

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 856 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H2/17/05

A Bill

HOUSE BILL 1497

5 By: Representatives Childers, Maloch, Wood, Wills
6 By: Senator Luker
7
8

9 **For An Act To Be Entitled**

10 TO REVISE VARIOUS PROVISIONS OF THE UNIFORM
11 COMMERCIAL CODE; AND FOR OTHER PURPOSES.

12 **Subtitle**

13 TO REVISE VARIOUS PROVISIONS OF THE
14 UNIFORM COMMERCIAL CODE.
15
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code § 4-1-101 is amended to read as follows:

22 4-1-101. Short ~~title~~ titles.

23 (a) This subtitle ~~shall be known and~~ may be cited as the Uniform
24 Commercial Code.

25 (b) This chapter may be cited as Uniform Commercial Code – General
26 Provisions.

27
28 SECTION 2. Arkansas Code § 4-1-102 is amended to read as follows:

29 4-1-102. ~~Purposes—Rules of construction—Variation by agreement~~
30 Scope of subtitle.

31 This chapter applies to a transaction to the extent that it is governed
32 by another chapter of this subtitle.

33 ~~(1) This subtitle shall be liberally construed and applied to promote~~
34 ~~its underlying purposes and policies.~~

35 ~~(2) Underlying purposes and policies of this subtitle are:~~



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

3 ~~(b) to permit the continued expansion of commercial practices~~
4 ~~through custom, usage and agreement of the parties;~~

5 ~~(c) to make uniform the law among the various jurisdictions.~~

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

13 ~~(4) The presence in certain provisions of this subtitle of the words~~
14 ~~"unless otherwise agreed" or words of similar import does not imply that the~~
15 ~~effect of other provisions may not be varied by agreement under subsection~~
16 ~~(3).~~

17 ~~(5) In this subtitle, unless the context otherwise requires:~~

18 ~~(a) words in the singular number include the plural, and in the~~
19 ~~plural include the singular;~~

20 ~~(b) words of the masculine gender include the feminine and the~~
21 ~~neuter, and when the sense so indicates words of the neuter gender may refer~~
22 ~~to any gender.~~

23 ~~(6) Any notice required or authorized by this subtitle to be given by~~
24 ~~registered mail may be given by certified mail.~~

25
26 SECTION 3. Arkansas Code § 4-1-103 is amended to read as follows:

27 4-1-103. ~~Supplementary general principles of law applicable~~
28 Construction of subtitle to promote its purposes and policies --
29 Applicability of supplemental principles of law.

30 (1) This subtitle shall be liberally construed and applied to promote
31 its underlying purposes and policies, which are:

32 (a) to simplify, clarify, and modernize the law governing
33 commercial transactions;

34 (b) to permit the continued expansion of commercial practices
35 through custom, usage, and agreement of the parties; and

36 (c) to make uniform the law among the various jurisdictions.

1 (2) Unless displaced by the particular provisions of this subtitle,
2 the principles of law and equity, including the law merchant and the law
3 relative to capacity to contract, principal and agent, estoppel, fraud,
4 misrepresentation, duress, coercion, mistake, bankruptcy, ~~or~~ and other
5 validating or invalidating cause supplement its provisions.

6
7 SECTION 4. Arkansas Code §§ 4-1-105 through 4-1-107 are repealed.

8 ~~4-1-105. Territorial application of the subtitle—Parties' power to
9 choose applicable law.~~

10 ~~(1) Except as provided hereafter in this section, when a transaction
11 bears a reasonable relation to this state and also to another state or nation
12 the parties may agree that the law either of this state or of such other
13 state or nation shall govern their rights and duties. Failing such agreement
14 this subtitle applies to transactions bearing an appropriate relation to this
15 state.~~

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

20
21 ~~Rights of creditors against sold goods. Section 4-2-402.~~

22
23 ~~Applicability of the chapter on leases. Sections 4-2A-105 and 4-
24 2A-106.~~

25
26 ~~Applicability of the chapter on bank deposits and collections.
27 Section 4-4-102.~~

28
29 ~~Governing law in the chapter on funds transfers. Section 4-4A-
30 507.~~

31
32 ~~Letters of Credit. Section 4-5-116.~~

33
34 ~~Applicability of the chapter on Investment Securities. Section 4-
35 8-110.~~

1 ~~Law governing perfection, the effect of perfection or~~
2 ~~nonperfection, and the priority of security interests and agricultural liens,~~
3 ~~Sections 4-9-301 through 4-9-307.~~

4
5 ~~4-1-106. Remedies to be liberally administered.~~

6 ~~(1) The remedies provided by this subtitle shall be liberally~~
7 ~~administered to the end that the aggrieved party may be put in as good a~~
8 ~~position as if the other party had fully performed but neither consequential~~
9 ~~or special nor penal damages may be had except as specifically provided in~~
10 ~~this subtitle or by other rule of law.~~

11 ~~(2) Any right or obligation declared by this subtitle is enforceable~~
12 ~~by action unless the provision declaring it specifies a different and limited~~
13 ~~effect.~~

14
15 ~~4-1-107. Waiver or renunciation of claim or right after breach.~~

16 ~~Any claim or right arising out of an alleged breach can be discharged~~
17 ~~in whole or in part without consideration by a written waiver or renunciation~~
18 ~~signed and delivered by the aggrieved party.~~

19
20 SECTION 5. Arkansas Code § 4-1-108 is renumbered as § 4-1-105 and
21 amended to read as follows:

22 ~~4-1-108~~ 4-1-105. Severability.

23 If any provision or clause of this subtitle or its application to any
24 person or circumstance is held invalid, ~~such~~ the invalidity ~~shall~~ does not
25 affect other provisions or applications of the subtitle which can be given
26 effect without the invalid provision or application, and to this end the
27 provisions of this subtitle are ~~declared to be~~ severable.

28
29 SECTION 6. Arkansas Code Title 4, Chapter 1, Subchapter 1 is amended
30 to add an additional section to read as follows:

31 4-1-106. Use of singular and plural --Gender.

32 In this subtitle, unless the statutory context otherwise requires:

33 (1) Words in the singular number include the plural, and those
34 in the plural include the singular; and

35 (2) Words of any gender also refer to any other gender.

36

1
2 SECTION 7. Arkansas Code § 4-1-109 is renumbered as § 4-1-107 and
3 amended to read as follows:

4 ~~4-1-109~~ 4-1-107. Section captions.

5 Section captions are ~~parts~~ part of this subtitle.

6
7 SECTION 8. Arkansas Code Title 4, Chapter 1, Subchapter 1 is amended
8 to add an additional section to read as follows:

9 4-1-108. Relation to electronic signatures in global and national
10 commerce act.

11 This subtitle modifies, limits, and supersedes the federal Electronic
12 Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq.,
13 except that nothing in this subtitle modifies, limits, or supersedes 15
14 U.S.C. § 7001(c) or authorizes electronic delivery of any of the notices
15 described in 15 U.S.C. § 7003(b).

16
17 SECTION 9. Arkansas Code § 4-1-201 is amended to read as follows:

18 4-1-201. General definitions.

19 (a) Unless the context otherwise requires, words or phrases defined in
20 this section, or in the additional definitions contained in other chapters of
21 this subtitle that apply to particular chapters or parts thereof, have the
22 meanings stated.

23 (b) Subject to additional definitions contained in the subsequent
24 other chapters of this subtitle which are applicable to specific that apply
25 to particular chapters or parts thereof, and unless the context otherwise
26 requires, in this subtitle:

27 (1) "Action" in the sense of a judicial proceeding includes
28 recoupment, counterclaim, set-off, suit in equity, and any other proceeding
29 in which rights are determined.

30 (2) "Aggrieved party" means a party entitled to ~~resort to~~ pursue
31 a remedy.

32 (3) "Agreement", as distinguished from "contract", means the
33 bargain of the parties in fact as found in their language or ~~by implication~~
34 inferred from other circumstances including ~~course of dealing or usage of~~
35 ~~trade or course of performance as provided in this subtitle (§§ 4-1-205, 4-2-~~
36 ~~208)~~ course of performance, course of dealing, or usage of trade as provided

1 ~~in § 4-1-303. Whether an agreement has legal consequences is determined by~~
2 ~~the provisions of this subtitle, if applicable; otherwise by law of contracts~~
3 ~~(§ 4-1-103). (Compare "contract".)~~

4 (4) "Bank" means ~~any~~ a person engaged in the business of banking
5 and includes a savings bank, savings and loan association, credit union, and
6 trust company.

7 (5) "Bearer" means ~~the~~ a person in possession of ~~an~~ a negotiable
8 instrument, document of title, or certificated security that is payable to
9 bearer or indorsed in blank.

10 (6) "Bill of lading" means a document evidencing the receipt of
11 goods for shipment issued by a person engaged in the business of transporting
12 or forwarding goods, ~~and includes an airbill. "Airbill" means a document~~
13 ~~servicing for air transportation as a bill of lading does for marine or rail~~
14 ~~transportation, and includes an air consignment note or air waybill.~~

15 (7) "Branch" includes a separately incorporated foreign branch
16 of a bank.

17 (8) "Burden of establishing" a fact means the burden of
18 persuading the ~~triers~~ trier of fact that the existence of the fact is more
19 probable than its ~~non-existence~~ nonexistence.

20 (9) "Buyer in ordinary course of business" means a person that
21 buys goods in good faith, without knowledge that the sale violates the rights
22 of another person in the goods, and in the ordinary course from a person,
23 other than a pawnbroker, in the business of selling goods of that kind. A
24 person buys goods in the ordinary course if the sale to the person comports
25 with the usual or customary practices in the kind of business in which the
26 seller is engaged or with the seller's own usual or customary practices. A
27 person that sells oil, gas, or other minerals at the wellhead or minehead is
28 a person in the business of selling goods of that kind. A buyer in ordinary
29 course of business may buy for cash, by exchange of other property, or on
30 secured or unsecured credit, and may acquire goods or documents of title
31 under a ~~pre-existing~~ preexisting contract for sale. Only a buyer that takes
32 possession of the goods or has a right to recover the goods from the seller
33 under chapter 2 may be a buyer in ordinary course of business. ~~A person that~~
34 ~~acquires goods in a transfer in bulk or as security for or in total or~~
35 ~~partial satisfaction of a money debt is not a buyer in ordinary course of~~
36 ~~business.~~ "Buyer in ordinary course of business" does not include a person

1 that acquires goods in a transfer in bulk or as security for or in total or
 2 partial satisfaction of a money debt.

3 (10) ~~“Conspicuous”~~ ~~— A term or clause is conspicuous when it is,~~
 4 with reference to a term, means so written, displayed, or presented that a
 5 reasonable person against ~~whom~~ which it is to operate ought to have noticed
 6 it. ~~A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is~~
 7 ~~conspicuous. Language in the body of a form is “conspicuous” if it is in~~
 8 ~~larger or other contrasting type or color. But in a telegram any stated term~~
 9 ~~is “conspicuous”.~~ Whether a term ~~or clause~~ is “conspicuous” or not is ~~for~~
 10 ~~decision by~~ a decision for the court. Conspicuous terms include the
 11 following:

12 (a) a heading in capitals equal to or greater in size than
 13 the surrounding text, or in contrasting type, font, or color to the
 14 surrounding text of the same or lesser size; and

15 (b) language in the body of a record or display in larger
 16 type than the surrounding text, or in contrasting type, font, or color to the
 17 surrounding text of the same size, or set off from surrounding text of the
 18 same size by symbols or other marks that call attention to the language.

19 (11) “Consumer” means an individual who enters into a
 20 transaction primarily for personal, family, or household purposes.

21 ~~(11)~~(12) “Contract”, as distinguished from “agreement”, means
 22 the total legal obligation which that results from the parties’ agreement as
 23 ~~affected~~ determined by this subtitle ~~and~~ as supplemented by any other
 24 ~~applicable rules of law~~ laws. ~~(Compare “agreement”).~~

25 ~~(12)~~(13) “Creditor” includes a general creditor, a secured
 26 creditor, a lien creditor, and any representative of creditors, including an
 27 assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in
 28 equity, and an executor or administrator of an insolvent debtor’s or
 29 assignor’s estate.

