

The House Committee on Judiciary offers the following substitute to HB 197:

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 revise the "Uniform  
21 Fraudulent Transfers Act" and enact the "Uniform Voidable Transactions Act"; to reform  
22 terminology and revise and add definitions; to provide the allocation of the burden of proof  
23 and define the standard of proof with respect to claims and defenses; to provide for  
24 governing law; to provide for the application to a series organization; to provide for  
25 uniformity of application and construction; to amend Article 3 of Chapter 3 of Title 9 and  
26 Code Section 17-14-17 of the Official Code of Georgia Annotated, relating to limitations on  
27 recovery for deficiencies connected with improvements to realty and resulting injuries and  
28 fraudulent transfers, respectively, so as to correct cross-references to the "Uniform Voidable

29 Transactions Act"; to amend Article 6 of Chapter 12 of Title 9 of the Official Code of  
 30 Georgia Annotated, relating to the "Uniform Enforcement of Foreign Judgments Law," so  
 31 as to provide for applicability of certain provisions in Chapter 11 of Title 9, the "Georgia  
 32 Civil Practice Act"; to provide for a short title; to provide for legislative intent; to provide  
 33 for related matters; to provide for effective dates and applicability; to repeal conflicting laws;  
 34 and for other purposes.

35 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

36 **PART I**  
 37 **SHORT TITLE**  
 38 **SECTION 1-1.**

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

41 (b) It is the intent of the General Assembly to modernize certain existing uniform laws in  
 42 the debtor-creditor arena and to adapt the most correct version promulgated by the National  
 43 Conference of Commissioners on Uniform State Laws, known as the Uniform Law  
 44 Commission.

45 **PART II**  
 46 **"UNIFORM FOREIGN-COUNTRY**  
 47 **MONEY JUDGMENTS RECOGNITION ACT"**  
 48 **SECTION 2-1.**

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

52 "ARTICLE 5

53 9-12-110.

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

56 9-12-111.

57 As used in this article, the term:

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

59 (A) The United States;

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

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

65 ~~(1)(2) 'Foreign-country judgment' 'Foreign judgment' means any judgment of a foreign~~  
66 ~~state granting or denying recovery of a sum of money other than a judgment for taxes, a~~  
67 ~~fine or other penalty, or a judgment for support in matrimonial or family matters~~ court of  
68 a foreign country.

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

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

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

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

74 9-12-112.

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

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

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

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

83 (1) A judgment for taxes;

84 (2) A fine or other penalty; or

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

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

89 9-12-113.

90 (a) Except as otherwise provided in Code Sections 9-12-114 and 9-12-115, a foreign  
91 subsections (b) and (c) of this Code section, a court of this state shall recognize a  
92 foreign-country judgment meeting the requirements of Code Section 9-12-112 is

93 ~~conclusive between the parties to the extent that it grants or denies recovery of a sum of~~  
 94 ~~money. The foreign judgment is enforceable in the same manner as the judgment of a~~  
 95 ~~sister state which is entitled to full faith and credit.~~

96 9-12-114.

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

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

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

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

103 (c) A court of this state may not recognize a foreign-country judgment if:

104 ~~(4)~~(1) The defendant in the proceedings in the foreign court did not receive notice of the  
 105 proceedings in sufficient time to enable ~~him~~ the defendant to defend;

106 ~~(5)~~(2) The judgment was obtained by fraud that deprived the losing party of an adequate  
 107 opportunity to present its case;

108 ~~(6)~~(3) The judgment or cause of action on which the judgment is based is repugnant to  
 109 the public policy of this state or of the United States;

110 ~~(7)~~(4) The judgment conflicts with another final and conclusive judgment;

111 ~~(8)~~(5) The proceedings in the foreign court were contrary to an agreement between the  
 112 parties under which the dispute in question was to be ~~settled~~ determined otherwise than  
 113 by proceedings in ~~that~~ such foreign court;

114 ~~(9)~~(6) In the case of jurisdiction based only on personal service, the foreign court was  
 115 a seriously inconvenient forum for the trial of the action; or

116 ~~(10) The party seeking to enforce the judgment fails to demonstrate that judgments of~~  
 117 ~~courts of the United States and of states thereof of the same type and based on~~  
 118 ~~substantially similar jurisdictional grounds are recognized and enforced in the courts of~~  
 119 ~~the foreign state.~~

120 (7) The judgment was rendered in circumstances that raise substantial doubt about the  
 121 integrity of the rendering court with respect to such judgment; or

122 (8) The specific proceeding in the foreign court leading to the judgment was not  
 123 compatible with the requirements of due process of law.

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

127 ~~9-12-115:~~ 9-12-114.

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

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

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

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

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

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

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

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

155 9-12-115.

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

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

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

163 9-12-116.

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

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

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

172 ~~9-12-116.~~ 9-12-117.

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

179 9-12-118.

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

183 ~~9-12-117.~~ 9-12-119.

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

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

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

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

199  
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202

11-1-101. **Short title titles.**  
(a) This Title 11 shall be known as and may be cited as the 'Uniform Commercial Code.'  
(b) ~~This article shall be known as and may be cited as the 'Uniform Commercial Code –~~  
General Provisions.'

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11-1-102. Scope of article.  
This article shall apply to a transaction to the extent that it is governed by another article  
of this title.

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

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

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

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

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(~~b~~)(2) To permit the continued expansion of commercial practices through custom,

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usage, and agreement of the parties; and

215

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

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(b) Unless displaced by the particular provisions of this title, the principles of law and

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equity, including the law merchant and the law relative to capacity to contract, principal

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and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and

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other validating or invalidating cause shall supplement its provisions.

