
- 1272 ~~partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair~~
- 1273 ~~valuation, and the sum of the excess of the value of each general partner's nonpartnership~~
- 1274 ~~assets over the partner's nonpartnership debts.~~
- 1275 ~~(d)~~(c) Assets under this Code section do not include property that has been transferred,
- 1276 concealed, or removed with intent to hinder, delay, or defraud creditors or that has been
- 1277 transferred in a manner making the transfer voidable under this article.
- 1278 ~~(e)~~(d) Debts under this Code section do not include an obligation to the extent it is secured
- 1279 by a valid lien on property of the debtor not included as an asset.

1280 18-2-73.

1281 (a) Value is given for a transfer or an obligation if, in exchange for the transfer or  
1282 obligation, property is transferred or an antecedent debt is secured or satisfied, but value  
1283 does not include an unperformed promise made otherwise than in the ordinary course of  
1284 the promisor's business to furnish support to the debtor or another person.

1285 (b) For the purposes of paragraph (2) of subsection (a) of Code Section 18-2-74 and Code  
1286 Section 18-2-75, a person gives a reasonably equivalent value if the person acquires an  
1287 interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure  
1288 sale or execution of a power of sale for the acquisition or disposition of the interest of the  
1289 debtor upon default under a mortgage, deed of trust, or security agreement.

1290 (c) A transfer is made for present value if the exchange between the debtor and the  
1291 transferee is intended by them to be contemporaneous and is in fact substantially  
1292 contemporaneous.

1293 18-2-74.

1294 (a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a  
1295 creditor, whether the creditor's claim arose before or after the transfer was made or the  
1296 obligation was incurred, if the debtor made the transfer or incurred the obligation:

1297 (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

1298 (2) Without receiving a reasonably equivalent value in exchange for the transfer or  
1299 obligation, and the debtor:

1300 (A) Was engaged or was about to engage in a business or a transaction for which the  
1301 remaining assets of the debtor were unreasonably small in relation to the business or  
1302 transaction; or

1303 (B) Intended to incur, or believed or reasonably should have believed that he or she  
1304 would incur, debts beyond his or her ability to pay as they became due.

1305 (b) In determining actual intent under paragraph (1) of subsection (a) of this Code section,  
1306 consideration may be given, among other factors, to whether:

1307 (1) The transfer or obligation was to an insider;

1308 (2) The debtor retained possession or control of the property transferred after the  
1309 transfer;

1310 (3) The transfer or obligation was disclosed or concealed;

1311 (4) Before the transfer was made or obligation was incurred, the debtor had been sued  
1312 or threatened with suit;

1313 (5) The transfer was of substantially all the debtor's assets;

1314 (6) The debtor absconded;

1315 (7) The debtor removed or concealed assets;

1316 (8) The value of the consideration received by the debtor was reasonably equivalent to  
 1317 the value of the asset transferred or the amount of the obligation incurred;

1318 (9) The debtor was insolvent or became insolvent shortly after the transfer was made or  
 1319 the obligation was incurred;

1320 (10) The transfer occurred shortly before or shortly after a substantial debt was incurred;  
 1321 and

1322 (11) The debtor transferred the essential assets of the business to a lienor who transferred  
 1323 the assets to an insider of the debtor.

1324 (c) If a creditor is a successor or assignee, a right of action under subsection (a) of this  
 1325 Code section is automatically assigned to such successor or assignee.

1326 (d) A creditor making a claim for relief under subsection (a) of this Code section has the  
 1327 burden of proving the elements of the claim for relief by a preponderance of the evidence.

1328 18-2-75.

1329 (a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a  
 1330 creditor whose claim arose before the transfer was made or the obligation was incurred if  
 1331 the debtor made the transfer or incurred the obligation without receiving a reasonably  
 1332 equivalent value in exchange for the transfer or obligation and the debtor was insolvent at  
 1333 that time or the debtor became insolvent as a result of the transfer or obligation.

