

AN ACT

To amend Chapter 12 of Title 9, Title 11, and Chapter 2 of Title 18 of the Official Code of Georgia Annotated, relating to verdict and judgment, the commercial code, and debtor and creditor relations, respectively, so as to change provisions in uniform Acts relating to debts and other obligations; to repeal the "Georgia Foreign Money Judgments Recognition Act" and enact the "Uniform Foreign-Country Money Judgments Recognition Act"; to provide for definitions; to provide for applicability; to provide for standards for recognition of foreign-country judgments; to provide for jurisdiction; to provide for procedure; to provide for the effect of recognition of foreign-country judgments; to provide for a stay of proceedings pending an appeal; to provide for uniformity; to provide for situations not covered by the "Uniform Foreign-Country Money Judgments Recognition Act"; to update and modernize various statutes in the commercial code relating to commercial transactions in order to maintain uniformity in this state's statutes governing commercial transactions as recommended by the National Conference of Commissioners on Uniform State Laws; to revise, add, and move defined terms; to reorganize Article 1, relating to general provisions, of the "Uniform Commercial Code"; to make conforming amendments to other articles of the "Uniform Commercial Code" to provide for accurate cross-references to the revised "Uniform Commercial Code"; to amend Titles 7, 10, 40, and 52 of the Official Code of Georgia Annotated, relating to banking and finance, commerce and trade, motor vehicles and traffic, and waters of the state, ports, and watercraft, respectively, so as to make conforming cross-references to the revised "Uniform Commercial Code"; to repeal Article 6 of the Uniform Commercial Code, relating to bulk transfers, and make a conforming cross-reference; to revise the "Uniform Fraudulent Transfers Act" and enact the "Uniform Voidable Transactions Act"; to reform terminology and revise and add definitions; to provide the allocation of the burden of proof and define the standard of proof with respect to claims and defenses; to provide for governing law; to provide for the application to a series organization; to provide for uniformity of application and construction; to amend Article 3 of Chapter 3 of Title 9 and Code Section 17-14-17 of the Official Code of Georgia Annotated, relating to limitations on recovery for deficiencies connected with improvements to realty and resulting injuries and fraudulent transfers, respectively, so as to correct cross-references to the "Uniform Voidable Transactions Act"; to amend Article 6 of Chapter 12 of Title 9 of the Official Code of Georgia Annotated, relating to the "Uniform Enforcement of Foreign Judgments Law," so as to provide for applicability of certain provisions in Chapter 11 of Title 9, the "Georgia Civil Practice Act"; to amend Code Section 44-13-100 of the Official Code of Georgia Annotated, relating to exemptions for the

purposes of bankruptcy and intestate insolvent estates, so as to change provisions relating to an exemption; to provide for a short title; to provide for legislative intent; to provide for related matters; to provide for effective dates and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SHORT TITLE
SECTION 1-1.

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

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

PART II
"UNIFORM FOREIGN-COUNTRY
MONEY JUDGMENTS RECOGNITION ACT"
SECTION 2-1.

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

"ARTICLE 5

9-12-110.

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

9-12-111.

As used in this article, the term:

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

(A) The United States;

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

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

(2) 'Foreign-country judgment' means any judgment of a court of a foreign country.

9-12-112.

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

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

(2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

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

(1) A judgment for taxes;

(2) A fine or other penalty; or

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

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

9-12-113.

(a) Except as otherwise provided in subsection (b) of this Code section, a court of this state shall recognize a foreign-country judgment meeting the requirements of Code Section 9-12-112.

(b) A court of this state shall not recognize a foreign-country judgment if:

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

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

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

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

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

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

- (7) The judgment conflicts with another final and conclusive judgment;
 - (8) The proceedings in the foreign court were contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in such foreign court;
 - (9) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
 - (10) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to such judgment; or
 - (11) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.
- (c) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this Code section exists.

9-12-114.

- (a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if:
- (1) The defendant was served personally in the foreign country;
 - (2) The defendant voluntarily appeared in the proceedings other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant;
 - (3) Prior to the commencement of the proceedings, the defendant had agreed to submit to the jurisdiction of the foreign court, with respect to the subject matter involved;
 - (4) The defendant was domiciled in the foreign country when the proceedings were instituted or was a corporation or other form of business organization that had its principal place of business in or was organized under the laws of the foreign country;
 - (5) The defendant had a business office in the foreign country and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or
 - (6) The defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of such operation.
- (b) The courts of this state may recognize other bases of personal jurisdiction other than those listed in subsection (a) of this Code section.