30 ~~(13)~~(14) “Defendant” includes a person in the position of
 31 defendant in a ~~cross-action or~~ counterclaim, cross-claim, or third-party
 32 claim.

33 ~~(14)~~(15) “Delivery”, with respect to ~~instruments, documents of~~
 34 title, chattel paper, or certificated securities an instrument, document of
 35 title, or chattel paper, means voluntary transfer of possession.

36 ~~(15)~~(16) “Document of title” includes bill of lading, dock

1 warrant, dock receipt, warehouse receipt, or order for the delivery of goods,
2 and also any other document which in the regular course of business or
3 financing is treated as adequately evidencing that the person in possession
4 of it is entitled to receive, hold, and dispose of the document and the goods
5 it covers. To be a document of title, a document must purport to be issued
6 by or addressed to a bailee and purport to cover goods in the bailee's
7 possession which are either identified or are fungible portions of an
8 identified mass.

9 ~~(16)~~(17) "Fault" means a default, breach, or wrongful act, or
10 omission, or breach.

11 ~~(17)~~(18) ~~"Fungible" with respect to goods or securities means~~
12 ~~goods or securities of which any unit is, by nature or usage of trade, the~~
13 ~~equivalent of any other like unit.~~ "Fungible goods" means:

14 (a) goods of which any unit, by nature or usage of trade,
15 is the equivalent of any other like unit; or

16 (b) goods that by agreement are treated as equivalent.

17 ~~Goods which are not fungible shall be deemed fungible for the purposes of~~
18 ~~this subtitle to the extent that under a particular agreement or document~~
19 ~~unlike units are treated as equivalents.~~

20 ~~(18)~~(19) "Genuine" means free of forgery or counterfeiting.

21 ~~(19)~~(20) ~~"Good faith"~~ "Good faith," except as otherwise provided
22 in chapter 5, means honesty in fact in the conduct or transaction concerned
23 and the observance of reasonable commercial standards of fair dealing.

24 ~~(20)~~(21) ~~"Holder" with respect to a negotiable instrument, means~~
25 ~~the person in possession if the instrument is payable to bearer or, in the~~
26 ~~ease of an instrument payable to an identified person, if the identified~~
27 ~~person is in possession.~~ ~~"Holder" with respect to a document of title means~~
28 ~~the person in possession if the goods are deliverable to bearer or to the~~
29 ~~order of the person in possession.~~ "Holder" means:

30 (a) the person in possession of a negotiable instrument
31 that is payable either to bearer or to an identified person that is the
32 person in possession; or

33 (b) the person in possession of a document of title if the
34 goods are deliverable either to bearer or to the order of the person in
35 possession.

36 ~~(21)~~ ~~To "honor" is to pay or to accept and pay, or where a~~

1 ~~credit so engages to purchase or discount a draft complying with the terms of~~
2 ~~the credit.~~

3 (22) ~~"Insolvency proceedings"~~ "Insolvency proceeding" includes
4 ~~any an~~ assignment for the benefit of creditors or other ~~proceedings~~
5 proceeding intended to liquidate or rehabilitate the estate of the person
6 involved.

7 (23) ~~A person is "insolvent" who either has ceased to pay his~~
8 ~~debts in the ordinary course of business or cannot pay his debts as they~~
9 ~~become due or is insolvent within the meaning of the federal bankruptcy law.~~
10 "Insolvent" means:

11 (a) having generally ceased to pay debts in the ordinary
12 course of business other than as a result of bona fide dispute;

13 (b) being unable to pay debts as they become due; or

14 (c) being insolvent within the meaning of federal
15 bankruptcy law.

16 (24) "Money" means a medium of exchange currently authorized or
17 adopted by a domestic or foreign government, ~~and~~ The term includes a monetary
18 unit of account established by an intergovernmental organization or by
19 agreement between two (2) or more ~~nations~~ countries.

20 ~~(25) A person has "notice" of a fact when:~~

21 ~~(a) he has actual knowledge of it; or~~

22 ~~(b) he has received a notice or notification of it; or~~

23 ~~(c) from all the facts and circumstances known to him at~~
24 ~~the time in question he has reason to know that it exists. A person "knows"~~
25 ~~or has "knowledge" of a fact when he has actual knowledge of it. "Discover"~~
26 ~~or "learn" or a word or phrase of similar import refers to knowledge rather~~
27 ~~than to reason to know. The time and circumstances under which a notice or~~
28 ~~notification may cease to be effective are not determined by this subtitle.~~

29 ~~(26) A person "notifies" or "gives" a notice or notification to~~
30 ~~another by taking such steps as may be reasonably required to inform the~~
31 ~~other in ordinary course whether or not such other actually comes to know of~~
32 ~~it. A person "receives" a notice or notification when:~~

33 ~~(a) it comes to his attention; or~~

34 ~~(b) it is duly delivered at the place of business through~~
35 ~~which the contract was made or at any other place held out by him as the~~
36 ~~place for receipt of such communications.~~

1 ~~(27)~~ Notice, knowledge, or a notice or notification received by
2 an organization is effective for a particular transaction from the time when
3 it is brought to the attention of the individual conducting that transaction,
4 and in any event from the time when it would have been brought to his
5 attention if the organization had exercised due diligence. An organization
6 exercises due diligence if it maintains reasonable routines for communicating
7 significant information to the person conducting the transaction and there is
8 reasonable compliance with the routines. Due diligence does not require an
9 individual acting for the organization to communicate information unless such
10 communication is part of his regular duties or unless he has reason to know
11 of the transaction and that the transaction would be materially affected by
12 the information.

13 ~~(28)~~(25) "Organization" ~~includes a corporation, government or~~
14 ~~governmental subdivision or agency, business trust, estate, trust,~~
15 ~~partnership or association, two (2) or more persons having a joint or common~~
16 ~~interest, or any other legal or commercial entity~~ means a person other than
17 an individual.

18 ~~(29)~~(26) "Party", as ~~distinct~~ distinguished from "third party",
19 means a person ~~who~~ that has engaged in a transaction or made an agreement
20 within subject to this subtitle.

21 ~~(30)~~(27) "Person" ~~includes an individual or an organization (see~~
22 ~~§ 4-1-102)~~ means an individual, corporation, business trust, estate, trust,
23 partnership, limited liability company, association, joint venture,
24 government, governmental subdivision, agency, or instrumentality, public
25 corporation, or any other legal or commercial entity.

26 ~~(31)~~ "Presumption" or "presumed" means that the trier of fact
27 must find the existence of the fact presumed unless and until evidence is
28 introduced which would support a finding of its nonexistence.

29 (28) "Present value" means the amount as of a date certain of
30 one (1) or more sums payable in the future, discounted to the date certain by
31 use of either an interest rate specified by the parties if that rate is not
32 manifestly unreasonable at the time the transaction is entered into or, if an
33 interest rate is not so specified, a commercially reasonable rate that takes
34 into account the facts and circumstances at the time the transaction is
35 entered into.

36 ~~(32)~~(29) "Purchase" ~~includes~~ means taking by sale, lease,

1 discount, negotiation, mortgage, pledge, lien, security interest, issue or
2 ~~re-issue~~ reissue, gift, or any other voluntary transaction creating an
3 interest in property.

4 ~~(33)~~(30) "Purchaser" means a person that takes by purchase.

5 (31) "Record" means information that is inscribed on a tangible
6 medium or that is stored in an electronic or other medium and is retrievable
7 in perceivable form.

8 ~~(34)~~(32) "Remedy" means any remedial right to which an aggrieved
9 party is entitled with or without resort to a tribunal.

10 ~~(35)~~(33) "Representative" ~~includes~~ means a person empowered to
11 act for another, including an agent, an officer of a corporation or
12 association, and a trustee, executor, or administrator of an estate, ~~or any~~
13 ~~other person empowered to act for another.~~

14 ~~(36)~~(34) "Rights" "Right" includes remedies remedy.

15 ~~(37)~~(35) ~~"Security interest" means an interest in personal~~
16 ~~property or fixtures which secures payment or performance of an obligation.~~
17 ~~The term also includes any interest of a consignor and a buyer of accounts,~~
18 ~~chattel paper, a payment intangible, or a promissory note in a transaction~~
19 ~~that is subject to chapter 9. The special property interest of a buyer of~~
20 ~~goods on identification of those goods to a contract for sale under § 4-2-401~~
21 ~~is not a "security interest", but a buyer may also acquire a "security~~
22 ~~interest" by complying with chapter 9. Except as otherwise provided in § 4-2-~~
23 ~~505, the right of a seller or lessor of goods under chapter 2 or chapter 2A~~
24 ~~to retain or acquire possession of the goods is not a "security interest",~~
25 ~~but a seller or lessor may also acquire a "security interest" by complying~~
26 ~~with chapter 9. The retention or reservation of title by a seller of goods~~
27 ~~notwithstanding shipment or delivery to the buyer (§ 4-2-401) is limited in~~
28 ~~effect to a reservation of a "security interest".~~ "Security interest" means
29 an interest in personal property or fixtures which secures payment or
30 performance of an obligation. "Security interest" includes any interest of a
31 consignor and a buyer of accounts, chattel paper, a payment intangible, or a
32 promissory note in a transaction that is subject to chapter 9. "Security
33 interest" does not include the special property interest of a buyer of goods
34 on identification of those goods to a contract for sale under § 4-2-401, but
35 a buyer may also acquire a "security interest" by complying with chapter 9.
36 Except as otherwise provided in § 4-2-505, the right of a seller or lessor of

1 goods under chapter 2 or 2A to retain or acquire possession of the goods is
2 not a "security interest", but a seller or lessor may also acquire a
3 "security interest" by complying with chapter 9. The retention or
4 reservation of title by a seller of goods notwithstanding shipment or
5 delivery to the buyer under § 4-2-401 is limited in effect to a reservation
6 of a "security interest". Whether a transaction in the form of a lease
7 creates a "security interest" is determined pursuant to § 4-1-203.

8 ~~(38)(36) "Send" in connection with any writing or notice means~~
9 ~~to deposit in the mail or deliver for transmission by any other usual means~~
10 ~~of communication with postage or cost of transmission provided for and~~
11 ~~properly addressed and in the case of an instrument to an address specified~~
12 ~~thereon or otherwise agreed, or if there be none to any address reasonable~~
13 ~~under the circumstances. The receipt of any writing or notice within the time~~
14 ~~at which it would have arrived if properly sent has the effect of a proper~~
15 ~~sending. "Send" in connection with a writing, record, or notice means:~~

16 (a) to deposit in the mail or deliver for transmission by
17 any other usual means of communication with postage or cost of transmission
18 provided for and properly addressed and, in the case of an instrument, to an
19 address specified thereon or otherwise agreed, or if there be none to any
20 address reasonable under the circumstances; or

21 (b) in any other way to cause to be received any record or
22 notice within the time it would have arrived if properly sent.

23 ~~(39)(37) "Signed" includes any symbol executed or adopted by a~~
24 ~~party with present intention to authenticate a writing. "Signed" includes~~
25 ~~using any symbol executed or adopted with present intention to adopt or~~
26 ~~accept a writing.~~

27 (38) "State" means a state of the United States, the District of
28 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
29 insular possession subject to the jurisdiction of the United States.

30 ~~(40)(39) "Surety" includes guarantor or a guarantor or other~~
31 ~~secondary obligor.~~

32 ~~(41) "Telegram" includes a message transmitted by radio,~~
33 ~~teletype, cable, any mechanical method of transmission, or the like.~~

34 ~~(42)(40) "Terms" "Term" means that a portion of an agreement~~
35 ~~which that relates to a particular matter.~~

36 ~~(43)(41) "Unauthorized" signature means one made without actual,~~

1 ~~implied, or apparent authority and includes a forgery.~~ “Unauthorized
 2 signature” means a signature made without actual, implied, or apparent
 3 authority. The term includes a forgery.