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(~~3~~) ~~The effect of provisions of this title may be varied by agreement, except as otherwise~~

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~~provided in this title and except that the obligations of good faith, diligence,~~

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~~reasonableness, and care prescribed by this title may not be disclaimed by agreement but~~

223

~~the parties may by agreement determine the standards by which the performance of such~~

224

~~obligations is to be measured if such standards are not manifestly unreasonable.~~

225

(~~4~~) ~~The presence in certain provisions of this title of the words 'unless otherwise agreed'~~

226

~~or words of similar import does not imply that the effect of other provisions may not be~~

227

~~varied by agreement under subsection (3) of this Code section.~~

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

229 ~~(a) Words in the singular number include the plural, and in the plural include the~~  
 230 ~~singular;~~

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

233 ~~11-1-103. **Supplementary general principles of law applicable.**~~

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

238 ~~11-1-104. **Construction against implicit repeal.**~~

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

242 ~~11-1-105. **Severability. Territorial application of the title; parties' power to choose**~~  
 243 ~~**applicable law.**~~

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

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

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

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

257 ~~Applicability of the article of this title on leases (Article 2A of this title). Code Sections~~  
 258 ~~11-2A-105 and 11-2A-106.~~

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

261 ~~Bulk transfers subject to the article of this title on bulk transfers (Article 6 of this title).~~  
 262 ~~Code Section 11-6-102.~~  
 263 ~~Applicability of the article of this title on investment securities (Article 8 of this title).~~  
 264 ~~Code Section 11-8-110.~~  
 265 ~~Law governing perfection, the effect of perfection or nonperfection, and the priority of~~  
 266 ~~security interests and agricultural liens. Code Sections 11-9-301 through 11-9-307.~~  
 267 ~~Governing law in the article on funds transfers (Article 4A of this title). Code Section~~  
 268 ~~11-4A-507.~~

269 11-1-106. **Use of singular and plural; gender. Remedies to be liberally administered.**  
 270 In this title unless the statutory context otherwise requires:  
 271 (1) Words in the singular number include the plural, and words in the plural include the  
 272 singular; and The remedies provided by this title shall be liberally administered to the end  
 273 that the aggrieved party may be put in as good a position as if the other party had fully  
 274 performed but neither consequential or special nor penal damages may be had except as  
 275 specifically provided in this title or by other rule of law.  
 276 (2) Words of any gender also refer to any other gender. Any right or obligation declared  
 277 by this title is enforceable by action unless the provision declaring it specifies a different  
 278 and limited effect.

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

283 11-1-108. **Relation to electronic signatures in Global and National Commerce Act.**  
 284 **Severability.**  
 285 If any provision or clause of this title or application thereof to any person or circumstances  
 286 is held invalid, such invalidity shall not affect other provisions or applications of the title  
 287 which can be given effect without the invalid provision or application, and to this end the  
 288 provisions of this title are declared to be severable.  
 289 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and  
 290 National Commerce Act, 15 U.S.C. Section 7001, et seq., but shall not modify, limit, or  
 291 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic  
 292 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section  
 293 7003(b).

294 ~~11-1-109. Section captions.~~

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

296 Part 2

297 General Definitions and Principles of Interpretation

298 11-1-201. **General definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

361 ~~(13)~~(14) 'Defendant' includes a person in the position of defendant in a ~~cross-action or~~  
 362 counterclaim, cross-claim, or third-party claim.

363 ~~(14)~~(15) 'Delivery' with respect to an ~~electronic instrument,~~ document of title, or chattel  
 364 paper means voluntary transfer of ~~control and with respect to instruments, tangible~~

365 ~~documents of title, chattel paper, or certificated securities means voluntary transfer of~~  
 366 ~~possession.~~

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

383 ~~(16)(17) 'Fault' means a default, breach, or wrongful act; or omission, or breach.~~

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

390 ~~(18)(19) 'Genuine' means free of forgery or counterfeiting.~~

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

394 ~~(20)(21) 'Holder' means:~~

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

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

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

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

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

405 (23) 'Insolvent' means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

446 ~~(29)(26) 'Party,' as distinct from 'third party,' means a person who has engaged in a~~  
 447 ~~transaction or made an agreement within subject to this title.~~

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

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

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

460 ~~(31.1) 'Public sale' means a sale:~~

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

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

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

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

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

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

478 ~~(33)~~(30) 'Purchaser' means a person who takes by purchase.

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

481 ~~(34)~~(32) 'Remedy' means any remedial right to which an aggrieved party is entitled with  
 482 or without resort to a tribunal.

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

486 ~~(36)~~(34) 'Rights' includes remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

545 ~~(38)(36)~~ 'Send' in connection with a writing, record, or notice means:

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

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

552 ~~(39)~~(37) 'Signed' includes using any symbol executed or adopted ~~by a party~~ with present  
 553 intention to ~~authenticate~~ adopt or accept a writing.

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

557 ~~(40)~~(39) 'Surety' includes a guarantor or other secondary obligor.

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

560 ~~(42)~~(40) 'Term' means that portion of an agreement ~~which~~ that relates to a particular  
 561 matter.

562 ~~(43)~~(41) 'Unauthorized' signature' means ~~one~~ a signature made without actual, implied,  
 563 or apparent authority. The term ~~and~~ includes a forgery.

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

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

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

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

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

573 ~~(45)~~(42) 'Warehouse receipt' means a ~~document of title~~ receipt issued by a person  
 574 engaged in the business of storing goods for hire.

575 ~~(46)~~(43) 'Written' or 'writing' includes printing, typewriting, or any other intentional  
 576 reduction to tangible form.

577 11-1-202. **Notice; knowledge. Prima-facie evidence by third party documents.**

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

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

585 (1) Has actual knowledge of it;

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

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

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

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

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

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

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

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

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

611 11-1-203. **Lease distinguished from security interest. Obligation of good faith.**

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

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

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

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

655 11-1-204. Value.

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

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

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

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

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

664 ~~11-1-204.~~ 11-1-205. Reasonable time; seasonableness. Time; reasonable time;  
 665 'seasonably.'