9-12-115.

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

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

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

9-12-116.

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

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

9-12-117.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay the proceedings with regard to the foreign-country judgment until the time for appeal expires or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

9-12-118.

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

9-12-119.

This article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this article."

PART IIIA
NATIONAL CONFERENCE OF
COMMISSIONERS ON UNIFORM STATE LAWS
RECOMMENDED CHANGES TO THE COMMERCIAL CODE
SECTION 3A-1.

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

"ARTICLE 1
GENERAL PROVISIONS

Part 1

General Provisions

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

- (a) This Title 11 shall be known as and may be cited as the 'Uniform Commercial Code.'
- (b) This article shall be known as and may be cited as the 'Uniform Commercial Code – General Provisions.'

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

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

11-1-103. **Rules of construction to promote purposes and policies; applicability of supplemental principles of law.**

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

which are:

- (1) To simplify, clarify, and modernize the law governing commercial transactions;
- (2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- (3) To make uniform the law among the various jurisdictions.

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

11-1-104. Construction against implicit repeal.

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

11-1-105. Severability.

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

11-1-106. Use of singular and plural; gender.

In this title unless the statutory context otherwise requires:

- (1) Words in the singular number include the plural, and words in the plural include the singular; and
- (2) Words of any gender also refer to any other gender.

11-1-107. Section captions.

Section captions are parts of this title.

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

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

Part 2

General Definitions and Principles of Interpretation

11-1-201. General definitions.

- (a) Unless the context otherwise requires, words or phrases defined in this Code section, or in the additional definitions contained in other articles of this title that apply to particular articles or parts thereof, have the meanings stated.
- (b) Subject to additional definitions contained in the other articles of this title that are applicable to specific articles or parts thereof, in this title:

- (1) 'Action' in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.
- (2) 'Aggrieved party' means a party entitled to pursue a remedy.
- (3) 'Agreement,' as distinguished from 'contract,' means the bargain of the parties in fact as found in their language or inferred from other circumstances including course of performance, course of dealing, or usage of trade as provided in Code Section 11-1-303.
- (4) 'Bank' means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, or trust company.
- (5) 'Bearer' means a person in control of a negotiable instrument, document of title, or certificated security payable to bearer or indorsed in blank.
- (6) 'Bill of lading' means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.
- (7) 'Branch' includes a separately incorporated foreign branch of a bank.
- (8) 'Burden of establishing' a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.
- (9) 'Buyer in ordinary course of business' means a person that buys goods in good faith without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this title may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.
- (10) 'Conspicuous,' with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is 'conspicuous' or not is a decision for the court. Conspicuous terms include the following:
 - (A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
 - (B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set

off from the surrounding text of the same size by symbols or other marks that call attention to the language.

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

(12) 'Contract,' as distinguished from 'agreement,' means the total legal obligation that results from the parties' agreement as determined by this title and any other applicable law.

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

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

(15) 'Delivery' with respect to an instrument, document of title, or chattel paper means voluntary transfer of possession.

(16) 'Document of title' includes a bill of lading, dock warrant, dock receipt, warehouse receipt, or order for delivery of goods and any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

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

(18) 'Fungible goods' means:

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

(B) Goods that by agreement are treated as equivalent.

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

(20) 'Good faith,' except as otherwise provided in Article 5 of this title, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) 'Holder' means:

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

(B) The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

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

(23) 'Insolvent' means:

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

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

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

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

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

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

(27) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

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

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

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

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

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

(33) 'Representative' means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate.

(34) 'Rights' includes remedies.

(35) 'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory

note in a transaction that is subject to Article 9 of this title. The term does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Code Section 11-2-401, but a buyer may also acquire a 'security interest' by complying with Article 9 of this title. Except as otherwise provided in Code Section 11-2-505, the right of a seller or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the goods is not a 'security interest,' but a seller or lessor may also acquire a 'security interest' by complying with Article 9 of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Code Section 11-2-401 is limited in effect to a reservation of a 'security interest.'

Whether a transaction in the form of a lease creates a 'security interest' shall be determined pursuant to Code Section 11-1-203.

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

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

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

(37) 'Signed' includes using any symbol executed or adopted with present intention to adopt or accept a writing.

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

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

(40) 'Term' means that portion of an agreement that relates to a particular matter.

(41) 'Unauthorized signature' means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) 'Warehouse receipt' means a receipt issued by a person engaged in the business of storing goods for hire.