4 ~~(44) “Value”. Except as otherwise provided with respect to~~
 5 ~~negotiable instruments and bank collections (§§ 4-3-303, 4-4-210, and 4-4-~~
 6 ~~211) a person gives “value” for rights if he acquires them:~~

7 ~~(a) in return for a binding commitment to~~
 8 ~~extend credit or for the extension of immediately available credit whether or~~
 9 ~~not drawn upon and whether or not a charge back is provided for in the event~~
 10 ~~of difficulties in collection; or~~

11 ~~(b) as security for or in total or partial~~
 12 ~~satisfaction of a preexisting claim; or~~

13 ~~(c) by accepting delivery pursuant to a~~
 14 ~~preexisting contract for purchase; or~~

15 ~~(d) generally, in return for any consideration~~
 16 ~~sufficient to support a simple contract.~~

17 ~~(45)(42) “Warehouse receipt” means a receipt issued by a person~~
 18 ~~engaged in the business of storing goods for hire.~~

19 ~~(46)(43) “Written” or “writing” includes printing, typewriting,~~
 20 ~~or any other intentional reduction to tangible form. “Writing” includes~~
 21 printing, typewriting, or any other intentional reduction to tangible form.
 22 “Written” has a corresponding meaning.

23
 24 SECTION 10. Arkansas Code §§ 4-1-202 through 4-1-209 are repealed.

25 ~~4-1-202. Prima facie evidence by third party documents.~~

26 ~~A document in due form purporting to be a bill of lading, policy or~~
 27 ~~certificate of insurance, official weigher’s or inspector’s certificate,~~
 28 ~~consular invoice, or any other document authorized or required by the~~
 29 ~~contract to be issued by a third party shall be prima facie evidence of its~~
 30 ~~own authenticity and genuineness and of the facts stated in the document by~~
 31 ~~the third party.~~

32
 33 ~~4-1-203. Obligation of good faith.~~

34 ~~Every contract or duty within this subtitle imposes an obligation of~~
 35 ~~good faith in its performance or enforcement.~~

36

1 ~~4-1-204. Time—Reasonable time—"Seasonably".~~

2 ~~(1) Whenever this subtitle requires any action to be taken within a~~
3 ~~reasonable time, any time which is not manifestly unreasonable may be fixed~~
4 ~~by agreement.~~

5 ~~(2) What is a reasonable time for taking any action depends on the~~
6 ~~nature, purpose and circumstances of such action.~~

7 ~~(3) An action is taken "seasonably" when it is taken at or within the~~
8 ~~time agreed or if no time is agreed at or within a reasonable time.~~

9
10 ~~4-1-205. Course of dealing and usage of trade.~~

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

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

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

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

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

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

36

1 ~~4-1-206.—Statute of frauds for kinds of personal property not~~
2 ~~otherwise covered.~~

3 ~~(1)—Except in the cases described in subsection (2) of this section a~~
4 ~~contract for the sale of personal property is not enforceable by way of~~
5 ~~action or defense beyond five thousand dollars (\$5,000) in amount or value of~~
6 ~~remedy unless there is some writing which indicates that a contract for sale~~
7 ~~has been made between the parties at a defined or stated price, reasonably~~
8 ~~identifies the subject matter, and is signed by the party against whom~~
9 ~~enforcement is sought or by his authorized agent.~~

10 ~~(2)—Subsection (1) of this section does not apply to contracts for the~~
11 ~~sale of goods (§ 4-2-201) nor of securities (§ 4-8-113) nor to security~~
12 ~~agreements (§ 4-9-203).~~

13
14 ~~4-1-207.—Performance or acceptance under reservation of rights.~~

15 ~~(1)—A party who with explicit reservation of rights performs or~~
16 ~~promises performance or assents to performance in a manner demanded or~~
17 ~~offered by the other party does not thereby prejudice the rights reserved.~~
18 ~~Such words as "without prejudice", "under protest" or the like are~~
19 ~~sufficient.~~

20 ~~(2)—Subsection (1) does not apply to an accord and satisfaction.~~

21
22 ~~4-1-208.—Option to accelerate at will.~~

23 ~~A term providing that one party or his successor in interest may accelerate~~
24 ~~payment or performance or require collateral or additional collateral "at~~
25 ~~will" or "when he deems himself insecure" or in words of similar import shall~~
26 ~~be construed to mean that he shall have power to do so only if he in good~~
27 ~~faith believes that the prospect of payment or performance is impaired. The~~
28 ~~burden of establishing lack of good faith is on the party against whom the~~
29 ~~power has been exercised.~~

30
31 ~~4-1-209.—Subordinated obligations.~~

32 ~~An obligation may be issued as subordinated to payment of another obligation~~
33 ~~of the person obligated, or a creditor may subordinate his right to payment~~
34 ~~of an obligation by agreement with either the person obligated or another~~
35 ~~creditor of the person obligated. Such a subordination does not create a~~
36 ~~security interest as against either the common debtor or a subordinated~~

1 ~~creditor. This section shall be construed as declaring the law as it existed~~
2 ~~prior to the enactment of this section and not as modifying it.~~

3
4 SECTION 11. Arkansas Code Title 4, Chapter 1, Subchapter 2 is amended
5 to add an additional section to read as follows:

6 4-1-202. Notice -- Knowledge.

7 (a) Subject to subsection (f), a person has "notice" of a fact if the
8 person:

9 (1) Has actual knowledge of it;

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

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

13 (b) "Knowledge" means actual knowledge. "Knows" has a corresponding
14 meaning.

15 (c) "Discover", "learn", or words of similar import refer to knowledge
16 rather than to reason to know.

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

21 (e) Subject to subsection (f), a person "receives" a notice or
22 notification when:

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

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

28 (f) Notice, knowledge, or a notice or notification received by an
29 organization is effective for a particular transaction from the time it is
30 brought to the attention of the individual conducting that transaction and,
31 in any event, from the time it would have been brought to the individual's
32 attention if the organization had exercised due diligence. An organization
33 exercises due diligence if it maintains reasonable routines for communicating
34 significant information to the person conducting the transaction and there is
35 reasonable compliance with the routines. Due diligence does not require an
36 individual acting for the organization to communicate information unless the

1 communication is part of the individual's regular duties or the individual
2 has reason to know of the transaction and that the transaction would be
3 materially affected by the information.

4
5 SECTION 12. Arkansas Code Title 4, Chapter 1, Subchapter 2 is amended
6 to add an additional section to read as follows:

7 4-1-203. Lease distinguished from security interest.

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

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

14 (1) The original term of the lease is equal to or greater than
15 the remaining economic life of the goods;

16 (2) The lessee is bound to renew the lease for the remaining
17 economic life of the goods or is bound to become the owner of the goods;

18 (3) The lessee has an option to renew the lease for the
19 remaining economic life of the goods for no additional consideration or for
20 nominal additional consideration upon compliance with the lease agreement; or

21 (4) The lessee has an option to become the owner of the goods
22 for no additional consideration or for nominal additional consideration upon
23 compliance with the lease agreement.

24 (c) A transaction in the form of a lease does not create a security
25 interest merely because:

26 (1) The present value of the consideration the lessee is
27 obligated to pay the lessor for the right to possession and use of the goods
28 is substantially equal to or is greater than the fair market value of the
29 goods at the time the lease is entered into;

30 (2) The lessee assumes risk of loss of the goods;

31 (3) The lessee agrees to pay, with respect to the goods, taxes,
32 insurance, filing, recording, or registration fees, or service or maintenance
33 costs;

34 (4) The lessee has an option to renew the lease or to become the
35 owner of the goods;

36 (5) The lessee has an option to renew the lease for a fixed rent

1 that is equal to or greater than the reasonably predictable fair market rent
2 for the use of the goods for the term of the renewal at the time the option
3 is to be performed; or

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

7 (d) Additional consideration is nominal if it is less than the
8 lessee's reasonably predictable cost of performing under the lease agreement
9 if the option is not exercised. Additional consideration is not nominal if:

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

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

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

21
22 SECTION 13. Arkansas Code Title 4, Chapter 1, Subchapter 2 is amended
23 to add an additional section to read as follows:

24 4-1-204. Value.

25 Except as otherwise provided in chapters 3, 4, and 5, a person gives
26 value for rights if the person acquires them:

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

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

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

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

1
2 SECTION 14. Arkansas Code Title 4, Chapter 1, Subchapter 2 is amended
3 to add an additional section to read as follows:

4 4-1-205. Reasonable time; seasonableness.

5 (a) Whether a time for taking an action required by this subtitle is
6 reasonable depends on the nature, purpose, and circumstances of the action.

7 (b) An action is taken seasonably if it is taken at or within the time
8 agreed or, if no time is agreed, at or within a reasonable time.

9
10 SECTION 15. Arkansas Code Title 4, Chapter 1, Subchapter 2 is amended
11 to add an additional section to read as follows:

12 4-1-206. Presumptions.

13 Whenever this subtitle creates a "presumption" with respect to a fact,
14 or provides that a fact is "presumed," the trier of fact must find the
15 existence of the fact unless and until evidence is introduced that supports a
16 finding of its nonexistence.

17
18 SECTION 16. Arkansas Code Title 4, Chapter 1, is amended to add an
19 additional subchapter to read as follows:

20 4-1-301. Territorial application of the subtitle--Parties' power to
21 choose applicable law.

22 (1) Except as provided in this section, when a transaction bears a
23 reasonable relation to this state and also to another state or nation, the
24 parties may agree that the law either of this state or of such other state or
25 nation shall govern their rights and duties. Failing such agreement this
26 subtitle applies to transactions bearing an appropriate relation to this
27 state.

28 (2) Where one of the following provisions of this subtitle specifies
29 the applicable law, that provision governs and a contrary agreement is
30 effective only to the extent permitted by the law (including the conflict of
31 laws rules) so specified:

32
33 Rights of creditors against sold goods. Section 4-2-402.

34
35 Applicability of the chapter on leases. Sections 4-2A-105 and 4-2A-106.

36

1 Applicability of the chapter on bank deposits and collections. Section 4-4-
2 102.

3
4 Governing law in the chapter on funds transfers. Section 4-4A-507.

5
6 Letters of Credit. Section 4-5-116.

7
8 Applicability of the chapter on Investment Securities. Section 4-8-110.

9
10 Law governing perfection, the effect of perfection or non-perfection, and
11 the priority of security interests and agricultural liens. Sections 4-9-
12 301 through 4-9-307.

13
14 4-1-302. Variation by agreement.

15 (a) Except as otherwise provided in subsection (b) or elsewhere in
16 this subtitle, the effect of provisions of this subtitle may be varied by
17 agreement.

18 (b) The obligations of good faith, diligence, reasonableness, and care
19 prescribed by this subtitle may not be disclaimed by agreement. The parties,
20 by agreement, may determine the standards by which the performance of those
21 obligations is to be measured if those standards are not manifestly
22 unreasonable. Whenever this subtitle requires an action to be taken within a
23 reasonable time, a time that is not manifestly unreasonable may be fixed by
24 agreement.

25 (c) The presence in certain provisions of this subtitle of the phrase
26 “unless otherwise agreed”, or words of similar import, does not imply that
27 the effect of other provisions may not be varied by agreement under this
28 section.

29
30 4-1-303. Course of performance -- Course of dealing -- Usage of trade.

31 (a) A “course of performance” is a sequence of conduct between the
32 parties to a particular transaction that exists if:

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

35 (2) The other party, with knowledge of the nature of the
36 performance and opportunity for objection to it, accepts the performance or

1 acquiesces in it without objection.

2 (b) A “course of dealing” is a sequence of conduct concerning previous
3 transactions between the parties to a particular transaction that is fairly
4 to be regarded as establishing a common basis of understanding for
5 interpreting their expressions and other conduct.

6 (c) A “usage of trade” is any practice or method of dealing having
7 such regularity of observance in a place, vocation, or trade as to justify an
8 expectation that it will be observed with respect to the transaction in
9 question. The existence and scope of such a usage must be proved as facts.
10 If it is established that such a usage is embodied in a trade code or similar
11 record, the interpretation of the record is a question of law.

12 (d) A course of performance or course of dealing between the parties
13 or usage of trade in the vocation or trade in which they are engaged or of
14 which they are or should be aware is relevant in ascertaining the meaning of
15 the parties’ agreement, may give particular meaning to specific terms of the
16 agreement, and may supplement or qualify the terms of the agreement. A usage
17 of trade applicable in the place in which part of the performance under the
18 agreement is to occur may be so utilized as to that part of the performance.