1334 (b) A transfer made by a debtor is ~~fraudulent~~ voidable as to a creditor whose claim arose  
 1335 before the transfer was made if the transfer was made to an insider for an antecedent debt,  
 1336 the debtor was insolvent at that time, and the insider had reasonable cause to believe that  
 1337 the debtor was insolvent.

1338 (c) If a creditor is a successor or assignee, a right of action under subsection (a) or (b) of  
 1339 this Code section is automatically assigned to such successor or assignee.

1340 (d) Subject to subsection (b) of Code Section 18-2-72, a creditor making a claim for relief  
 1341 under subsection (a) or (b) of this Code section has the burden of proving the elements of  
 1342 the claim for relief by a preponderance of the evidence.

1343 18-2-76.

1344 For the purposes of this article:

1345 (1) A transfer is made:

1346 (A) With respect to an asset that is real property other than a fixture, but including the  
 1347 interest of a seller or purchaser under a contract for the sale of the asset, when the  
 1348 transfer is so far perfected that a good faith purchaser of the asset from the debtor  
 1349 against whom applicable law permits the transfer to be perfected cannot acquire an  
 1350 interest in the asset that is superior to the interest of the transferee; and

- 1351 (B) With respect to an asset that is not real property or that is a fixture, when the  
 1352 transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial  
 1353 lien otherwise than under this article that is superior to the interest of the transferee;  
 1354 (2) If applicable law permits the transfer to be perfected as provided in paragraph (1) of  
 1355 this Code section and the transfer is not so perfected before the commencement of an  
 1356 action for relief under this article, the transfer is deemed made immediately before the  
 1357 commencement of the action;  
 1358 (3) If applicable law does not permit the transfer to be perfected as provided in  
 1359 paragraph (1) of this Code section, the transfer is made when it becomes effective  
 1360 between the debtor and the transferee;  
 1361 (4) A transfer is not made until the debtor has acquired rights in the asset transferred; and  
 1362 (5) An obligation is incurred:  
 1363 (A) If oral, when it becomes effective between the parties; or  
 1364 (B) If evidenced by a writing record, when the ~~writing executed~~ record signed by the  
 1365 obligor is delivered to or for the benefit of the obligee.

1366 18-2-77.

- 1367 (a) In an action for relief against a transfer or obligation under this article, a creditor,  
 1368 subject to the limitations in Code Section 18-2-78, may obtain:  
 1369 (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's  
 1370 claim;  
 1371 (2) An attachment or other provisional remedy against the asset transferred or other  
 1372 property of the transferee in accordance with the procedure prescribed by Chapter 3 of  
 1373 this title; and  
 1374 (3) Subject to applicable principles of equity and in accordance with applicable rules of  
 1375 civil procedure:  
 1376 (A) An injunction against further disposition by the debtor or a transferee, or both, of  
 1377 the asset transferred or of other property;  
 1378 (B) Appointment of a receiver to take charge of the asset transferred or of other  
 1379 property of the transferee; or  
 1380 (C) Any other relief the circumstances may require.  
 1381 (b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the  
 1382 court so orders, may levy execution on the asset transferred or its proceeds.

1383 18-2-78.

1384 (a) A transfer or obligation is not voidable under paragraph (1) of subsection (a) of Code  
1385 Section 18-2-74 against a person who took in good faith and for a reasonably equivalent  
1386 value or against any subsequent transferee or obligee.

1387 (b) To the extent a transfer is avoidable in an action by a creditor under paragraph (1) of  
1388 subsection (a) of Code Section 18-2-77, the following rules apply:

1389 ~~(1) Except as otherwise provided in this Code section, to the extent a transfer is voidable~~  
1390 ~~in an action by a creditor under paragraph (1) of subsection (a) of Code Section 18-2-77,~~  
1391 the creditor may recover judgment for the value of the asset transferred, as adjusted under  
1392 subsection (c) of this Code section, or the amount necessary to satisfy the creditor's claim,  
1393 whichever is less. The judgment may be entered against:

1394 ~~(1)(A)~~ (A) The first transferee of the asset or the person for whose benefit the transfer was  
1395 made; or

1396 ~~(2) Any subsequent transferee other than a~~

1397 (B) An immediate or mediate transferee of the first transferee, other than:

1398 (i) A good faith transferee or obligee who took for value; or from any subsequent  
1399 transferee or obligee

1400 (ii) An immediate or mediate good faith transferee of a person described in  
1401 division (i) of this subparagraph.