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

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

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

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

673 ~~11-1-205. Course of dealing and usage of trade.~~

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

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

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

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

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

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

694 ~~11-1-206. **Presumptions. Statute of frauds for kinds of personal property not**~~  
 695 ~~**otherwise covered.**~~

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

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

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

708 ~~11-1-207. **Performance or acceptance under reservation of rights.**~~

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

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

714 ~~11-1-208. **Option to accelerate at will.**~~

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

721 ~~11-1-209. **Subordinated obligations.**~~

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

728 Part 3

729 Territorial Applicability and General Rules

730 11-1-301. **Territorial applicability; parties' power to choose applicable law.**

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

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

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

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

749 11-1-302. **Variation by agreement.**

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

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

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

760 **11-1-303. Course of performance, course of dealing, and usage of trade.**

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

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

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

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

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

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

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

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

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

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

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

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

794 **11-1-304. Obligation of good faith.**

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

797 **11-1-305. Remedies to be liberally administered.**

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

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

804 **11-1-306. Waiver or renunciation of claim or right after breach.**

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

807 **11-1-307. Prima-facie evidence by third party documents.**

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

813 **11-1-308. Performance or acceptance under reservation of rights.**

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

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

819 **11-1-309. Option to accelerate at will.**

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

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

826 **11-1-310. Subordinated obligations.**

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

### 832 **PART IIIB**

#### 833 **CONFORMING CROSS-REFERENCES**

#### 834 **IN THE UCC TO PART IIIA**

#### 835 **SECTION 3B-1.**

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

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

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

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

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

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

#### 844 **SECTION 3B-2.**

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

847 "11-2-202. **Final written expression; parol or extrinsic evidence.**

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

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

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

857 **SECTION 3B-3.**

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

860 "11-2-208. ~~Course of performance or practical construction.~~

861 Reserved.

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

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

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

874 **SECTION 3B-4.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

896 **SECTION 3B-5.**

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

899 "~~11-2A-207. **Course of performance or practical construction.**~~

900 Reserved.

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

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

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

913 **SECTION 3B-6.**

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

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

919 **SECTION 3B-7.**

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

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

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

934 **SECTION 3B-8.**

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

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

949 **SECTION 3B-9.**

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

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

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

964 **SECTION 3B-10.**

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

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

984 **SECTION 3B-11.**

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

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

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

992 **SECTION 3B-12.**

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

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

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

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

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

1000 'Certificate of deposit.' Code Section 11-3-104.

1001 'Certified check.' Code Section 11-3-409.

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

1003 ~~'Good faith.' Code Section 11-3-103.~~

1004 'Holder in due course.' Code Section 11-3-302.

1005 'Instrument.' Code Section 11-3-104.

1006 'Notice of dishonor.' Code Section 11-3-503.

1007 'Order.' Code Section 11-3-103.

1008 'Ordinary care.' Code Section 11-3-103.

1009 'Person entitled to enforce.' Code Section 11-3-301.

1010 'Presentment.' Code Section 11-3-501.

1011 'Promise.' Code Section 11-3-103.

1012 'Prove.' Code Section 11-3-103.

1013 'Teller's check.' Code Section 11-3-104.

1014 'Unauthorized signature.' Code Section 11-3-403."

1015 **SECTION 3B-13.**

1016 Said title is further amended by revising paragraphs (6) and (7) of subsection (a) of Code  
1017 Section 11-4A-105, relating to other definitions, as follows:

1018 "(6) Reserved. ~~'Good faith' means honesty in fact and the observance of reasonable~~  
1019 ~~commercial standards of fair dealing.~~

1020 (7) 'Prove' with respect to a fact means to meet the burden of establishing the fact (Code  
1021 Section 11-1-201(b)(8))."

1022 **SECTION 3B-14.**

1023 Said title is further amended by revising subsection (a) of Code Section 11-4A-106, relating  
1024 to time payment order is received, as follows:

1025 "(a) The time of receipt of a payment order or communication canceling or amending a  
1026 payment order is determined by the rules applicable to receipt of a notice stated in Code

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

1037 **SECTION 3B-15.**

1038 Said title is further amended by revising subsection (b) of Code Section 11-4A-204, relating  
 1039 to refund of payment and duty of customer to report with respect to unauthorized payment  
 1040 order, as follows:

1041 "(b) Reasonable time under subsection (a) of this Code section may be fixed by agreement  
 1042 as stated in subsection (b) of Code Section ~~11-1-204(1)~~ 11-1-302, but the obligation of a  
 1043 receiving bank to refund payment as stated in subsection (a) of this Code section may not  
 1044 otherwise be varied by agreement."

1045 **SECTION 3B-16.**

1046 Said title is further amended by revising subsection (c) of Code Section 11-5-103, relating  
 1047 to scope, as follows:

1048 "(c) With the exception of subsections (a), (b), and (d) of this Code section, paragraphs (9)  
 1049 and (10) of subsection (a) of Code Section 11-5-102, subsection (d) of Code Section  
 1050 11-5-106, and subsection (d) of Code Section 11-5-114 and except to the extent prohibited  
 1051 in ~~subsection (3) of~~ Code Section ~~11-1-102~~ 11-1-302 and subsection (d) of Code Section  
 1052 11-5-117, the effect of this article may be varied by agreement or by a provision stated or  
 1053 incorporated by reference in an undertaking. A term in an agreement or undertaking  
 1054 generally excusing liability or generally limiting remedies for failure to perform obligations  
 1055 is not sufficient to vary obligations prescribed by this article."

1056 **SECTION 3B-17.**

1057 Said title is further amended by revising paragraph (10) of subsection (a) of Code Section  
 1058 11-8-102, relating to definitions, as follows:

1059 ~~"(10) Reserved. 'Good faith,' for purposes of the obligation of good faith in the~~  
 1060 ~~performance or enforcement of contracts or duties within this article, means honesty in~~  
 1061 ~~fact and the observance of reasonable commercial standards of fair dealing."~~

1062 **SECTION 3B-18.**

1063 Said title is further amended by revising paragraph (44) of subsection (a) of Code Section  
 1064 11-9-102, relating to definitions and index of definitions, as follows:

1065 ~~"(44) Reserved. 'Good faith' means honesty in fact and the observance of reasonable~~  
 1066 ~~commercial standards of fair dealing."~~

1067 **SECTION 3B-19.**

1068 Said title is further amended by revising Code Section 11-11-101, relating to effective date  
 1069 and definition, as follows:

1070 ~~"11-11-101. **Effective date; definitions.**~~

1071 ~~(1) This Act shall become effective at 12:01 A.M. on July 1, 1978.~~

1072 ~~(2) As used in this article:~~

1073 ~~(a) 'Old Article 9 of this title' means Code Sections 11-1-105, 11-1-201(9), 11-1-201(37),~~  
 1074 ~~11-2-107, 11-5-116, and Article 9 of this title, as they are in effect on June 30, 1978,~~  
 1075 ~~immediately prior to the effective date of this Act.~~

1076 ~~(b) 'Revised Article 9 of this title' means Code Sections 11-1-105, 11-1-201(9),~~  
 1077 ~~11-1-201(37), 11-1-209, 11-2-107, 11-5-116, and Article 9 of this title as said provisions~~  
 1078 ~~are enacted pursuant to this Act."~~

1079 **PART IIIC**

1080 **CONFORMING CROSS-REFERENCES**

1081 **IN THE CODE TO PART IIIA**

1082 **SECTION 3C-1.**

1083 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is  
 1084 amended by revising paragraph (29) of Code Section 7-1-4, relating to definitions, as  
 1085 follows:

1086 ~~"(29) 'Public sale' means a sale as defined in paragraph (31.1) of Code Section 11-1-201;~~

1087 ~~(A) Held at a place reasonably available to persons who might desire to attend and~~  
 1088 ~~submit bids;~~

1089 ~~(B) At which those attending shall be given the opportunity to bid on a competitive~~  
 1090 ~~basis;~~

1091 ~~(C) At which the sale, if made, shall be made to the highest and best bidder; and~~

1092 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the  
 1093 advertising of public sales, of which notice is given by advertisement once a week for  
 1094 two weeks in the newspaper in which the sheriff's advertisements are published in the  
 1095 county where the sale is to be held, and which notice shall state the day and hour,  
 1096 between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the  
 1097 goods to be sold."

1098 **SECTION 3C-2.**

1099 Said title is further amended by revising paragraph (23) of Code Section 7-1-680, relating  
 1100 to definitions, as follows:

1101 "(23) 'Signed' shall have the same meaning as provided in ~~paragraph (39) of Code~~  
 1102 Section 11-1-201."

1103 **SECTION 3C-3.**

1104 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
 1105 amended by revising paragraph (8) of Code Section 10-1-622, relating to definitions, as  
 1106 follows:

1107 "(8) 'Good faith' means honesty in fact and the observation of reasonable commercial  
 1108 standards of fair dealing in the trade as defined ~~and interpreted~~ in Code Section ~~11-1-203~~  
 1109 11-1-201."

1110 **SECTION 3C-4.**

1111 Said title is further amended by revising subsection (b) of Code Section 10-12-3, relating to  
 1112 the applicability to electronic records and signatures relating to a transaction, as follows:

1113 "(b) This chapter shall not apply to a transaction to the extent it is governed by:  
 1114 (1) A law governing the creation and execution of wills, codicils, or testamentary trusts;  
 1115 (2) Title 11 other than ~~Code Sections 11-1-107 and 11-1-206~~ Code Section 11-1-306,  
 1116 Article 2, and Article 2A; or  
 1117 (3) The Uniform Computer Information Transactions Act."

1118 **SECTION 3C-5.**

1119 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
 1120 amended by revising subsection (a) of Code Section 40-11-6, relating to sale of vehicle  
 1121 pursuant to foreclosure, as follows:

1122 "(a)(1) As used in this subsection, the term 'public sale' means a sale:  
 1123 (A) Held at a place reasonably available to persons who might desire to attend and  
 1124 submit bids;

1125 (B) At which those attending shall be given the opportunity to bid on a competitive  
 1126 basis;

1127 (C) At which the sale, if made, shall be made to the highest and best bidder; and

1128 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the  
 1129 advertising of public sales, of which notice is given by advertisement once a week for  
 1130 two weeks in the newspaper in which the sheriff's advertisements are published in the  
 1131 county where the sale is to be held, and which notice shall state the day and hour,  
 1132 between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the  
 1133 goods to be sold.

1134 (2) Upon order of the court, the person holding the lien on the abandoned motor vehicle  
 1135 shall be authorized to sell such motor vehicle at public sale, as defined by Code Section  
 1136 11-1-201."

1137 **SECTION 3C-6.**

1138 Title 52 of the Official Code of Georgia Annotated, relating to waters of the state, ports, and  
 1139 watercraft, is amended by revising subsection (a) of Code Section 52-7-75, relating to public  
 1140 sale of vessel and disposition of excess proceeds, as follows:

1141 "(a)(1) As used in this subsection, the term 'public sale' means a sale:

1142 (A) Held at a place reasonably available to persons who might desire to attend and  
 1143 submit bids;

1144 (B) At which those attending shall be given the opportunity to bid on a competitive  
 1145 basis;

1146 (C) At which the sale, if made, shall be made to the highest and best bidder; and

1147 (D) Except as otherwise provided in Title 11 for advertising or dispensing with the  
 1148 advertising of public sales, of which notice is given by advertisement once a week for  
 1149 two weeks in the newspaper in which the sheriff's advertisements are published in the  
 1150 county where the sale is to be held, and which notice shall state the day and hour,  
 1151 between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the  
 1152 goods to be sold.

1153 (2) Upon order of the court, the person holding the lien on the abandoned vessel shall be  
 1154 authorized to sell such vessel at public sale, as defined by Code Section 11-1-201."

1155 **PART IVA**  
 1156 **UNIFORM VOIDABLE TRANSACTIONS ACT**  
 1157 **SECTION 4A-1.**

1158 Chapter 2 of Title 18 of the Official Code of Georgia Annotated, relating to debtor and  
 1159 creditor relations, is amended by revising Article 4, relating to the "Uniform Fraudulent  
 1160 Transfers Act," as follows:

1161 "ARTICLE 4

1162 18-2-70.

1163 This article, which was formerly known and cited as the 'Uniform Fraudulent Transfers  
 1164 Act,' shall be known and may be cited as the 'Uniform ~~Fraudulent Transfers~~ Voidable  
 1165 Transactions Act.'

1166 18-2-71.