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

11-1-202. **Notice; knowledge.**

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

- (1) Has actual knowledge of it;
- (2) Has received a notice or notification of it; or
- (3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

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

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

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

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

- (1) It comes to that person's attention; or
- (2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

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

11-1-203. **Lease distinguished from security interest.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11-1-204. Value.

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

- (1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) As security for, or in total or partial satisfaction of, a preexisting claim;
- (3) By accepting delivery under a preexisting contract for purchase; or
- (4) In return for any consideration sufficient to support a simple contract.

11-1-205. Reasonable time; seasonableness.

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

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

11-1-206. Presumptions.

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

Part 3

Territorial Applicability and General Rules

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

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

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

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

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

11-1-302. Variation by agreement.

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

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

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

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

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

- (1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
- (2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

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

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

be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

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

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

- (1) Express terms prevail over course of performance, course of dealing, and usage of trade;
- (2) Course of performance prevails over course of dealing and usage of trade; and
- (3) Course of dealing prevails over usage of trade.

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

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

11-1-304. Obligation of good faith.

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

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

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

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

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

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

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

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

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

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

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

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

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

11-1-310. Subordinated obligations.

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

PART IIIB
CONFORMING CROSS-REFERENCES
IN THE UCC TO PART IIIA
SECTION 3B-1.

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

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

- (a) 'Buyer' means a person who buys or contracts to buy goods.
- (b) Reserved.
- (c) 'Receipt' of goods means taking physical possession of them.
- (d) 'Seller' means a person who sells or contracts to sell goods."

SECTION 3B-2.

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

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

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

- (a) By course of performance, course of dealing, or usage of trade (Code Section 11-1-303); and
- (b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement."

SECTION 3B-3.

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

"11-2-208.

Reserved.

SECTION 3B-4.

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

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

- 'Account.' Code Section 11-9-102(a).
- 'Between merchants.' Code Section 11-2-104(3).
- 'Buyer.' Code Section 11-2-103(1)(a).
- 'Chattel paper.' Code Section 11-9-102(a).
- 'Consumer goods.' Code Section 11-9-102(a).
- 'Document.' Code Section 11-9-102(a).
- 'Entrusting.' Code Section 11-2-403(3).
- 'General intangible.' Code Section 11-9-102(a).

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

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

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

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

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

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

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

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

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

SECTION 3B-5.

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

"11-2A-207.

Reserved.

SECTION 3B-6.

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

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

SECTION 3B-7.

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

"(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Code Section 11-2A-504) or otherwise determined pursuant to agreement of the parties (Code Sections 11-1-302 and 11-2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii)

any incidental or consequential damages, less expenses saved in consequence of the lessor's default."

SECTION 3B-8.

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

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

SECTION 3B-9.

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

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

SECTION 3B-10.

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

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

SECTION 3B-11.

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

"(4) Reserved. "

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

SECTION 3B-12.

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

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

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

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

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

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

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

'Check.' Code Section 11-3-104.
'Holder in due course.' Code Section 11-3-302.
'Instrument.' Code Section 11-3-104.
'Notice of dishonor.' Code Section 11-3-503.
'Order.' Code Section 11-3-103.
'Ordinary care.' Code Section 11-3-103.
'Person entitled to enforce.' Code Section 11-3-301.
'Presentment.' Code Section 11-3-501.
'Promise.' Code Section 11-3-103.
'Prove.' Code Section 11-3-103.
'Teller's check.' Code Section 11-3-104.
'Unauthorized signature.' Code Section 11-3-403."

SECTION 3B-13.

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

"(6) Reserved.

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

SECTION 3B-14.

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

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

SECTION 3B-15.

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

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

SECTION 3B-16.

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

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

SECTION 3B-17.

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

"(10) Reserved. "

SECTION 3B-18.

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

"(44) Reserved. "

SECTION 3B-19.

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

"11-11-101. **Effective date.**

This Act shall become effective at 12:01 A.M. on July 1, 1978."

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

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

"(29) 'Public sale' means a sale:

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

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

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

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

SECTION 3C-2.

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

"(23) 'Signed' shall have the same meaning as provided in Code Section 11-1-201."

SECTION 3C-3.

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

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

SECTION 3C-4.

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

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

- (1) A law governing the creation and execution of wills, codicils, or testamentary trusts;
- (2) Title 11 other than Code Section 11-1-306, Article 2, and Article 2A; or
- (3) The Uniform Computer Information Transactions Act."

SECTION 3C-5.