1402 (2) Recovery pursuant to paragraph (1) of subsection (a) or subsection (b) of Code  
1403 Section 18-2-77 of or from the asset transferred or its proceeds, by levy or otherwise, is  
1404 available only against a person described in paragraph (1) of this subsection.

1405 (c) If the judgment under subsection (b) of this Code section is based upon the value of the  
1406 asset transferred, the judgment must be for an amount equal to the value of the asset at the  
1407 time of the transfer, subject to adjustment as the equities may require.

1408 (d) Notwithstanding voidability of a transfer or an obligation under this article, a good  
1409 faith transferee or obligee is entitled, to the extent of the value given the debtor for the  
1410 transfer or obligation, to:

1411 (1) A lien on or a right to retain any interest in the asset transferred;

1412 (2) Enforcement of any obligation incurred; or

1413 (3) A reduction in the amount of the liability on the judgment.

1414 (e) A transfer is not voidable under paragraph (2) of subsection (a) of Code Section  
1415 18-2-74 or Code Section 18-2-75 if the transfer results from:

1416 (1) Termination of a lease upon default by the debtor when the termination is pursuant  
1417 to the lease and applicable law; or

1418 (2) Enforcement of a security interest in compliance with Article 9 of the Uniform  
 1419 Commercial Code, other than acceptance of collateral in full or partial satisfaction of the  
 1420 obligation it secures.

1421 (f) A transfer is not voidable under subsection (b) of Code Section 18-2-75:

1422 (1) To the extent the insider gave new value to or for the benefit of the debtor after the  
 1423 transfer was made unless the new value was secured by a valid lien;

1424 (2) If made in the ordinary course of business or financial affairs of the debtor and the  
 1425 insider; or

1426 (3) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer  
 1427 secured the present value given for that purpose as well as an antecedent debt of the  
 1428 debtor.

1429 (g) The following rules determine the burden of proving matters referred to in this Code  
 1430 section:

1431 (1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this Code section has the  
 1432 burden of proving the applicability of that subsection;

1433 (2) Except as otherwise provided in paragraphs (3) and (4) of this subsection, the creditor  
 1434 has the burden of proving each applicable element of subsection (b) or (c) of this Code  
 1435 section;

1436 (3) The transferee has the burden of proving the applicability to the transferee of  
 1437 subparagraph (b)(1)(B) of this Code section; and

1438 (4) A party that seeks adjustment under subsection (c) of this Code section has the  
 1439 burden of proving the adjustment.

1440 (h) The standard of proof required to establish matters referred to in this Code section is  
 1441 preponderance of the evidence.

1442 18-2-79.

1443 A cause of action with respect to a fraudulent transfer or obligation under this article is  
 1444 extinguished unless action is brought:

1445 (1) Under paragraph (1) of subsection (a) of Code Section 18-2-74, within four years  
 1446 after the transfer was made or the obligation was incurred or, if later, within one year  
 1447 after the transfer or obligation was or could reasonably have been discovered by the  
 1448 claimant;

1449 (2) Under paragraph (2) of subsection (a) of Code Section 18-2-74 or subsection (a) of  
 1450 Code Section 18-2-75, within four years after the transfer was made or the obligation was  
 1451 incurred; or

1452 (3) Under subsection (b) of Code Section 18-2-75, within one year after the transfer was  
 1453 made or the obligation was incurred.

1454 18-2-80.