1167 As used in this article, the term:

1168 (1) 'Affiliate' means:

1169 (A) A person who directly or indirectly owns, controls, or holds with power to vote,  
 1170 20 percent or more of the outstanding voting securities of the debtor, other than a  
 1171 person who holds the securities:

1172 (i) As a fiduciary or agent without sole discretionary power to vote the securities; or

1173 (ii) Solely to secure a debt, if the person has not exercised the power to vote;

1174 (B) A corporation 20 percent or more of whose outstanding voting securities are  
 1175 directly or indirectly owned, controlled, or held with power to vote by the debtor or a  
 1176 person who directly or indirectly owns, controls, or holds with power to vote 20 percent  
 1177 or more of the outstanding voting securities of the debtor, other than a person who  
 1178 holds the securities:

1179 (i) As a fiduciary or agent without sole power to vote the securities; or

1180 (ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

1181 (C) A person whose business is operated by the debtor under a lease or other  
 1182 agreement, or a person substantially all of whose assets are controlled by the debtor; or

1183 (D) A person who operates the debtor's business under a lease or other agreement or  
 1184 controls substantially all of the debtor's assets.

1185 (2) 'Asset' means property of a debtor, but the term does not include:

1186 (A) Property to the extent it is encumbered by a valid lien;

1187 (B) Property to the extent it is generally exempt under nonbankruptcy law; or

- 1188 (C) An interest in property held in tenancy by the entireties to the extent it is not  
 1189 subject to process by a creditor holding a claim against only one tenant.
- 1190 (3) 'Claim,' except for claim for relief, means a right to payment, whether or not the right  
 1191 is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,  
 1192 disputed, undisputed, legal, equitable, secured, or unsecured.
- 1193 (4) 'Creditor' means a person who has a claim, regardless of when the person acquired  
 1194 the claim, together with any successors or assigns.
- 1195 (5) 'Debt' means liability on a claim.
- 1196 (6) 'Debtor' means a person who is liable on a claim.
- 1197 (7) 'Electronic' means relating to technology having electrical, digital, magnetic,  
 1198 wireless, optical, electromagnetic, or similar capabilities.
- 1199 ~~(7)~~(8) 'Insider' includes:
- 1200 (A) If the debtor is an individual:
- 1201 (i) A relative of the debtor or of a general partner of the debtor;
- 1202 (ii) A partnership in which the debtor is a general partner;
- 1203 (iii) A general partner in a partnership described in division (ii) of this subparagraph;
- 1204 or
- 1205 (iv) A corporation of which the debtor is a director, officer, or person in control;
- 1206 (B) If the debtor is a corporation:
- 1207 (i) A director of the debtor;
- 1208 (ii) An officer of the debtor;
- 1209 (iii) A person in control of the debtor;
- 1210 (iv) A partnership in which the debtor is a general partner;
- 1211 (v) A general partner in a partnership described in division (iv) of this subparagraph;
- 1212 or
- 1213 (vi) A relative of a general partner, director, officer, or person in control of the  
 1214 debtor;
- 1215 (C) If the debtor is a partnership:
- 1216 (i) A general partner in the debtor;
- 1217 (ii) A relative of a general partner in, or a general partner of, or a person in control  
 1218 of the debtor;
- 1219 (iii) Another partnership in which the debtor is a general partner;
- 1220 (iv) A general partner in a partnership described in division (iii) of this subparagraph;
- 1221 or
- 1222 (v) A person in control of the debtor;
- 1223 (D) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- 1224 (E) A managing agent of the debtor.

1225 ~~(8)~~(9) 'Lien' means a charge against or an interest in property to secure payment of a debt  
 1226 or performance of an obligation and includes a security interest created by agreement, a  
 1227 judicial lien obtained by legal or equitable process or proceedings, a common-law lien,  
 1228 or a statutory lien.

1229 (10) 'Organization' means a person other than an individual.

1230 ~~(9)~~(11) 'Person' means an individual, ~~partnership, public~~ corporation, ~~association,~~  
 1231 ~~organization,~~ government or governmental subdivision ~~or agency or instrumentality,~~  
 1232 business ~~trust or nonprofit entity,~~ estate, ~~trust,~~ or any other legal ~~or commercial~~ entity.

1233 ~~(10)~~(12) 'Property' means anything that may be the subject of ownership.

1234 (13) 'Record' means information that is inscribed on a tangible medium or that is stored  
 1235 in an electronic or other medium and is retrievable in perceivable form.

1236 ~~(11)~~(14) 'Relative' means an individual related by consanguinity within the third degree  
 1237 as determined by the common law, a spouse, or an individual related to a spouse within  
 1238 the third degree as so determined and includes an individual in an adoptive relationship  
 1239 within the third degree.

1240 (15) 'Sign' means, with present intent to authenticate or adopt a record:

1241 (A) To execute or adopt a tangible symbol; or

1242 (B) To attach to or logically associate with the record an electronic symbol, sound, or  
 1243 process.

1244 ~~(12)~~(16) 'Transfer' means every mode, direct or indirect, absolute or conditional,  
 1245 voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset  
 1246 and includes payment of money, release, lease, and creation of a lien or other  
 1247 encumbrance.

1248 ~~(13)~~(17) 'Valid lien' means a lien that is effective against the holder of a judicial lien  
 1249 subsequently obtained by legal or equitable process or proceedings.

1250 18-2-72.

1251 (a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than  
 1252 ~~all of the~~ sum of the debtor's assets, ~~at a fair valuation.~~

1253 (b) A debtor who is generally not paying his or her debts as they become due other than  
 1254 as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes  
 1255 on the party against which the presumption is directed the burden of proving that the  
 1256 nonexistence of insolvency is more probable than its existence.

1257 ~~(c) A partnership is insolvent under subsection (a) of this Code section if the sum of the~~  
 1258 ~~partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair~~  
 1259 ~~valuation, and the sum of the excess of the value of each general partner's nonpartnership~~  
 1260 ~~assets over the partner's nonpartnership debts.~~

1261 ~~(d)~~(c) Assets under this Code section do not include property that has been transferred,  
 1262 concealed, or removed with intent to hinder, delay, or defraud creditors or that has been  
 1263 transferred in a manner making the transfer voidable under this article.

1264 ~~(e)~~(d) Debts under this Code section do not include an obligation to the extent it is secured  
 1265 by a valid lien on property of the debtor not included as an asset.