19 (e) Except as otherwise provided in subsection (f), the express terms
20 of an agreement and any applicable course of performance, course of dealing,
21 or usage of trade must be construed whenever reasonable as consistent with
22 each other. If such a construction is unreasonable:

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

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

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

28 (f) Subject to § 4-2-209, a course of performance is relevant to show
29 a waiver or modification of any term inconsistent with the course of
30 performance.

31 (g) Evidence of a relevant usage of trade offered by one party is not
32 admissible unless that party has given the other party notice that the court
33 finds sufficient to prevent unfair surprise to the other party.

34
35 4-1-304. Obligation of good faith.

36 Every contract or duty within this subtitle imposes an obligation of

1 good faith in its performance and enforcement.

2
3 4-1-305. Remedies to be liberally administered.

4 (a) The remedies provided by this subtitle must be liberally
5 administered to the end that the aggrieved party may be put in as good a
6 position as if the other party had fully performed but neither consequential
7 or special damages nor penal damages may be had except as specifically
8 provided in this subtitle or by other rule of law.

9 (b) Any right or obligation declared by this subtitle is enforceable
10 by action unless the provision declaring it specifies a different and limited
11 effect.

12
13 4-1-306. Waiver or renunciation of claim or right after breach.

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

17
18 4-1-307. Prima facie evidence by third-party documents.

19 A document in due form purporting to be a bill of lading, policy or
20 certificate of insurance, official weigher's or inspector's certificate,
21 consular invoice, or any other document authorized or required by the
22 contract to be issued by a third party is prima facie evidence of its own
23 authenticity and genuineness and of the facts stated in the document by the
24 third party.

25
26 4-1-308. Performance or acceptance under reservation of rights.

27 (a) A party that with explicit reservation of rights performs or
28 promises performance or assents to performance in a manner demanded or
29 offered by the other party does not thereby prejudice the rights reserved.
30 Such words as "without prejudice," "under protest," or the like are
31 sufficient.

32 (b) Subsection (a) does not apply to an accord and satisfaction.

33
34 4-1-309. Option to accelerate at will.

35 A term providing that one party or that party's successor in interest
36 may accelerate payment or performance or require collateral or additional

1 collateral "at will" or when the party "deems itself insecure," or words of
2 similar import, means that the party has power to do so only if that party in
3 good faith believes that the prospect of payment or performance is impaired.
4 The burden of establishing lack of good faith is on the party against which
5 the power has been exercised.

6
7 4-1-310. Subordinated obligations.

8 An obligation may be issued as subordinated to performance of another
9 obligation of the person obligated, or a creditor may subordinate its right
10 to performance of an obligation by agreement with either the person obligated
11 or another creditor of the person obligated. Subordination does not create a
12 security interest as against either the common debtor or a subordinated
13 creditor.

14
15 SECTION 17. Arkansas Code § 4-2-103(1), concerning definitions
16 applicable to sales transactions, is amended to read as follows:

17 (1) In this chapter unless the context otherwise requires:

18 (a) "Buyer" means a person who buys or contracts to buy goods.

19 (b) ~~"Good faith" in the case of a merchant means honesty in fact~~
20 ~~and the observance of reasonable commercial standards of fair dealing in the~~
21 ~~trade. [Reserved.]~~

22 (c) "Receipt" of goods means taking physical possession of them.

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

25
26 SECTION 18. Arkansas Code § 4-2-202 is amended to read as follows:

27 4-2-202. Final written expression -- Parol or extrinsic evidence.

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

33 (a) by course of performance, course of dealing, or usage of trade (§
34 ~~4-1-205 4-1-303) or by course of performance (§ 4-2-208); and~~

35 (b) by evidence of consistent additional terms unless the court finds
36 the writing to have been intended also as a complete and exclusive statement

1 of the terms of the agreement.

2

3 SECTION 19. Arkansas Code § 4-2-208 is repealed.

4 ~~4-2-208. Course of performance or practical construction.~~

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

10 ~~(2) The express terms of the agreement and any such course of~~
11 ~~performance, as well as any course of dealing and usage of trade, shall be~~
12 ~~construed whenever reasonable as consistent with each other; but when such~~
13 ~~construction is unreasonable, express terms shall control course of~~
14 ~~performance and course of performance shall control both course of dealing~~
15 ~~and usage of trade (§ 4-1-205).~~

16 ~~(3) Subject to the provisions of the next section on modification and~~
17 ~~waiver, such course of performance shall be relevant to show a waiver or~~
18 ~~modification of any term inconsistent with such course of performance.~~

19

20 SECTION 20. Arkansas Code § 4-2A-103(3), concerning definitions
21 applicable to leases, is amended to read as follows:

22 (3) The following definitions in other chapters apply to this chapter:

23 "Account". Section 4-9-102(a)(2).

24 "Between merchants". Section 4-2-104(3).

25 "Buyer". Section 4-2-103(1)(a).

26 "Chattel paper". Section 4-9-102(a)(11).

27 "Consumer goods". Section 4-9-102(a)(23).

28 "Document". Section 4-9-102(a)(30).

29 "Entrusting". Section 4-2-403(3).

30 "General intangible". Section 4-9-102(a)(42).

31 ~~"Good faith". Section 4-2-103(1)(b).~~

32 "Instrument". Section 4-9-102(a)(47).

33 "Merchant". Section 4-2-104(1).

34 "Mortgage". Section 4-9-102(a)(55).

35 "Pursuant to commitment". Section 4-9-102(a)(68).

36 "Receipt". Section 4-2-103(1)(c).

- 1 "Sale". Section 4-2-106(1).
- 2 "Sale on approval". Section 4-2-326.
- 3 "Sale or return". Section 4-2-326.
- 4 "Seller". Section 4-2-103(1)(d).

5
6 SECTION 21. Arkansas Code § 4-2A-207 is repealed.

7 ~~4-2A-207. Course of performance or practical construction.~~
8 ~~(1) If a lease contract involves repeated occasions for performance by~~
9 ~~either party with knowledge of the nature of the performance and opportunity~~
10 ~~for objection to it by the other, any course of performance accepted or~~
11 ~~acquiesced in without objection is relevant to determine the meaning of the~~
12 ~~lease agreement.~~

13 ~~(2) The express terms of a lease agreement and any course of~~
14 ~~performance, as well as any course of dealing and usage of trade, must be~~
15 ~~construed whenever reasonable as consistent with each other; but if that~~
16 ~~construction is unreasonable, express terms control course of performance,~~
17 ~~course of performance controls both course of dealing and usage of trade, and~~
18 ~~course of dealing controls usage of trade.~~

19 ~~(3) Subject to the provisions of § 4-2A-208 on modification and~~
20 ~~waiver, course of performance is relevant to show a waiver or modification of~~
21 ~~any term inconsistent with the course of performance.~~

22
23 SECTION 22. Arkansas Code § 4-2A-501 is amended to read as follows:
24 4-2A-501. Default - Procedure.

25 (1) Whether the lessor or the lessee is in default under a lease
26 contract is determined by the lease agreement and this chapter.

27 (2) If the lessor or the lessee is in default under the lease
28 contract, the party seeking enforcement has rights and remedies as provided
29 in this chapter and, except as limited by this chapter, as provided in the
30 lease agreement.

31 (3) If the lessor or the lessee is in default under the lease
32 contract, the party seeking enforcement may reduce the party's claim to
33 judgment, or otherwise enforce the lease contract by self-help or any
34 available judicial procedure or nonjudicial procedure, including
35 administrative proceeding, arbitration, or the like, in accordance with this
36 chapter.

1 (4) Except as otherwise provided in § ~~4-1-106(1)~~ 4-1-305(a) or this
2 chapter or the lease agreement, the rights and remedies referred to in
3 subsections (2) and (3) are cumulative.

4 (5) If the lease agreement covers both real property and goods, the
5 party seeking enforcement may proceed under this part as to the goods, or
6 under other applicable law as to both the real property and the goods in
7 accordance with that party's rights and remedies in respect of the real
8 property, in which case this part does not apply.

9
10 SECTION 23. Arkansas Code § 4-2A-518 is amended to read as follows:

11 4-2A-518. Cover - Substitute goods.

12 (1) After a default by a lessor under the lease contract of the type
13 described in § 4-2A-508(1), or, if agreed, after other default by the lessor,
14 the lessee may cover by making any purchase or lease of or contract to
15 purchase or lease goods in substitution for those due from the lessor.

16 (2) Except as otherwise provided with respect to damages liquidated in
17 the lease agreement (§ 4-2A-504) or otherwise determined pursuant to
18 agreement of the parties (§§ ~~4-1-102(3)~~ 4-1-302 and 4-2A-503), if a lessee's
19 cover is by a lease agreement substantially similar to the original lease
20 agreement and the new lease agreement is made in good faith and in a
21 commercially reasonable manner, the lessee may recover from the lessor as
22 damages (i) the present value, as of the date of the commencement of the term
23 of the new lease agreement, of the rent under the new lease agreement
24 applicable to that period of the new lease term which is comparable to the
25 then remaining term of the original lease agreement minus the present value
26 as of the same date of the total rent for the then remaining lease term of
27 the original lease agreement, and (ii) any incidental or consequential
28 damages, less expenses saved in consequence of the lessor's default.

29 (3) If a lessee's cover is by lease agreement that for any reason does
30 not qualify for treatment under subsection (2), or is by purchase or
31 otherwise, the lessee may recover from the lessor as if the lessee had
32 elected not to cover and § 4-2A-519 governs.

33
34 SECTION 24. Arkansas Code § 4-2A-519(1), concerning a lessee's damages
35 for accepted goods, is amended to read as follows:

36 (1) Except as otherwise provided with respect to damages liquidated in

1 the lease agreement (§ 4-2A-504) or otherwise determined pursuant to
2 agreement of the parties (§§ ~~4-1-102(3)~~ 4-1-302 and 4-2A-503), if a lessee
3 elects not to cover or a lessee elects to cover and the cover is by lease
4 agreement that for any reason does not qualify for treatment under § 4-2A-
5 518(2), or is by purchase or otherwise, the measure of damages for non-
6 delivery or repudiation by the lessor or for rejection or revocation of
7 acceptance by the lessee is the present value, as of the date of the default,
8 of the then market rent minus the present value as of the same date of the
9 original rent, computed for the remaining lease term of the original lease
10 agreement, together with incidental and consequential damages, less expenses
11 saved in consequence of the lessor's default.

12

13 SECTION 25. Arkansas Code § 4-2A-527(2), concerning a lessor's rights
14 to dispose of goods, is amended to read as follows:

15 (2) Except as otherwise provided with respect to damages liquidated in
16 the lease agreement (§ 4-2A-504) or otherwise determined pursuant to
17 agreement of the parties (§§ ~~4-1-102(3)~~ 4-1-302 and 4-2A-503), if the
18 disposition is by lease agreement substantially similar to the original lease
19 agreement and the new lease agreement is made in good faith and in a
20 commercially reasonable manner, the lessor may recover from the lessee as
21 damages (i) accrued and unpaid rent as of the date of the commencement of the
22 term of the new lease agreement, (ii) the present value, as of the same date,
23 of the total rent for the then remaining lease term of the original lease
24 agreement minus the present value, as of the same date, of the rent under the
25 new lease agreement applicable to that period of the new lease term which is
26 comparable to the then remaining term of the original lease agreement, and
27 (iii) any incidental damages allowed under § 4-2A-530, less expenses saved in
28 consequence of the lessee's default.

29

30 SECTION 26. Arkansas Code § 4-2A-528 is amended to read as follows:

31 4-2A-528. Lessor's damages for non-acceptance, failure to pay,
32 repudiation, or other default.