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

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

- (A) Held at a place reasonably available to persons who might desire to attend and submit bids;
- (B) At which those attending shall be given the opportunity to bid on a competitive basis;
- (C) At which the sale, if made, shall be made to the highest and best bidder; and
- (D) Except as otherwise provided in Title 11 for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff's advertisements are published in the county where the sale is to be held, and which notice shall state the day and hour, between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

(2) Upon order of the court, the person holding the lien on the abandoned motor vehicle shall be authorized to sell such motor vehicle at public sale."

SECTION 3C-6.

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

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

- (A) Held at a place reasonably available to persons who might desire to attend and submit bids;
- (B) At which those attending shall be given the opportunity to bid on a competitive basis;
- (C) At which the sale, if made, shall be made to the highest and best bidder; and
- (D) Except as otherwise provided in Title 11 for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff's advertisements are published in the county where the sale is to be held, and which notice shall state the day and hour,

between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

(2) Upon order of the court, the person holding the lien on the abandoned vessel shall be authorized to sell such vessel at public sale."

PART III

REPEAL OF ARTICLE 6 RELATING TO BULK TRANSFERS

SECTION 3D-1.

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

SECTION 3D-2.

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

PART IVA

UNIFORM VOIDABLE TRANSACTIONS ACT

SECTION 4A-1.

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

"ARTICLE 4

18-2-70.

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

18-2-71.

As used in this article, the term:

(1) 'Affiliate' means:

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

- (i) As a fiduciary or agent without sole discretionary power to vote the securities; or
 - (ii) Solely to secure a debt, if the person has not exercised the power to vote;
- (B) A corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:
- (i) As a fiduciary or agent without sole power to vote the securities; or
 - (ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;
- (C) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
- (D) A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
- (2) 'Asset' means property of a debtor, but the term does not include:
- (A) Property to the extent it is encumbered by a valid lien;
 - (B) Property to the extent it is generally exempt under nonbankruptcy law; or
 - (C) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.
- (3) 'Claim,' except for claim for relief, means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- (4) 'Creditor' means a person who has a claim, regardless of when the person acquired the claim, together with any successors or assigns.
- (5) 'Debt' means liability on a claim.
- (6) 'Debtor' means a person who is liable on a claim.
- (7) 'Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (8) 'Insider' includes:
- (A) If the debtor is an individual:
 - (i) A relative of the debtor or of a general partner of the debtor;
 - (ii) A partnership in which the debtor is a general partner;
 - (iii) A general partner in a partnership described in division (ii) of this subparagraph;or
 - (iv) A corporation of which the debtor is a director, officer, or person in control;
 - (B) If the debtor is a corporation:
 - (i) A director of the debtor;
 - (ii) An officer of the debtor;

- (iii) A person in control of the debtor;
 - (iv) A partnership in which the debtor is a general partner;
 - (v) A general partner in a partnership described in division (iv) of this subparagraph;
or
 - (vi) A relative of a general partner, director, officer, or person in control of the debtor;
- (C) If the debtor is a partnership:
- (i) A general partner in the debtor;
 - (ii) A relative of a general partner in, or a general partner of, or a person in control of the debtor;
 - (iii) Another partnership in which the debtor is a general partner;
 - (iv) A general partner in a partnership described in division (iii) of this subparagraph;
or
 - (v) A person in control of the debtor;
- (D) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- (E) A managing agent of the debtor.
- (9) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.
- (10) 'Organization' means a person other than an individual.
- (11) 'Person' means an individual, public corporation, government or governmental subdivision agency or instrumentality, business or nonprofit entity, estate, or other legal entity.
- (12) 'Property' means anything that may be the subject of ownership.
- (13) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (14) 'Relative' means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined and includes an individual in an adoptive relationship within the third degree.
- (15) 'Sign' means, with present intent to authenticate or adopt a record:
- (A) To execute or adopt a tangible symbol; or
 - (B) To attach to or logically associate with the record an electronic symbol, sound, or process.

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

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

18-2-72.

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

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

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

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

18-2-73.

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

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

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

18-2-74.

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

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (B) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.
- (b) In determining actual intent under paragraph (1) of subsection (a) of this Code section, consideration may be given, among other factors, to whether:
 - (1) The transfer or obligation was to an insider;
 - (2) The debtor retained possession or control of the property transferred after the transfer;
 - (3) The transfer or obligation was disclosed or concealed;
 - (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
 - (5) The transfer was of substantially all the debtor's assets;
 - (6) The debtor absconded;
 - (7) The debtor removed or concealed assets;
 - (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
 - (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
 - (10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
 - (11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.
- (c) If a creditor is a successor or assignee, a right of action under subsection (a) of this Code section is automatically assigned to such successor or assignee.
- (d) A creditor making a claim for relief under subsection (a) of this Code section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

18-2-75.