1455 (a) In this Code section, the following rules determine a debtor's location:

1456 (1) A debtor who is an individual is located at the individual's principal residence;

1457 (2) A debtor that is an organization and has only one place of business is located at its  
 1458 place of business; and

1459 (3) A debtor that is an organization and has more than one place of business is located  
 1460 at its chief executive office.

1461 (b) A cause of action in the nature of a claim for relief under this article is governed by the  
 1462 law of the jurisdiction in which the debtor is located when the transfer is made or the  
 1463 obligation is incurred.

1464 18-2-81.

1465 (a) As used in this Code section, the term:

1466 (1) 'Protected series' means an arrangement, however denominated, created by a series  
 1467 organization that, pursuant to the law under which the series organization is organized,  
 1468 has the characteristics set forth in paragraph (2) of this subsection.

1469 (2) 'Series organization' means an organization that, pursuant to the law under which it  
 1470 is organized, has the following characteristics:

1471 (A) The organic record of the organization provides for creation by the organization  
 1472 of one or more protected series, however denominated, with respect to specified  
 1473 property of the organization, and for records to be maintained for each protected series  
 1474 that identify the property of or associated with the protected series;

1475 (B) Debt incurred or existing with respect to the activities of, or property of or  
 1476 associated with, a particular protected series is enforceable against the property of or  
 1477 associated with the protected series only, and not against the property of or associated  
 1478 with the organization or other protected series of the organization; or

1479 (C) Debt incurred or existing with respect to the activities or property of the  
 1480 organization is enforceable against the property of the organization only, and not  
 1481 against the property of or associated with a protected series of the organization.

1482 (b) A series organization and each protected series of the organization is a separate person  
 1483 for purposes of this article, even if for other purposes a protected series is not a person  
 1484 separate from the organization or other protected series of the organization.

1485 ~~18-2-80.~~ 18-2-82.

1486 ~~(a)~~ Unless displaced by the provisions of this article, the principles of law and equity,  
 1487 including the law merchant and the law relating to principal and agent, estoppel, laches,

1488 fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or  
 1489 invalidating cause, supplement its provisions.

1490 ~~(b) The provisions of this article do not create a cause of action for a governmental entity~~  
 1491 ~~or its agent or assignee with respect to a transaction which may otherwise constitute a~~  
 1492 ~~fraudulent transfer or obligation under this article if the transaction complies with the~~  
 1493 ~~applicable state and federal laws concerning transfers of property in the determination of~~  
 1494 ~~eligibility for public benefits.~~

1495 18-2-83.

1496 This article shall be applied and construed to effectuate its general purpose to make  
 1497 uniform the law with respect to the subject of this article among states enacting the  
 1498 'Uniform Voidable Transactions Act.'

1499 18-2-84.

1500 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and  
 1501 National Commerce Act, 15 U.S.C. Section 7001, et seq., but shall not modify, limit, or  
 1502 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic  
 1503 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section  
 1504 7003(b).

1505 ~~18-2-81.~~ 18-2-85.

1506 (a) As used in this Code section, the term:

1507 (1) 'Charitable organization' means an organization which has qualified as tax-exempt  
 1508 under Section 501(c)(3) of the federal Internal Revenue Code of 1986 and has been so  
 1509 qualified for not less than two years preceding any transfer pursuant to this Code section,  
 1510 other than a private foundation or family trust.

1511 (2) 'Private foundation' shall have the same meaning as set forth in 26 U.S.C. Section  
 1512 509(a).

1513 (b) A transfer made to a charitable organization shall be considered ~~complete unless~~  
 1514 voidable only if it is established that a ~~fraudulent~~ voidable transfer has occurred as  
 1515 described in Code Section 18-2-74 or 18-2-75, and such charitable organization had actual  
 1516 or constructive knowledge of the ~~fraudulent~~ voidable nature of the transfer.

1517 (c) The statute of limitations for a civil action with respect to a voidable transfer to a  
 1518 charitable organization under this Code section shall be within two years after such transfer  
 1519 was made."