1266 18-2-73.

1267 (a) Value is given for a transfer or an obligation if, in exchange for the transfer or  
 1268 obligation, property is transferred or an antecedent debt is secured or satisfied, but value  
 1269 does not include an unperformed promise made otherwise than in the ordinary course of  
 1270 the promisor's business to furnish support to the debtor or another person.

1271 (b) For the purposes of paragraph (2) of subsection (a) of Code Section 18-2-74 and Code  
 1272 Section 18-2-75, a person gives a reasonably equivalent value if the person acquires an  
 1273 interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure  
 1274 sale or execution of a power of sale for the acquisition or disposition of the interest of the  
 1275 debtor upon default under a mortgage, deed of trust, or security agreement.

1276 (c) A transfer is made for present value if the exchange between the debtor and the  
 1277 transferee is intended by them to be contemporaneous and is in fact substantially  
 1278 contemporaneous.

1279 18-2-74.

1280 (a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a  
 1281 creditor, whether the creditor's claim arose before or after the transfer was made or the  
 1282 obligation was incurred, if the debtor made the transfer or incurred the obligation:

1283 (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

1284 (2) Without receiving a reasonably equivalent value in exchange for the transfer or  
 1285 obligation, and the debtor:

1286 (A) Was engaged or was about to engage in a business or a transaction for which the  
 1287 remaining assets of the debtor were unreasonably small in relation to the business or  
 1288 transaction; or

1289 (B) Intended to incur, or believed or reasonably should have believed that he or she  
 1290 would incur, debts beyond his or her ability to pay as they became due.

1291 (b) In determining actual intent under paragraph (1) of subsection (a) of this Code section,  
 1292 consideration may be given, among other factors, to whether:

1293 (1) The transfer or obligation was to an insider;

1294 (2) The debtor retained possession or control of the property transferred after the  
 1295 transfer;

- 1296 (3) The transfer or obligation was disclosed or concealed;
- 1297 (4) Before the transfer was made or obligation was incurred, the debtor had been sued  
1298 or threatened with suit;
- 1299 (5) The transfer was of substantially all the debtor's assets;
- 1300 (6) The debtor absconded;
- 1301 (7) The debtor removed or concealed assets;
- 1302 (8) The value of the consideration received by the debtor was reasonably equivalent to  
1303 the value of the asset transferred or the amount of the obligation incurred;
- 1304 (9) The debtor was insolvent or became insolvent shortly after the transfer was made or  
1305 the obligation was incurred;
- 1306 (10) The transfer occurred shortly before or shortly after a substantial debt was incurred;  
1307 and
- 1308 (11) The debtor transferred the essential assets of the business to a lienor who transferred  
1309 the assets to an insider of the debtor.
- 1310 (c) If a creditor is a successor or assignee, a right of action under subsection (a) or (b) of  
1311 this Code section is automatically assigned to such successor or assignee.
- 1312 (d) A creditor making a claim for relief under subsection (a) of this Code section has the  
1313 burden of proving the elements of the claim for relief by a preponderance of the evidence.
- 1314 18-2-75.
- 1315 (a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a  
1316 creditor whose claim arose before the transfer was made or the obligation was incurred if  
1317 the debtor made the transfer or incurred the obligation without receiving a reasonably  
1318 equivalent value in exchange for the transfer or obligation and the debtor was insolvent at  
1319 that time or the debtor became insolvent as a result of the transfer or obligation.
- 1320 (b) A transfer made by a debtor is ~~fraudulent~~ voidable as to a creditor whose claim arose  
1321 before the transfer was made if the transfer was made to an insider for an antecedent debt,  
1322 the debtor was insolvent at that time, and the insider had reasonable cause to believe that  
1323 the debtor was insolvent.
- 1324 (c) If a creditor is a successor or assignee, a right of action under subsection (a) or (b) of  
1325 this Code section is automatically assigned to such successor or assignee.
- 1326 (d) Subject to subsection (b) of Code Section 18-2-72, a creditor making a claim for relief  
1327 under subsection (a) or (b) of this Code section has the burden of proving the elements of  
1328 the claim for relief by a preponderance of the evidence.
- 1329 18-2-76.
- 1330 For the purposes of this article:

- 1331 (1) A transfer is made:
- 1332 (A) With respect to an asset that is real property other than a fixture, but including the
- 1333 interest of a seller or purchaser under a contract for the sale of the asset, when the
- 1334 transfer is so far perfected that a good faith purchaser of the asset from the debtor
- 1335 against whom applicable law permits the transfer to be perfected cannot acquire an
- 1336 interest in the asset that is superior to the interest of the transferee; and
- 1337 (B) With respect to an asset that is not real property or that is a fixture, when the
- 1338 transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial
- 1339 lien otherwise than under this article that is superior to the interest of the transferee;
- 1340 (2) If applicable law permits the transfer to be perfected as provided in paragraph (1) of
- 1341 this Code section and the transfer is not so perfected before the commencement of an
- 1342 action for relief under this article, the transfer is deemed made immediately before the
- 1343 commencement of the action;
- 1344 (3) If applicable law does not permit the transfer to be perfected as provided in
- 1345 paragraph (1) of this Code section, the transfer is made when it becomes effective
- 1346 between the debtor and the transferee;
- 1347 (4) A transfer is not made until the debtor has acquired rights in the asset transferred; and
- 1348 (5) An obligation is incurred:
- 1349 (A) If oral, when it becomes effective between the parties; or
- 1350 (B) If evidenced by a writing record, when the ~~writing executed~~ record signed by the
- 1351 obligor is delivered to or for the benefit of the obligee.

1352 18-2-77.

- 1353 (a) In an action for relief against a transfer or obligation under this article, a creditor,
- 1354 subject to the limitations in Code Section 18-2-78, may obtain:
- 1355 (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's
- 1356 claim;
- 1357 (2) An attachment or other provisional remedy against the asset transferred or other
- 1358 property of the transferee in accordance with the procedure prescribed by Chapter 3 of
- 1359 this title; and
- 1360 (3) Subject to applicable principles of equity and in accordance with applicable rules of
- 1361 civil procedure:
- 1362 (A) An injunction against further disposition by the debtor or a transferee, or both, of
- 1363 the asset transferred or of other property;
- 1364 (B) Appointment of a receiver to take charge of the asset transferred or of other
- 1365 property of the transferee; or
- 1366 (C) Any other relief the circumstances may require.