- (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in

exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

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

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

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

18-2-76.

For the purposes of this article:

(1) A transfer is made:

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

(B) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this article that is superior to the interest of the transferee;

(2) If applicable law permits the transfer to be perfected as provided in paragraph (1) of this Code section and the transfer is not so perfected before the commencement of an action for relief under this article, the transfer is deemed made immediately before the commencement of the action;

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1) of this Code section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) A transfer is not made until the debtor has acquired rights in the asset transferred; and

(5) An obligation is incurred:

(A) If oral, when it becomes effective between the parties; or

(B) If evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

18-2-77.

(a) In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in Code Section 18-2-78, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Chapter 3 of this title; and

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(B) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(C) Any other relief the circumstances may require.

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

18-2-78.

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

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

(1) Except as otherwise provided in this Code section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this Code section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

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

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

(i) A good faith transferee who took for value; or

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

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

- (c) If the judgment under subsection (b) of this Code section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.
- (d) Notwithstanding voidability of a transfer or an obligation under this article, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:
- (1) A lien on or a right to retain any interest in the asset transferred;
 - (2) Enforcement of any obligation incurred; or
 - (3) A reduction in the amount of the liability on the judgment.
- (e) A transfer is not voidable under paragraph (2) of subsection (a) of Code Section 18-2-74 or Code Section 18-2-75 if the transfer results from:
- (1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
 - (2) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.
- (f) A transfer is not voidable under subsection (b) of Code Section 18-2-75:
- (1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;
 - (2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
 - (3) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured the present value given for that purpose as well as an antecedent debt of the debtor.
- (g) The following rules determine the burden of proving matters referred to in this Code section:
- (1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this Code section has the burden of proving the applicability of that subsection;
 - (2) Except as otherwise provided in paragraphs (3) and (4) of this subsection, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this Code section;
 - (3) The transferee has the burden of proving the applicability to the transferee of subparagraph (b)(1)(B) of this Code section; and
 - (4) A party that seeks adjustment under subsection (c) of this Code section has the burden of proving the adjustment.
- (h) The standard of proof required to establish matters referred to in this Code section is preponderance of the evidence.

18-2-79.

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

- (1) Under paragraph (1) of subsection (a) of Code Section 18-2-74, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (2) Under paragraph (2) of subsection (a) of Code Section 18-2-74 or subsection (a) of Code Section 18-2-75, within four years after the transfer was made or the obligation was incurred; or
- (3) Under subsection (b) of Code Section 18-2-75, within one year after the transfer was made or the obligation was incurred.

18-2-80.

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

- (1) A debtor who is an individual is located at the individual's principal residence;
- (2) A debtor that is an organization and has only one place of business is located at its place of business; and
- (3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

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

18-2-81.

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

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

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

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

(B) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or

associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization; or

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

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

18-2-82.

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

18-2-83.

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

18-2-84.

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

18-2-85.

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

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

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

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

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

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

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

"9-3-35.

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

SECTION 4B-2.

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

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

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

PART V
UNIFORM ENFORCEMENT
OF FOREIGN JUDGMENTS LAW
SECTION 5-1.

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

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

PART VI
BANKRUPTCY EXEMPTION
SECTION 6-1.

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

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

PART VII
EFFECTIVE DATE;
APPLICABILITY; AND REPEALER
SECTION 7-1.

- (a) Except as provided in subsection (c) of this section, this Act shall become effective on July 1, 2015.
- (b) Part 2 of this Act shall apply to all actions filed on or after July 1, 2015, in which the recognition of a foreign-country judgment is raised.
- (c) Parts 3A, 3B, and 3C of this Act shall become effective on January 1, 2016.
- (d) The amendments made by Parts 4A and 4B of this Act shall:
 - (1) Apply to a transfer made or obligation incurred on or after July 1, 2015;
 - (2) Not apply to a transfer made or obligation incurred before July 1, 2015;
 - (3) Not apply to a right of action that has accrued before July 1, 2015; and
 - (4) For purposes of this subsection, a transfer is made and an obligation is incurred at the time provided in Code Section 18-7-76.

SECTION 7-2.

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