1520 **PART IVB**  
 1521 **CONFORMING CROSS-REFERENCES TO**  
 1522 **THE UNIFORM VOIDABLE TRANSACTIONS ACT**  
 1523 **SECTION 4B-1.**

1524 Article 3 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to  
 1525 limitations on recovery for deficiencies connected with improvements to realty and resulting  
 1526 injuries, is amended by revising Code Section 9-3-35, relating to actions by creditors seeking  
 1527 relief under Uniform Fraudulent Transfers Act, as follows:

1528 "9-3-35.

1529 An action by a creditor seeking relief under the provisions of Article 4 of Chapter 2 of Title  
 1530 18, known as the 'Uniform ~~Fraudulent Transfers~~ Voidable Transactions Act,' shall be  
 1531 brought within the applicable period set out in Code Section 18-2-79."

1532 **SECTION 4B-2.**

1533 Code Section 17-14-17 of the Official Code of Georgia Annotated, relating to fraudulent  
 1534 transfers, is amended by revising subsection (a) as follows:

1535 "(a) The state or the victim of a crime may institute an action against an offender pursuant  
 1536 to Article 4 of Chapter 2 of Title 18, the 'Uniform ~~Fraudulent Transfers~~ Voidable  
 1537 Transactions Act,' to set aside a transfer of real, personal, or other property made  
 1538 voluntarily by the offender on or after the date of the crime committed by the offender  
 1539 against the victim with the intent to:

- 1540 (1) Conceal the crime or the fruits of the crime;  
 1541 (2) Hinder, delay, or defraud any victim; or  
 1542 (3) Avoid the payment of restitution."

1543 **PART V**  
 1544 **UNIFORM ENFORCEMENT**  
 1545 **OF FOREIGN JUDGMENTS LAW**  
 1546 **SECTION 5-1.**

1547 Article 6 of Chapter 12 of Title 9 of the Official Code of Georgia Annotated, relating to the  
 1548 "Uniform Enforcement of Foreign Judgments Law," is amended by adding a new subsection  
 1549 to Code Section 9-12-133, relating to the affidavit concerning judgment creditor and debtor  
 1550 and notice to the judgment debtor of filing of judgment, as follows:

1551 "(c) The provisions of Code Section 9-11-4 shall not apply to this article."

1552 **PART VI**  
 1553 **BANKRUPTCY EXEMPTION**  
 1554 **SECTION 6-1.**

1555 Code Section 44-13-100 of the Official Code of Georgia Annotated, relating to exemptions  
 1556 for the purposes of bankruptcy and intestate insolvent estates, is amended by revising  
 1557 paragraph (6) of subsection (a) as follows:

1558 "(6) The debtor's aggregate interest, not to exceed ~~\$600.00~~ \$1,200.00 in value plus any  
 1559 unused amount of the exemption, not to exceed ~~\$5,000.00~~ \$10,000.00, provided under  
 1560 paragraph (1) of this subsection, in any property;"

1561 **PART VII**  
 1562 **EFFECTIVE DATE;**  
 1563 **APPLICABILITY; AND REPEALER**  
 1564 **SECTION 7-1.**

1565 (a) Except as provided in subsection (c) of this section, this Act shall become effective on  
 1566 July 1, 2015.

1567 (b) Part 2 of this Act shall apply to all actions filed on or after July 1, 2015, in which the  
 1568 recognition of a foreign-country judgment is raised.

1569 (c) Parts 3A, 3B, and 3C of this Act shall become effective on January 1, 2016.

1570 (d) The amendments made by Parts 4A and 4B of this Act shall:

1571 (1) Apply to a transfer made or obligation incurred on or after July 1, 2015;

1572 (2) Not apply to a transfer made or obligation incurred before July 1, 2015;

1573 (3) Not apply to a right of action that has accrued before July 1, 2015; and

1574 (4) For purposes of this subsection, a transfer is made and an obligation is incurred at the  
 1575 time provided in Code Section 18-7-76.

1576 **SECTION 7-2.**  
 1577 All laws and parts of laws in conflict with this Act are repealed.