33 (1) Except as otherwise provided with respect to damages liquidated in
34 the lease agreement (§ 4-2A-504) or otherwise determined pursuant to
35 agreement of the parties (§§ ~~4-1-102(3)~~ 4-1-302 and 4-2A-503), if a lessor
36 elects to retain the goods or a lessor elects to dispose of the goods and the

1 disposition is by lease agreement that for any reason does not qualify for
 2 treatment under § 4-2A-527(2), or is by sale or otherwise, the lessor may
 3 recover from the lessee as damages for a default of the type described in §
 4 4-2A-523(1) or § 4-2A-523(3)(a), or, if agreed, for other default of the
 5 lessee, (i) accrued and unpaid rent as of the date of default if the lessee
 6 has never taken possession of the goods, or, if the lessee has taken
 7 possession of the goods, as of the date the lessor repossesses the goods or
 8 an earlier date on which the lessee makes a tender of the goods to the
 9 lessor, (ii) the present value as of the date determined under clause (i) of
 10 the total rent for the then remaining lease term of the original lease
 11 agreement minus the present value as of the same date of the market rent at
 12 the place computed for the same lease term, and (iii) any incidental damages
 13 allowed under § 4-2A-530, less expenses saved in consequence of the lessee's
 14 default.

15 (2) If the measure of damages provided in subsection (1) is inadequate
 16 to put a lessor in as good a position as performance would have, the measure
 17 of damages is the present value of the profit, including reasonable overhead,
 18 the lessor would have made from full performance by the lessee, together with
 19 any incidental damages allowed under § 4-2A-530, due allowance for costs
 20 reasonably incurred and due credit for payments or proceeds of disposition.
 21
 22

23 SECTION 27. Arkansas Code § 4-3-103(a) and (b), concerning definitions
 24 applicable to negotiable instruments, are amended to read as follows:

25 4-3-103. Definitions.

26 (a) In this chapter:

27 (1) "Acceptor" means a drawee who has accepted a draft.

28 (2) "Consumer transaction" means a transaction in which an
 29 individual incurs an obligation primarily for personal, family, or household
 30 purposes.

31 ~~(2)(3)~~ "Drawee" means a person ordered in a draft to make
 32 payment.

33 ~~(3)(4)~~ "Drawer" means a person who signs or is identified in a
 34 draft as a person ordering payment.

35 ~~(4)(5)~~ "Good faith" means honesty in fact and the observance of
 36 reasonable commercial standards of fair dealing.

1 ~~(5)~~(6) "Maker" means a person who signs or is identified in a
2 note as a person undertaking to pay.

3 ~~(6)~~(7) "Order" means a written instruction to pay money signed
4 by the person giving the instruction. The instruction may be addressed to
5 any person, including the person giving the instruction, or to one (1) or
6 more persons jointly or in the alternative but not in succession. An
7 authorization to pay is not an order unless the person authorized to pay is
8 also instructed to pay.

9 ~~(7)~~(9) "Ordinary care" in the case of a person engaged in
10 business means observance of reasonable commercial standards, prevailing in
11 the area in which the person is located, with respect to the business in
12 which the person is engaged. In the case of a bank that takes an instrument
13 for processing for collection or payment by automated means, reasonable
14 commercial standards do not require the bank to examine the instrument if the
15 failure to examine does not violate the bank's prescribed procedures and the
16 bank's procedures do not vary unreasonably from general banking usage not
17 disapproved by this chapter or chapter 4.

18 ~~(8)~~(9) "Party" means a party to an instrument.

19 (10) "Principal obligor," with respect to an instrument, means
20 the accommodated party or any other party to the instrument against whom a
21 secondary obligor has recourse under this article.

22 ~~(9)~~(11) "Promise" means a written undertaking to pay money
23 signed by the person undertaking to pay. An acknowledgment of an obligation
24 by the obligor is not a promise unless the obligor also undertakes to pay the
25 obligation.

26 ~~(10)~~(12) "Prove" with respect to a fact means to meet the burden
27 of establishing the fact (§ 4-1-201(8)).

28 (13) "Record" means information that is inscribed on a tangible
29 medium or that is stored in an electronic or other medium and is retrievable
30 in perceivable form.

31 ~~(11)~~(14) "Remitter" means a person who purchases an instrument
32 from its issuer if the instrument is payable to an identified person other
33 than the purchaser.

34 (15) "Remotely-created item" means an item drawn on an account,
35 which is not created by the payor bank and does not bear a handwritten or
36 facsimile signature purporting to be the signature of the drawer.

1 (16) "Secondary obligor," with respect to an instrument, means
2 (a) an indorser or an accommodation party, (b) a drawer having the obligation
3 described in § 4-3-414(d), or (c) any other party to the instrument that has
4 recourse against another party to the instrument pursuant to § 4-3-116(b).

5 (b) Other definitions applying to this chapter and the sections in
6 which they appear are:

7
8 "Acceptance". Section 4-3-409.

9
10 "Accommodated party". Section 4-3-419.

11
12 "Accommodation party". Section 4-3-419.

13
14 "Account". Section 4-4-104.

15
16 "Alteration". Section 4-3-407.

17
18 "Anomalous indorsement". Section 4-3-205.

19
20 "Blank indorsement". Section 4-3-205.

21
22 "Cashier's check". Section 4-3-104.

23
24 "Certificate of deposit". Section 4-3-104.

25
26 "Certified check". Section 4-3-409.

27
28 "Check". Section 4-3-104.

29
30 "Consideration". Section 4-3-303.

31
32 "Draft". Section 4-3-104.

33
34 "Holder in due course". Section 4-3-302.

35
36 "Incomplete instrument". Section 4-3-115.

1
2 "Indorsement". Section 4-3-204.
3
4 "Indorser". Section 4-3-204.
5
6 "Instrument". Section 4-3-104.
7
8 "Issue". Section 4-3-105.
9
10 "Issuer". Section 4-3-105.
11
12 "Negotiable instrument". Section 4-3-104.
13
14 "Negotiation". Section 4-3-201.
15
16 "Note". Section 4-3-104.
17
18 "Payable at a definite time". Section 4-3-108.
19
20 "Payable on demand". Section 4-3-108.
21
22 "Payable to bearer". Section 4-3-109.
23
24 "Payable to order". Section 4-3-109.
25
26 "Payment". Section 4-3-602.
27
28 "Person entitled to enforce". Section 4-3-301.
29
30 "Presentment". Section 4-3-501.
31
32 "Reacquisition". Section 4-3-207.
33
34 "Special indorsement". Section 4-3-205.
35
36 "Teller's check". Section 4-3-104.

1
2 "Transfer of instrument". Section 4-3-203.

3
4 "Traveler's check". Section 4-3-104.

5
6 "Value". Section 4-3-303.

7
8 SECTION 28. Arkansas Code § 4-3-106(a) and (b), concerning
9 unconditional promises or orders, are amended to read as follows:

10 (a) Except as provided in this section, for the purposes of § 4-3-
11 104(a), a promise or order is unconditional unless it states (i) an express
12 condition to payment, (ii) that the promise or order is subject to or
13 governed by another ~~writing~~ record, or (iii) that rights or obligations with
14 respect to the promise or order are stated in another ~~writing~~ record. A
15 reference to another ~~writing~~ record does not of itself make the promise or
16 order conditional.

17 (b) A promise or order is not made conditional (i) by a reference to
18 another ~~writing~~ record for a statement of rights with respect to collateral,
19 prepayment, or acceleration, or (ii) because payment is limited to resort to
20 a particular fund or source.

21
22 SECTION 29. Arkansas Code § 4-3-116(c), concerning joint and several
23 liability and contribution is repealed.

24 ~~(c) Discharge of one (1) party having joint and several liability by a~~
25 ~~person entitled to enforce the instrument does not affect the right under~~
26 ~~subsection (b) of a party having the same joint and several liability to~~
27 ~~receive contribution from the party discharged.~~

28
29 SECTION 30. Arkansas Code § 4-3-119 is amended to read as follows:

30 4-3-119. Notice of right to defend action.

31 In an action for breach of an obligation for which a third person is
32 answerable over pursuant to this chapter or chapter 4 the defendant may give
33 the third person ~~written~~ notice of the litigation in a record, and the person
34 notified may then give similar notice to any other person who is answerable
35 over. If the notice states (i) that the person notified may come in and
36 defend and (ii) that failure to do so will bind the person notified in an

1 action later brought by the person giving the notice as to any determination
2 of fact common to the two (2) litigations, the person notified is so bound
3 unless after seasonable receipt of the notice the person notified does come
4 in and defend.

5
6 SECTION 31. Arkansas Code § 4-3-305(a), concerning defenses and claims
7 in recoupment, is amended to read as follows:

8 (a) Except as ~~stated in subsection (b)~~ otherwise provided in this
9 section, the right to enforce the obligation of a party to pay an instrument
10 is subject to the following:

11 (1) a defense of the obligor based on (i) infancy of the obligor
12 to the extent it is a defense to a simple contract, (ii) duress, lack of
13 legal capacity, or illegality of the transaction which, under other law,
14 nullifies the obligation of the obligor, (iii) fraud that induced the obligor
15 to sign the instrument with neither knowledge nor reasonable opportunity to
16 learn of its character or its essential terms, or (iv) discharge of the
17 obligor in insolvency proceedings;

18 (2) a defense of the obligor stated in another section of this
19 chapter or a defense of the obligor that would be available if the person
20 entitled to enforce the instrument were enforcing a right to payment under a
21 simple contract; and

22 (3) a claim in recoupment of the obligor against the original
23 payee of the instrument if the claim arose from the transaction that gave
24 rise to the instrument; but the claim of the obligor may be asserted against
25 a transferee of the instrument only to reduce the amount owing on the
26 instrument at the time the action is brought.

27
28 SECTION 32. Arkansas Code § 4-3-305, concerning defenses and claims in
29 recoupment, is amended to add two additional subsections to read as follows:

30 (e) In a consumer transaction, if law other than this article
31 requires that an instrument include a statement to the effect that the rights
32 of a holder or transferee are subject to a claim or defense that the issuer
33 could assert against the original payee, and the instrument does not include
34 such a statement:

35 (1) the instrument has the same effect as if the
36 instrument included such a statement;

1 (2) the issuer may assert against the holder or transferee
2 all claims and defenses that would have been available if the instrument
3 included such a statement; and

4 (3) the extent to which claims may be asserted against the
5 holder or transferee is determined as if the instrument included such a
6 statement.

7 (f) This section is subject to law other than this chapter that
8 establishes a different rule for consumer transactions.

9
10 SECTION 33. Arkansas Code § 4-3-309(a), concerning enforcement of
11 lost, destroyed, or stole instruments is amended to read as follows:

12 (a) A person not in possession of an instrument is entitled to enforce
13 the instrument if:

14 ~~(i) the person was in possession of the instrument and~~

15 (1)(A) was entitled to enforce ~~it~~ the instrument when loss
16 of possession occurred; or

17 (B) has directly or indirectly acquired ownership of
18 the instrument from a person who was entitled to enforce the instrument when
19 loss of possession occurred;

20 ~~(ii)(2)~~ (2) the loss of possession was not the result of a transfer
21 by the person or a lawful seizure; and

22 ~~(iii)(3)~~ (3) the person cannot reasonably obtain possession of the
23 instrument because the instrument was destroyed, its whereabouts cannot be
24 determined, or it is in the wrongful possession of an unknown person or a
25 person that cannot be found or is not amenable to service of process.

26
27 SECTION 34. Arkansas Code Title 4, Chapter 3, Subchapter 3 is amended
28 to add an additional section to read as follows:

29 4-3-312. Lost, destroyed, or stolen cashier's check, teller's check,
30 or certified check.

31 (a) In this section:

32 (1) "Check" means a cashier's check, teller's check, or
33 certified check.

34 (2) "Claimant" means a person who claims the right to receive the
35 amount of a cashier's check, teller's check, or certified check that was
36 lost, destroyed, or stolen.

1 (3) "Declaration of loss" means a written statement, made in a
2 record under penalty of perjury, to the effect that (i) the declarer lost
3 possession of a check, (ii) the declarer is the drawer or payee of the check,
4 in the case of a certified check, or the remitter or payee of the check, in
5 the case of a cashier's check or teller's check, (iii) the loss of possession
6 was not the result of a transfer by the declarer or a lawful seizure, and
7 (iv) the declarer cannot reasonably obtain possession of the check because
8 the check was destroyed, its whereabouts cannot be determined, or it is in
9 the wrongful possession of an unknown person or a person that cannot be found
10 or is not amenable to service of process.

11 (4) "Obligated bank" means the issuer of a cashier's check or
12 teller's check or the acceptor of a certified check.