1367 (b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the  
1368 court so orders, may levy execution on the asset transferred or its proceeds.

1369 18-2-78.

1370 (a) A transfer or obligation is not voidable under paragraph (1) of subsection (a) of Code  
1371 Section 18-2-74 against a person who took in good faith and for a reasonably equivalent  
1372 value or against any subsequent transferee or obligee.

1373 (b) To the extent a transfer is avoidable in an action by a creditor under paragraph (1) of  
1374 subsection (a) of Code Section 18-2-77, the following rules apply:

1375 (1) Except as otherwise provided in this Code section, to the extent a transfer is voidable  
1376 in an action by a creditor under paragraph (1) of subsection (a) of Code Section 18-2-77,  
1377 the creditor may recover judgment for the value of the asset transferred, as adjusted under  
1378 subsection (c) of this Code section, or the amount necessary to satisfy the creditor's claim,  
1379 whichever is less. The judgment may be entered against:

1380 (1)(A) The first transferee of the asset or the person for whose benefit the transfer was  
1381 made; or

1382 (2) Any subsequent transferee other than a

1383 (B) An immediate or mediate transferee of the first transferee, other than:

1384 (i) A good faith transferee or obligee who took for value; or from any subsequent  
1385 transferee or obligee

1386 (ii) An immediate or mediate good faith transferee of a person described in  
1387 division (i) of this subparagraph.

1388 (2) Recovery pursuant to paragraph (1) of subsection (a) or subsection (b) of Code  
1389 Section 18-2-77 of or from the asset transferred or its proceeds, by levy or otherwise, is  
1390 available only against a person described in paragraph (1) of this subsection.

1391 (c) If the judgment under subsection (b) of this Code section is based upon the value of the  
1392 asset transferred, the judgment must be for an amount equal to the value of the asset at the  
1393 time of the transfer, subject to adjustment as the equities may require.

1394 (d) Notwithstanding voidability of a transfer or an obligation under this article, a good  
1395 faith transferee or obligee is entitled, to the extent of the value given the debtor for the  
1396 transfer or obligation, to:

1397 (1) A lien on or a right to retain any interest in the asset transferred;

1398 (2) Enforcement of any obligation incurred; or

1399 (3) A reduction in the amount of the liability on the judgment.

1400 (e) A transfer is not voidable under paragraph (2) of subsection (a) of Code Section  
1401 18-2-74 or Code Section 18-2-75 if the transfer results from:

- 1402 (1) Termination of a lease upon default by the debtor when the termination is pursuant  
 1403 to the lease and applicable law; or
- 1404 (2) Enforcement of a security interest in compliance with Article 9 of the Uniform  
 1405 Commercial Code, other than acceptance of collateral in full or partial satisfaction of the  
 1406 obligation it secures.
- 1407 (f) A transfer is not voidable under subsection (b) of Code Section 18-2-75:
- 1408 (1) To the extent the insider gave new value to or for the benefit of the debtor after the  
 1409 transfer was made unless the new value was secured by a valid lien;
- 1410 (2) If made in the ordinary course of business or financial affairs of the debtor and the  
 1411 insider; or
- 1412 (3) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer  
 1413 secured the present value given for that purpose as well as an antecedent debt of the  
 1414 debtor.
- 1415 (g) The following rules determine the burden of proving matters referred to in this Code  
 1416 section:
- 1417 (1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this Code section has the  
 1418 burden of proving the applicability of that subsection;
- 1419 (2) Except as otherwise provided in paragraphs (3) and (4) of this subsection, the creditor  
 1420 has the burden of proving each applicable element of subsection (b) or (c) of this Code  
 1421 section;
- 1422 (3) The transferee has the burden of proving the applicability to the transferee of  
 1423 subparagraph (b)(1)(B) of this Code section; and
- 1424 (4) A party that seeks adjustment under subsection (c) of this Code section has the  
 1425 burden of proving the adjustment.
- 1426 (h) The standard of proof required to establish matters referred to in this Code section is  
 1427 preponderance of the evidence.

1428 18-2-79.

1429 A cause of action with respect to a fraudulent transfer or obligation under this article is  
 1430 extinguished unless action is brought:

- 1431 (1) Under paragraph (1) of subsection (a) of Code Section 18-2-74, within four years  
 1432 after the transfer was made or the obligation was incurred or, if later, within one year  
 1433 after the transfer or obligation was or could reasonably have been discovered by the  
 1434 claimant;
- 1435 (2) Under paragraph (2) of subsection (a) of Code Section 18-2-74 or subsection (a) of  
 1436 Code Section 18-2-75, within four years after the transfer was made or the obligation was  
 1437 incurred; or

1438 (3) Under subsection (b) of Code Section 18-2-75, within one year after the transfer was  
1439 made or the obligation was incurred.

1440 18-2-80.

1441 (a) In this Code section, the following rules determine a debtor's location:

1442 (1) A debtor who is an individual is located at the individual's principal residence;

1443 (2) A debtor that is an organization and has only one place of business is located at its  
1444 place of business; and

1445 (3) A debtor that is an organization and has more than one place of business is located  
1446 at its chief executive office.

1447 (b) A cause of action in the nature of a claim for relief under this article is governed by the  
1448 law of the jurisdiction in which the debtor is located when the transfer is made or the  
1449 obligation is incurred.

1450 18-2-81.

1451 (a) As used in this Code section, the term:

1452 (1) 'Protected series' means an arrangement, however denominated, created by a series  
1453 organization that, pursuant to the law under which the series organization is organized,  
1454 has the characteristics set forth in paragraph (2) of this subsection.