13 (b) A claimant may assert a claim to the amount of a check by a
14 communication to the obligated bank describing the check with reasonable
15 certainty and requesting payment of the amount of the check, if (i) the
16 claimant is the drawer or payee of a certified check or the remitter or payee
17 of a cashier's check or teller's check, (ii) the communication contains or is
18 accompanied by a declaration of loss of the claimant with respect to the
19 check, (iii) the communication is received at a time and in a manner
20 affording the bank a reasonable time to act on it before the check is paid,
21 and (iv) the claimant provides reasonable identification if requested by the
22 obligated bank. Delivery of a declaration of loss is a warranty of the truth
23 of the statements made in the declaration. If a claim is asserted in
24 compliance with this subsection, the following rules apply:

25 (1) The claim becomes enforceable at the later of (i) the time
26 the claim is asserted, or (ii) the 90th day following the date of the check,
27 in the case of a cashier's check or teller's check, or the 90th day following
28 the date of the acceptance, in the case of a certified check.

29 (2) Until the claim becomes enforceable, it has no legal effect
30 and the obligated bank may pay the check or, in the case of a teller's check,
31 may permit the drawee to pay the check. Payment to a person entitled to
32 enforce the check discharges all liability of the obligated bank with respect
33 to the check.

34 (3) If the claim becomes enforceable before the check is
35 presented for payment, the obligated bank is not obliged to pay the check

36 (4) When the claim becomes enforceable, the obligated bank

1 becomes obliged to pay the amount of the check to the claimant if payment of
2 the check has not been made to a person entitled to enforce the check.
3 Subject to § 4-4-302(a)(1), payment to the claimant discharges all liability
4 of the obligated bank with respect to the check.

5 (c) If the obligated bank pays the amount of a check to a claimant
6 under subsection (b)(4) and the check is presented for payment by a person
7 having rights of a holder in due course, the claimant is obliged to (i)
8 refund the payment to the obligated bank if the check is paid, or (ii) pay
9 the amount of the check to the person having rights of a holder in due course
10 if the check is dishonored.

11 (d) If a claimant has the right to assert a claim under subsection (b)
12 and is also a person entitled to enforce a cashier's check, teller's check,
13 or certified check which is lost, destroyed, or stolen, the claimant may
14 assert rights with respect to the check either under this section or § 4-3-
15 309.

16
17 SECTION 35. Arkansas Code § 4-3-416(a), concerning transfer of
18 warranties, is amended to read as follows:

19 (a) A person who transfers an instrument for consideration warrants to
20 the transferee and, if the transfer is by indorsement, to any subsequent
21 transferee that:

22 (1) the warrantor is a person entitled to enforce the
23 instrument;

24 (2) all signatures on the instrument are authentic and
25 authorized;

26 (3) the instrument has not been altered;

27 (4) the instrument is not subject to a defense or claim in
28 recoupment of any party which can be asserted against the warrantor; ~~and~~

29 (5) the warrantor has no knowledge of any insolvency proceeding
30 commenced with respect to the maker or acceptor or, in the case of an
31 unaccepted draft, the drawer; and

32 (6) with respect to a remotely-created item, that the person on
33 whose account the item is drawn authorized the issuance of the item in the
34 amount for which the item is drawn.

35
36 SECTION 36. Arkansas Code § 4-3-416, concerning transfer of

1 warranties, is amended to add an additional subsection to read as follows:

2 (e) If the warranty in paragraph (6) of subsection (a) is not given by
3 a transferor under applicable conflict of laws rules, then the warranty in
4 paragraph (6) is not given to that transferor when that transferor is a
5 transferee.

6
7 SECTION 37. Arkansas Code § 4-3-417(a), concerning presentment
8 warranties, is amended to read as follows:

9 (a) If an unaccepted draft is presented to the drawee for payment or
10 acceptance and the drawee pays or accepts the draft, (i) the person obtaining
11 payment or acceptance, at the time of presentment, and (ii) a previous
12 transferor of the draft, at the time of transfer, warrant to the drawee
13 making payment or accepting the draft in good faith that:

14 (1) the warrantor is, or was, at the time the warrantor
15 transferred the draft, a person entitled to enforce the draft or authorized
16 to obtain payment or acceptance of the draft on behalf of a person entitled
17 to enforce the draft;

18 (2) the draft has not been altered; ~~and~~

19 (3) the warrantor has no knowledge that the signature of the
20 drawer of the draft is unauthorized; and

21 (4) with respect to any remotely-created item, that the person
22 on whose account the item is drawn authorized the issuance of the item in the
23 amount for which the item is drawn.

24
25 SECTION 38. Arkansas Code § 4-3-419(e), concerning instruments signed
26 for accommodation, is amended to read as follows:

27 ~~(e) An accommodation party who pays the instrument is entitled to~~
28 ~~reimbursement from the accommodated party and is entitled to enforce the~~
29 ~~instrument against the accommodated party. An accommodated party who pays~~
30 ~~the instrument has no right of recourse against, and is not entitled to~~
31 ~~contribution from, an accommodation party. If the signature of a party to an~~
32 instrument is accompanied by words indicating that the party guarantees
33 payment or the signer signs the instrument as an accommodation party in some
34 other manner that does not unambiguously indicate an intention to guarantee
35 collection rather than payment, the signer is obliged to pay the amount due
36 on the instrument to a person entitled to enforce the instrument in the same

1 circumstances as the accommodated party would be obliged, without prior
2 resort to the accommodated party by the person entitled to enforce the
3 instrument.

4
5 SECTION 39. Arkansas Code § 4-3-419, concerning instruments signed for
6 accommodation, is amended to add an additional subsection to read as follows:

7 (f) An accommodation party who pays the instrument is entitled to
8 reimbursement from the accommodated party and is entitled to enforce the
9 instrument against the accommodated party. In proper circumstances, an
10 accommodation party may obtain relief that requires the accommodated party to
11 perform its obligations on the instrument. An accommodated party that pays
12 the instrument has no right of recourse against, and is not entitled to
13 contribution from, an accommodation party.

14
15 SECTION 40. Arkansas Code § 4-3-602 is amended to read as follows:
16 4-3-602. Payment.

17 (a) Subject to subsection ~~(b)~~(e), an instrument is paid to the extent
18 payment is made ~~(i)~~ by or on behalf of a party obliged to pay the instrument,
19 and ~~(ii)~~ to a person entitled to enforce the instrument. ~~To the extent of~~
20 ~~the payment, the obligation of the party obliged to pay the instrument is~~
21 ~~discharged even though payment is made with knowledge of a claim to the~~
22 ~~instrument under § 4-3-306 by another person.~~

23 (b) Subject to subsection (e), a note is paid to the extent payment is
24 made by or on behalf of a party obliged to pay the note to a person that
25 formerly was entitled to enforce the note only if at the time of the payment
26 the party obliged to pay has not received adequate notification that the note
27 has been transferred and that payment is to be made to the transferee. A
28 notification is adequate only if it is signed by the transferor or the
29 transferee; reasonably identifies the transferred note; and provides an
30 address at which payments subsequently are to be made. Upon request, a
31 transferee shall seasonably furnish reasonable proof that the note has been
32 transferred. Unless the transferee complies with the request, a payment to
33 the person that formerly was entitled to enforce the note is effective for
34 purposes of subsection (c) even if the party obliged to pay the note has
35 received a notification under this subsection (b).

36 (c) Subject to subsection (e), to the extent of the payment, a payment

1 under subsections (a) and (b), the obligation of the party obliged to pay the
2 instrument is discharged even though payment is made with knowledge of a
3 claim to the instrument under § 4-3-306 by another person.

4 (d) Subject to subsection (e), a transferee, or any party that has
5 acquired rights in the instrument directly or indirectly from a transferee,
6 including any such party that has rights as a holder in due course, is deemed
7 to have notice of any payment that is made under subsection (b) after the
8 date that the note is transferred to the transferee but before the party
9 obliged to pay the note receives adequate notification of the transfer.

10 ~~(b)(e)~~ The obligation of a party to pay the instrument is not
11 discharged under ~~subsection (a)~~ subsections (a) through (d) if:

12 (1) a claim to the instrument under § 4-3-306 is enforceable
13 against the party receiving payment and (i) payment is made with knowledge by
14 the payor that payment is prohibited by injunction or similar process of a
15 court of competent jurisdiction, or (ii) in the case of an instrument other
16 than a cashier's check, teller's check, or certified check, the party making
17 payment accepted, from the person having a claim to the instrument, indemnity
18 against loss resulting from refusal to pay the person entitled to enforce the
19 instrument; or

20 (2) the person making payment knows that the instrument is a
21 stolen instrument and pays a person it knows is in wrongful possession of the
22 instrument.

23 (f) As used in this section, "signed," with respect to a record that
24 is not a writing, includes the attachment to or logical association with the
25 record of an electronic symbol, sound, or process with the present intent to
26 adopt or accept the record.

27
28 SECTION 41. Arkansas Code § 4-3-604 is amended to read as follows:

29 4-3-604. Discharge by cancellation or renunciation.

30 (a) A person entitled to enforce an instrument, with or without
31 consideration, may discharge the obligation of a party to pay the instrument
32 (i) by an intentional voluntary act, such as surrender of the instrument to
33 the party, destruction, mutilation, or cancellation of the instrument,
34 cancellation or striking out of the party's signature, or the addition of
35 words to the instrument indicating discharge, or (ii) by agreeing not to sue
36 or otherwise renouncing rights against the party by a signed ~~writing~~ record.

1 (b) Cancellation or striking out of an indorsement pursuant to
2 subsection (a) does not affect the status and rights of a party derived from
3 the indorsement.

4 (c) In this section, "signed," with respect to a record that is not a
5 writing, includes the attachment to or logical association with the record of
6 an electronic symbol, sound, or process with the present intent to adopt or
7 accept the record.

8
9 SECTION 42. Arkansas Code § 4-3-605 is amended to read as follows:

10 4-3-605. ~~Discharge of indorsers and accommodation parties~~ Discharge of
11 secondary obligors.

12 ~~(a) In this section, the term "indorser" includes a drawer having the~~
13 ~~obligation described in § 4-3-414(d).~~

14 ~~(b) Discharge, under § 4-3-604, of the obligation of a party to pay an~~
15 ~~instrument does not discharge the obligation of an indorser or accommodation~~
16 ~~party having a right of recourse against the discharged party.~~

17 ~~(c) If a person entitled to enforce an instrument agrees, with or~~
18 ~~without consideration, to an extension of the due date of the obligation of a~~
19 ~~party to pay the instrument, the extension discharges an indorser or~~
20 ~~accommodation party having a right of recourse against the party whose~~
21 ~~obligation is extended to the extent the indorser or accommodation party~~
22 ~~proves that the extension caused loss to the indorser or accommodation party~~
23 ~~with respect to the right of recourse.~~

24 ~~(d) If a person entitled to enforce an instrument agrees, with or~~
25 ~~without consideration, to a material modification of the obligation of a~~
26 ~~party other than an extension of the due date, the modification discharges~~
27 ~~the obligation of an indorser or accommodation party having a right of~~
28 ~~recourse against the person whose obligation is modified to the extent the~~
29 ~~modification causes loss to the indorser or accommodation party with respect~~
30 ~~to the right of recourse. The loss suffered by the indorser or accommodation~~
31 ~~party as a result of the modification is equal to the amount of the right of~~
32 ~~recourse unless the person enforcing the instrument proves that no loss was~~
33 ~~caused by the modification or that the loss caused by the modification was an~~
34 ~~amount less than the amount of the right of recourse.~~

35 ~~(e) If the obligation of a party to pay an instrument is secured by an~~
36 ~~interest in collateral and a person entitled to enforce the instrument~~

1 ~~impairs the value of the interest in collateral, the obligation of an~~
2 ~~indorser or accommodation party having a right of recourse against the~~
3 ~~obligor is discharged to the extent of the impairment. The value of an~~
4 ~~interest in collateral is impaired to the extent (i) the value of the~~
5 ~~interest is reduced to an amount less than the amount of the right of~~
6 ~~recourse of the party asserting discharge, or (ii) the reduction in value of~~
7 ~~the interest causes an increase in the amount by which the amount of the~~
8 ~~right of recourse exceeds the value of the interest. The burden of proving~~
9 ~~impairment is on the party asserting discharge.~~

10 ~~(f) If the obligation of a party is secured by an interest in~~
11 ~~collateral not provided by an accommodation party and a person entitled to~~
12 ~~enforce the instrument impairs the value of the interest in collateral, the~~
13 ~~obligation of any party who is jointly and severally liable with respect to~~
14 ~~the secured obligation is discharged to the extent the impairment causes the~~
15 ~~party asserting discharge to pay more than that party would have been obliged~~
16 ~~to pay, taking into account rights of contribution, if impairment had not~~
17 ~~occurred. If the party asserting discharge is an accommodation party not~~
18 ~~entitled to discharge under subsection (e), the party is deemed to have a~~
19 ~~right to contribution based on joint and several liability rather than a~~
20 ~~right to reimbursement. The burden of proving impairment is on the party~~
21 ~~asserting discharge.~~

22 ~~(g) Under subsection (e) or (f), impairing value of an interest in~~
23 ~~collateral includes (i) failure to obtain or maintain perfection or~~
24 ~~recordation of the interest in collateral, (ii) release of collateral without~~
25 ~~substitution of collateral of equal value, (iii) failure to perform a duty to~~
26 ~~preserve the value of collateral owed, under chapter 9 of this subtitle or~~
27 ~~other law, to a debtor or surety or other person secondarily liable, or (iv)~~
28 ~~failure to comply with applicable law in disposing of collateral.~~

29 ~~(h) An accommodation party is not discharged under subsections (e),~~
30 ~~(d), or (c) unless the person entitled to enforce the instrument knows of the~~
31 ~~accommodation or has notice under § 4-3-419(c) that the instrument was signed~~
32 ~~for accommodation.~~

33 ~~(i) A party is not discharged under this section if: (i) The party~~
34 ~~asserting discharge consents to the event or conduct that is the basis of the~~
35 ~~discharge; or (ii) The instrument or a separate agreement of the party~~
36 ~~provides for waiver of discharge under this section either specifically or by~~

1 ~~general language indicating that parties waive defenses based on suretyship~~
2 ~~or impairment of collateral.~~

3 (a) If a person entitled to enforce an instrument releases the
4 obligation of a principal obligor in whole or in part, and another party to
5 the instrument is a secondary obligor with respect to the obligation of that
6 principal obligor, the following rules apply:

7 (1) any obligations of the principal obligor to the secondary
8 obligor with respect to any previous payment by the secondary obligor are not
9 affected. Unless the terms of the release preserve the secondary obligor's
10 recourse, the principal obligor is discharged, to the extent of the release,
11 from any other duties to the secondary obligor under this article.

12 (2) unless the terms of the release provide that the person
13 entitled to enforce the instrument retains the right to enforce the
14 instrument against the secondary obligor, the secondary obligor is discharged
15 to the same extent as the principal obligor from any unperformed portion of
16 its obligation on the instrument. If the instrument is a check and the
17 obligation of the secondary obligor is based on an indorsement of the check,
18 the secondary obligor is discharged without regard to the language or
19 circumstances of the discharge or other release.

20 (3) if the secondary obligor is not discharged under paragraph
21 (2), the secondary obligor is discharged to the extent of the value of the
22 consideration for the release, and to the extent that the release would
23 otherwise cause the secondary obligor a loss.

24 (b) If a person entitled to enforce an instrument grants a principal
25 obligor an extension of the time at which one or more payments are due on the
26 instrument and another party to the instrument is a secondary obligor with
27 respect to the obligation of that principal obligor, the following rules
28 apply:

29 (1) any obligations of the principal obligor to the secondary
30 obligor with respect to any previous payment by the secondary obligor are not
31 affected. Unless the terms of the extension preserve the secondary obligor's
32 recourse, the extension correspondingly extends the time for performance of
33 any other duties owed to the secondary obligor by the principal obligor under
34 this article.

35 (2) the secondary obligor is discharged to the extent that the
36 extension would otherwise cause the secondary obligor a loss.

1 (3) to the extent that the secondary obligor is not discharged
2 under paragraph (2), the secondary obligor may perform its obligations to a
3 person entitled to enforce the instrument as if the time for payment had not
4 been extended or, unless the terms of the extension provide that the person
5 entitled to enforce the instrument retains the right to enforce the
6 instrument against the secondary obligor as if the time for payment had not
7 been extended, treat the time for performance of its obligations as having
8 been extended correspondingly.

9 (c) If a person entitled to enforce an instrument agrees, with or
10 without consideration, to a modification of the obligation of a principal
11 obligor other than a complete or partial release or an extension of the due
12 date and another party to the instrument is a secondary obligor with respect
13 to the obligation of that principal obligor, the following rules apply:

14 (1) any obligations of the principal obligor to the secondary
15 obligor with respect to any previous payment by the secondary obligor are not
16 affected. The modification correspondingly modifies any other duties owed to
17 the secondary obligor by the principal obligor under this article.

18 (2) the secondary obligor is discharged from any unperformed
19 portion of its obligation to the extent that the modification would otherwise
20 cause the secondary obligor a loss.

21 (3) to the extent that the secondary obligor is not discharged
22 under paragraph (2), the secondary obligor may satisfy its obligation on the
23 instrument as if the modification had not occurred, or treat its obligation
24 on the instrument as having been modified correspondingly.

25 (d) If the obligation of a principal obligor is secured by an interest
26 in collateral, another party to the instrument is a secondary obligor with
27 respect to that obligation, and a person entitled to enforce the instrument
28 impairs the value of the interest in collateral, the obligation of the
29 secondary obligor is discharged to the extent of the impairment. The value
30 of an interest in collateral is impaired to the extent the value of the
31 interest is reduced to an amount less than the amount of the recourse of the
32 secondary obligor, or the reduction in value of the interest causes an
33 increase in the amount by which the amount of the recourse exceeds the value
34 of the interest. For purposes of this subsection, impairing the value of an
35 interest in collateral includes failure to obtain or maintain perfection or
36 recordation of the interest in collateral, release of collateral without

1 substitution of collateral of equal value or equivalent reduction of the
2 underlying obligation, failure to perform a duty to preserve the value of
3 collateral owed, under Article 9 or other law, to a debtor or other person
4 secondarily liable, and failure to comply with applicable law in disposing of
5 or otherwise enforcing the interest in collateral.

6 (e) A secondary obligor is not discharged under subdivision (a)(3) or
7 subsections (b), (c), or (d) unless the person entitled to enforce the
8 instrument knows that the person is a secondary obligor or has notice under §
9 4-3-419(c) that the instrument was signed for accommodation.

10 (f) A secondary obligor is not discharged under this section if the
11 secondary obligor consents to the event or conduct that is the basis of the
12 discharge, or the instrument or a separate agreement of the party provides
13 for waiver of discharge under this section specifically or by general
14 language indicating that parties waive defenses based on suretyship or
15 impairment of collateral. Unless the circumstances indicate otherwise,
16 consent by the principal obligor to an act that would lead to a discharge
17 under this section constitutes consent to that act by the secondary obligor
18 if the secondary obligor controls the principal obligor or deals with the
19 person entitled to enforce the instrument on behalf of the principal obligor.

20 (g) A release or extension preserves a secondary obligor's recourse if
21 the terms of the release or extension provide that:

22 (1) the person entitled to enforce the instrument retains the
23 right to enforce the instrument against the secondary obligor; and

24 (2) the recourse of the secondary obligor continues as if the
25 release or extension had not been granted.

26 (h) Except as otherwise provided in subsection (i), a secondary
27 obligor asserting discharge under this section has the burden of persuasion
28 both with respect to the occurrence of the acts alleged to harm the secondary
29 obligor and loss or prejudice caused by those acts.

30 (i) If the secondary obligor demonstrates prejudice caused by an
31 impairment of its recourse, and the circumstances of the case indicate that
32 the amount of loss is not reasonably susceptible of calculation or requires
33 proof of facts that are not ascertainable, it is presumed that the act
34 impairing recourse caused a loss or impairment equal to the liability of the
35 secondary obligor on the instrument. In that event, the burden of persuasion
36 as to any lesser amount of the loss is on the person entitled to enforce the

1 instrument.

2

3 SECTION 43. Arkansas Code § 4-4-104(b) and (c), concerning a index of
4 definitions, are amended to read as follows:

5 (b) Other definitions applying to this chapter and the sections in
6 which they appear are:

7

8 "Agreement for electronic presentment". Section 4-4-110.

9

10 ~~"Bank". Section 4-4-105.~~ [RESERVED]

11

12 "Collecting bank". Section 4-4-105.

13

14 "Depository bank". Section 4-4-105.

15

16 "Intermediary bank". Section 4-4-105.

17

18 "Payor bank". Section 4-4-105.

19

20 "Presenting bank". Section 4-4-105.

21

22 "Presentment notice". Section 4-4-110.

23

24 (c) The following definitions in other chapters of this subtitle apply
25 to this chapter:

26

27 "Acceptance". Section 4-3-409.

28

29 "Alteration". Section 4-3-407.

30

31 "Cashier's check". Section 4-3-104.

32

33 "Certificate of deposit". Section 4-3-104.

34

35 "Certified check". Section 4-3-409.

36

- 1 "Check". Section 4-3-104.
- 2
- 3 "Good faith". Section 4-3-103.
- 4
- 5 "Holder in due course". Section 4-3-302.
- 6
- 7 "Instrument". Section 4-3-104.
- 8
- 9 "Notice of dishonor". Section 4-3-503.
- 10
- 11 "Order". Section 4-3-103.
- 12
- 13 "Ordinary care". Section 4-3-103.
- 14
- 15 "Person entitled to enforce". Section 4-3-301.
- 16
- 17 "Presentment". Section 4-3-501.
- 18
- 19 "Promise". Section 4-3-103.
- 20
- 21 "Prove". Section 4-3-103.
- 22
- 23 "Record". Section 4-3-103.
- 24
- 25 "Remotely-created item". Section 4-3-103.
- 26
- 27 "Teller's check". Section 4-3-104.
- 28
- 29 "Unauthorized signature". Section 4-3-403.
- 30

31 SECTION 44. The catchline to Arkansas Code § 4-4-105 is amended to
32 read as follows:

33 4-4-105. ~~"Bank"~~ ~~"Depository bank"~~ ~~"Payor bank"~~ ~~"Intermediary~~
34 ~~bank"~~ ~~"Collecting bank"~~ ~~"Presenting bank"~~ Definitions of types of banks.

35
36 SECTION 45. Arkansas Code § 4-4-207(a), concerning transfer

1 warranties, is amended to read as follows:

2 (a) A customer or collecting bank that transfers an item and receives
3 a settlement or other consideration warrants to the transferee and to any
4 subsequent collecting bank that:

5 (1) the warrantor is a person entitled to enforce the item;

6 (2) all signatures on the item are authentic and authorized;

7 (3) the item has not been altered;

8 (4) the item is not subject to a defense or claim in recoupment
9 (§ 4-3-305(a)) of any party that can be asserted against the warrantor; ~~and~~

10 (5) the warrantor has no knowledge of any insolvency proceeding
11 commenced with respect to the maker or acceptor or, in the case of an
12 unaccepted draft, the drawer; and

13 (6) with respect to any remotely-created item, that the person
14 on whose account the item is drawn authorized the issuance of the item in the
15 amount for which the item is drawn.

16

17 SECTION 46. Arkansas Code § 4-4-207, concerning transfer warranties,
18 is amended to add an additional subsection to read as follows:

19 (f) If the warranty in paragraph (6) of subsection (a) is not given by
20 a transferor under applicable conflict of laws rules, then the warranty in
21 paragraph (6) is not given to that transferor when that transferor is a
22 transferee.