1455 (2) 'Series organization' means an organization that, pursuant to the law under which it  
1456 is organized, has the following characteristics:

1457 (A) The organic record of the organization provides for creation by the organization  
1458 of one or more protected series, however denominated, with respect to specified  
1459 property of the organization, and for records to be maintained for each protected series  
1460 that identify the property of or associated with the protected series;

1461 (B) Debt incurred or existing with respect to the activities of, or property of or  
1462 associated with, a particular protected series is enforceable against the property of or  
1463 associated with the protected series only, and not against the property of or associated  
1464 with the organization or other protected series of the organization; or

1465 (C) Debt incurred or existing with respect to the activities or property of the  
1466 organization is enforceable against the property of the organization only, and not  
1467 against the property of or associated with a protected series of the organization.

1468 (b) A series organization and each protected series of the organization is a separate person  
1469 for purposes of this article, even if for other purposes a protected series is not a person  
1470 separate from the organization or other protected series of the organization.

1471 ~~18-2-80:~~ 18-2-82.

1472 (a) Unless displaced by the provisions of this article, the principles of law and equity,  
1473 including the law merchant and the law relating to principal and agent, estoppel, laches,  
1474 fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or  
1475 invalidating cause, supplement its provisions.

1476 ~~(b) The provisions of this article do not create a cause of action for a governmental entity  
1477 or its agent or assignee with respect to a transaction which may otherwise constitute a  
1478 fraudulent transfer or obligation under this article if the transaction complies with the  
1479 applicable state and federal laws concerning transfers of property in the determination of  
1480 eligibility for public benefits.~~

1481 18-2-83.

1482 This article shall be applied and construed to effectuate its general purpose to make  
1483 uniform the law with respect to the subject of this article among states enacting the  
1484 'Uniform Voidable Transactions Act.'

1485 18-2-84.

1486 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and  
1487 National Commerce Act, 15 U.S.C. Section 7001, et seq., but shall not modify, limit, or  
1488 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic  
1489 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section  
1490 7003(b).

1491 ~~18-2-81:~~ 18-2-85.

1492 (a) As used in this Code section, the term:

1493 (1) 'Charitable organization' means an organization which has qualified as tax-exempt  
1494 under Section 501(c)(3) of the federal Internal Revenue Code of 1986 and has been so  
1495 qualified for not less than two years preceding any transfer pursuant to this Code section,  
1496 other than a private foundation or family trust.

1497 (2) 'Private foundation' shall have the same meaning as set forth in 26 U.S.C. Section  
1498 509(a).

1499 (b) A transfer made to a charitable organization shall be considered ~~complete unless~~  
1500 voidable only if it is established that a ~~fraudulent~~ voidable transfer has occurred as  
1501 described in Code Section 18-2-74 or 18-2-75, and such charitable organization had actual  
1502 or constructive knowledge of the ~~fraudulent~~ voidable nature of the transfer.

1503 (c) The statute of limitations for a civil action with respect to a voidable transfer to a  
 1504 charitable organization under this Code section shall be within two years after such transfer  
 1505 was made."

1506 **PART IVB**

1507 **CONFORMING CROSS-REFERENCES TO**  
 1508 **THE UNIFORM VOIDABLE TRANSACTIONS ACT**

1509 **SECTION 4B-1.**

1510 Article 3 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to  
 1511 limitations on recovery for deficiencies connected with improvements to realty and resulting  
 1512 injuries, is amended by revising Code Section 9-3-35, relating to actions by creditors seeking  
 1513 relief under Uniform Fraudulent Transfers Act, as follows:

1514 "9-3-35.

1515 An action by a creditor seeking relief under the provisions of Article 4 of Chapter 2 of Title  
 1516 18, known as the 'Uniform ~~Fraudulent Transfers~~ Voidable Transactions Act,' shall be  
 1517 brought within the applicable period set out in Code Section 18-2-79."

1518 **SECTION 4B-2.**

1519 Code Section 17-14-17 of the Official Code of Georgia Annotated, relating to fraudulent  
 1520 transfers, is amended by revising subsection (a) as follows:

1521 "(a) The state or the victim of a crime may institute an action against an offender pursuant  
 1522 to Article 4 of Chapter 2 of Title 18, the 'Uniform ~~Fraudulent Transfers~~ Voidable  
 1523 Transactions Act,' to set aside a transfer of real, personal, or other property made  
 1524 voluntarily by the offender on or after the date of the crime committed by the offender  
 1525 against the victim with the intent to:

1526 (1) Conceal the crime or the fruits of the crime;

1527 (2) Hinder, delay, or defraud any victim; or

1528 (3) Avoid the payment of restitution."

1529 **PART V**

1530 **UNIFORM ENFORCEMENT**  
 1531 **OF FOREIGN JUDGMENTS LAW**

1532 **SECTION 5-1.**

1533 Article 6 of Chapter 12 of Title 9 of the Official Code of Georgia Annotated, relating to the  
 1534 "Uniform Enforcement of Foreign Judgments Law," is amended by adding a new subsection

1535 to Code Section 9-12-133, relating to the affidavit concerning judgment creditor and debtor  
1536 and notice to the judgment debtor of filing of judgment, as follows:

1537 "(c) The provisions of Code Section 9-11-4 shall not apply to this article."

1538 **PART VI**  
1539 **EFFECTIVE DATE;**  
1540 **APPLICABILITY; AND REPEALER**  
1541 **SECTION 6-1.**

1542 (a) Except as provided in subsection (c) of this section, this Act shall become effective on  
1543 July 1, 2015.

1544 (b) Part 2 of this Act shall apply to all actions filed on or after July 1, 2015, in which the  
1545 recognition of a foreign-country judgment is raised.

1546 (c) Parts 3A, 3B, and 3C of this Act shall become effective on January 1, 2016.

1547 (d) The amendments made by Parts 4A and 4B of this Act shall:

1548 (1) Apply to a transfer made or obligation incurred on or after July 1, 2015;

1549 (2) Not apply to a transfer made or obligation incurred before July 1, 2015;

1550 (3) Not apply to a right of action that has accrued before July 1, 2015; and

1551 (4) For purposes of this subsection, a transfer is made and an obligation is incurred at the  
1552 time provided in Code Section 18-7-76.

1553 **SECTION 6-2.**

1554 All laws and parts of laws in conflict with this Act are repealed.