23

24 SECTION 47. Arkansas Code § 4-4-208(a), concerning presentment
25 warranties, is amended to read as follows:

26 (a) If an unaccepted draft is presented to the drawee for payment or
27 acceptance and the drawee pays or accepts the draft, (i) the person obtaining
28 payment or acceptance, at the time of presentment, and (ii) a previous
29 transferor of the draft, at the time of transfer, warrant to the drawee that
30 pays or accepts the draft in good faith that:

31 (1) the warrantor is, or was, at the time the warrantor
32 transferred the draft, a person entitled to enforce the draft or authorized
33 to obtain payment or acceptance of the draft on behalf of a person entitled
34 to enforce the draft;

35 (2) the draft has not been altered; and

36 (3) the warrantor has no knowledge that the signature of the

1 purported drawer of the draft is unauthorized,; and

2 (4) with respect to any remotely-created item, that the person
3 on whose account the item is drawn authorized the issuance of the item in the
4 amount for which the item is drawn.

5
6 SECTION 48. Arkansas Code § 4-4-212(a), concerning payment by notice
7 of a item not payable, through, or at a bank, is amended to read as follows:

8 (a) Unless otherwise instructed, a collecting bank may present an item
9 not payable by, through, or at a bank by sending to the party to accept or
10 pay a ~~written~~ record providing notice that the bank holds the item for
11 acceptance or payment. The notice must be sent in time to be received on or
12 before the day when presentment is due and the bank must meet any requirement
13 of the party to accept or pay under § 4-3-501 by the close of the bank's next
14 banking day after it knows of the requirement.

15
16 SECTION 49. Arkansas Code § 4-4-301(a), concerning deferred posting,
17 recovery of payment by return of items, time of dishonor, and return of items
18 by payor bank, is amended to read as follows:

19 (a) If a payor bank settles for a demand item other than a documentary
20 draft presented otherwise than for immediate payment over the counter before
21 midnight of the banking day of receipt, the payor bank may revoke the
22 settlement and recover the settlement if, before it has made final payment
23 and before its midnight deadline, it:

24 (1) returns the item; ~~or~~

25 (2) returns an image of the item, if the party to which the
26 return is made has entered into an agreement to accept an image as a return
27 of the item and the image is returned in accordance with that agreement; or

28 ~~(2)-(3)~~ sends written a record providing notice of dishonor or
29 nonpayment if the item is unavailable for return.

30
31 SECTION 50. Arkansas Code § 4-4-403(b), concerning the customer's
32 right to stop payment and burden of proof of loss, is amended to read as
33 follows:

34 (b) A stop-payment order is effective for six (6) months, but it
35 lapses after fourteen (14) calendar days if the original order was oral and
36 was not confirmed in ~~writing~~ a record within that period. A stop-payment

1 order may be renewed for additional six-month periods by a ~~writing~~ record
2 given to the bank within a period during which the stop-payment order is
3 effective.

4
5 SECTION 51. Arkansas Code § 4-4A-105(a), concerning definitions, is
6 amended to read as follows:

7 (a) In this chapter:

8 (1) "Authorized account" means a deposit account of a customer in a
9 bank designated by the customer as a source of payment of payment orders
10 issued by the customer to the bank. If a customer does not so designate an
11 account, any account of the customer is an authorized account if payment of a
12 payment order from that account is not inconsistent with a restriction on the
13 use of that account.

14 (2) "Bank" means a person engaged in the business of banking and
15 includes a savings bank, savings and loan association, credit union, and
16 trust company. A branch or separate office of a bank is a separate bank for
17 purposes of this chapter.

18 (3) "Customer" means a person, including a bank, having an account
19 with a bank or from whom a bank has agreed to receive payment orders.

20 (4) "Funds-transfer business day" of a receiving bank means the part
21 of a day during which the receiving bank is open for the receipt, processing,
22 and transmittal of payment orders and cancellations and amendments of payment
23 orders.

24 (5) "Funds-transfer system" means a wire transfer network, automated
25 clearinghouse, or other communication system of a clearinghouse or other
26 association of banks through which a payment order by a bank may be
27 transmitted to the bank to which the order is addressed.

28 (6) ~~"Good faith" means honesty in fact and the observance of~~
29 ~~reasonable commercial standards of fair dealing.~~ [Reserved]

30 (7) "Prove" with respect to a fact means to meet the burden of
31 establishing the fact (§ ~~4-1-201(8)~~ 4-1-201(b)(8)).

32
33 SECTION 52. Arkansas Code § 4-4A-106 is amended to read as follows:
34 4-4A-106. Time payment order is received.

35 (a) The time of receipt of a payment order or communication cancelling
36 or amending a payment order is determined by the rules applicable to receipt

1 of a notice stated in § ~~4-1-201(27)~~ 4-1-202. A receiving bank may fix a cut-
2 off time or times on a funds-transfer business day for the receipt and
3 processing of payment orders and communications cancelling or amending
4 payment orders. Different cut-off times may apply to payment orders,
5 cancellations, or amendments, or to different categories of payment orders,
6 cancellations, or amendments. A cut-off time may apply to senders generally
7 or different cut-off times may apply to different senders or categories of
8 payment orders. If a payment order or communication cancelling or amending a
9 payment order is received after the close of a funds-transfer business day or
10 after the appropriate cut-off time on a funds-transfer business day, the
11 receiving bank may treat the payment order or communication as received at
12 the opening of the next funds-transfer business day.

13 (b) If this chapter refers to an execution date or payment date or
14 states a day on which a receiving bank is required to take action, and the
15 date or day does not fall on a funds-transfer business day, the next day that
16 is a funds-transfer business day is treated as the date or day stated, unless
17 the contrary is stated in this chapter.

18

19 SECTION 53. Arkansas Code § 4-4A-204 is amended to read as follows:

20 4-4A-204. Refund of payment and duty of customer to report with respect
21 to unauthorized payment order.

22 (a) If a receiving bank accepts a payment order issued in the name of
23 its customer as sender which is (i) not authorized and not effective as the
24 order of the customer under § 4-4A-202, or (ii) not enforceable, in whole or
25 in part, against the customer under § 4-4A-203, the bank shall refund any
26 payment of the payment order received from the customer to the extent the
27 bank is not entitled to enforce payment and shall pay interest on the
28 refundable amount calculated from the date the bank received payment to the
29 date of the refund. However, the customer is not entitled to interest from
30 the bank on the amount to be refunded if the customer fails to exercise
31 ordinary care to determine that the order was not authorized by the customer
32 and to notify the bank of the relevant facts within a reasonable time not
33 exceeding ninety (90) days after the date the customer received notification
34 from the bank that the order was accepted or that the customer's account was
35 debited with respect to the order. The bank is not entitled to any recovery
36 from the customer on account of a failure by the customer to give

1 notification as stated in this section.

2 (b) Reasonable time under subsection (a) may be fixed by agreement as
3 stated in § ~~4-1-204(1)~~ 4-1-302(b), but the obligation of a receiving bank to
4 refund payment as stated in subsection (a) may not otherwise be varied by
5 agreement.

6

7 SECTION 54. Arkansas Code § 4-5-103 is amended to read as follows:
8 4-5-103. Scope.

9 (a) This chapter applies to letters of credit and to certain rights
10 and obligations arising out of transactions involving letters of credit.

11 (b) The statement of a rule in this chapter does not by itself
12 require, imply, or negate application of the same or a different rule to a
13 situation not provided for, or to a person not specified, in this chapter.

14 (c) With the exception of this subsection, subsections (a) and (d) of
15 this section, §§ 4-5-102(a)(9) and (10), 4-5-106(d), and 4-5-114(d), and
16 except to the extent prohibited in §§ ~~4-1-102(3)~~ 4-1-302 and 4-5-117(d), the
17 effect of this chapter may be varied by agreement or by a provision stated or
18 incorporated by reference in an undertaking. A term in an agreement or
19 undertaking generally excusing liability or generally limiting remedies for
20 failure to perform obligations is not sufficient to vary obligations
21 prescribed by this chapter.

22 (d) Rights and obligations of an issuer to a beneficiary or a
23 nominated person under a letter of credit are independent of the existence,
24 performance, or nonperformance of a contract or arrangement out of which the
25 letter of credit arises or which underlies it, including contracts or
26 arrangements between the issuer and the applicant and between the applicant
27 and the beneficiary.

28

29 SECTION 55. Arkansas Code § 4-8-102(a), concerning definitions
30 applicable to investment securities, is amended to read as follows:

31 (a) In this chapter:

32 (1) "Adverse claim" means a claim that a claimant has a property
33 interest in a financial asset and that it is a violation of the rights of the
34 claimant for another person to hold, transfer, or deal with the financial
35 asset.

36 (2) "Bearer form," as applied to a certificated security, means

1 a form in which the security is payable to the bearer of the security
2 certificate according to its terms but not by reason of an indorsement.

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

6 (4) "Certificated security" means a security that is represented
7 by a certificate.

8 (5) "Clearing corporation" means:

9 (i) a person that is registered as a "clearing agency"
10 under the federal securities laws;

11 (ii) a federal reserve bank; or

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

18 (6) "Communicate" means to:

19 (i) send a signed writing; or

20 (ii) transmit information by any mechanism agreed upon by
21 the persons transmitting and receiving the information.

22 (7) "Entitlement holder" means a person identified in the
23 records of a securities intermediary as the person having a security
24 entitlement against the securities intermediary. If a person acquires a
25 security entitlement by virtue of § 4-8-501(b)(2) or (3), that person is the
26 entitlement holder.

27 (8) "Entitlement order" means a notification communicated to a
28 securities intermediary directing transfer or redemption of a financial asset
29 to which the entitlement holder has a security entitlement.

30 (9) "Financial asset," except as otherwise provided in § 4-8-
31 103, means:

32 (i) a security;

33 (ii) an obligation of a person or a share, participation,
34 or other interest in a person or in property or an enterprise of a person,
35 which is, or is of a type, dealt in or traded on financial markets, or which
36 is recognized in any area in which it is issued or dealt in as a medium for

1 investment; or

2 (iii) any property that is held by a securities
3 intermediary for another person in a securities account if the securities
4 intermediary has expressly agreed with the other person that the property is
5 to be treated as a financial asset under this chapter.

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

10 (10) ~~"Good faith," for purposes of the obligation of good faith~~
11 ~~in the performance or enforcement of contracts or duties within this chapter,~~
12 ~~means honesty in fact and the observance of reasonable commercial standards~~
13 ~~of fair dealing.~~ [Reserved]

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

18 (12) "Instruction" means a notification communicated to the
19 issuer of an uncertificated security which directs that the transfer of the
20 security be registered or that the security be redeemed.

21 (13) "Registered form," as applied to a certificated security,
22 means a form in which:

23 (i) the security certificate specifies a person entitled
24 to the security; and

25 (ii) a transfer of the security may be registered upon
26 books maintained for that purpose by or on behalf of the issuer, or the
27 security certificate so states.

28 (14) "Securities intermediary" means:

29 (i) a clearing corporation; or

30 (ii) a person, including a bank or broker, that in the
31 ordinary course of its business maintains securities accounts for others and
32 is acting in that capacity.

33 (15) "Security," except as otherwise provided in § 4-8-103,
34 means an obligation of an issuer or a share, participation, or other interest
35 in an issuer or in property or an enterprise of an issuer:

36 (i) which is represented by a security certificate in

1 bearer or registered form, or the transfer of which may be registered upon
2 books maintained for that purpose by or on behalf of the issuer;

3 (ii) which is one of a class or series or by its terms is
4 divisible into a class or series of shares, participations, interests, or
5 obligations; and

6 (iii) which:

7 (A) is, or is of a type, dealt in or traded on
8 securities exchanges or securities markets; or

9 (B) is a medium for investment and by its terms
10 expressly provides that it is a security governed by this chapter.

11 (16) "Security certificate" means a certificate representing a
12 security.

13 (17) "Security entitlement" means the rights and property
14 interest of an entitlement holder with respect to a financial asset specified
15 in part 5 (§ 4-8-501 et seq.).

16 (18) "Uncertificated security" means a security that is not
17 represented by a certificate.

18
19 SECTION 56. Arkansas Code § 4-9-102(a)(43), concerning the definition
20 of good faith in the context of secured transactions, is amended to read as
21 follows:

22 (43) ~~"Good faith" means honesty in fact and the observance of~~
23 ~~reasonable commercial standards of fair dealing.~~

24
25 /s/ Childers, et al

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28 APPROVED: 3/15/2005
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