

By the Committee on Financial Services and Representatives  
Safley, Lippman, Sanderson, Bainter, Ball, Edwards, Rayson,  
Effman, Flanagan, Lawson, Dennis and Maygarden

1                                   A bill to be entitled  
2           An act relating to the Uniform Commercial Code;  
3           revising chapter 678, F.S.; revising part I,  
4           relating to general matters; providing a short  
5           title; providing definitions; providing rules  
6           for determining whether certain obligations and  
7           interests are securities or financial assets;  
8           providing for acquisition of security or  
9           financial assets or interests; providing for  
10          notice of adverse claim; providing for control  
11          of certain securities; providing for effect of  
12          certain actions; providing for warranties in  
13          direct holding; providing for warranties in  
14          indirect holding; providing for applicability  
15          of law; providing clearing corporation rules;  
16          providing for creditor's legal process;  
17          providing for inapplication of statute of  
18          frauds; providing for evidentiary rules  
19          concerning certificated securities; providing  
20          for nonliability to adverse claimant under  
21          certain circumstances; providing for securities  
22          intermediary as purchaser for value; revising  
23          part II, relating to issue and issuer;  
24          providing a definition of issuer; providing for  
25          issuer's responsibilities and defenses;  
26          providing for notice; specifying staleness as  
27          notice of defect or defense; providing effect  
28          of issuer's restriction on transfer; providing  
29          for effect of unauthorized signatures;  
30          providing for completion or alteration of  
31          security certificates; providing rights and

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1 duties of issuer with respect to registered  
2 owners; providing for effect of signature of  
3 certain persons; providing for issuer's liens;  
4 specifying conditions of overissue; revising  
5 part III, relating to transfer of certificated  
6 and uncertificated securities; providing for  
7 delivery of certain securities; providing for  
8 rights of purchaser; providing for protected  
9 purchasers; providing for indorsement;  
10 providing for certain instructions; providing  
11 for effect of guaranteeing certain actions;  
12 providing purchaser's right to certain  
13 requisites; revising part IV, relating to  
14 registration; providing duties of issuer to  
15 register transfers; requiring certain assurance  
16 of effectiveness of certain actions; providing  
17 for demand that issuer not register transfer;  
18 providing for liability for wrongful  
19 registration; providing for replacement of  
20 certain certificates; providing for obligation  
21 to notify issuer of certain certificates;  
22 providing for authenticating certain persons;  
23 revising part V, relating to security  
24 entitlements; providing for securities  
25 accounts; providing for acquisition of security  
26 entitlement from a securities intermediary;  
27 providing for assertion of adverse claim  
28 against entitlement holder; providing for  
29 property interest of entitlement holder in  
30 certain assets; providing duties of securities  
31 intermediary; providing for certain rights of

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1 purchaser of security entitlement; providing  
2 priority among security interests and  
3 entitlement holders; amending s. 679.103, F.S.;  
4 providing for perfection of security interests  
5 relating to investment property; amending ss.  
6 679.105 and 679.106, F.S., to conform; creating  
7 s. 679.115, F.S.; providing for perfection of  
8 security interests in certain investment  
9 properties; providing definitions; providing  
10 criteria; providing procedures; creating s.  
11 679.116, F.S.; providing for perfection of  
12 security interests arising in purchase or  
13 delivery of financial interests; amending ss.  
14 679.203, 679.301, 679.302, 679.303, 679.304,  
15 679.305, 679.306, 679.309, and 679.312, F.S.,  
16 to conform; amending ss. 671.105, 671.206,  
17 674.104, and 675.114, F.S., to conform;  
18 providing for applicability; repealing ss.  
19 610.011, 610.021, 610.031, 610.041, 610.051,  
20 610.061, 610.071, 610.081, 610.091, 610.101,  
21 610.111, and 671.304(2)(b), F.S., relating to  
22 the Uniform Act for Simplification of Fiduciary  
23 Security Transfers; repealing ss. 678.101,  
24 678.102, 678.103, 678.104, 678.105, 678.106,  
25 678.107, 678.108, 678.201, 678.202, 678.203,  
26 678.204, 678.205, 678.206, 678.207, 678.208,  
27 678.301, 678.302, 678.303, 678.304, 678.305,  
28 678.306, 678.307, 678.308, 678.309, 678.310,  
29 678.311, 678.312, 678.313, 678.314, 678.315,  
30 678.316, 678.317, 678.318, 678.319, 678.320,  
31 678.321, 678.401, 678.402, 678.403, 678.404,

1 678.405, 678.406, 678.407, and 678.408, F.S.,  
2 relating to investment securities under the  
3 Uniform Commercial Code; revising provisions of  
4 chapter 680, F.S., relating to leases under the  
5 Uniform Commercial Code; amending s. 680.1031,  
6 F.S.; redefining the terms "consumer lease" and  
7 "finance lease"; amending s. 680.1041, F.S.;  
8 revising language with respect to other  
9 statutes to which leases are subject; amending  
10 s. 680.303, F.S.; revising language with  
11 respect to the alienability of a party's  
12 interest under a lease contract or of a  
13 lessor's residual interest in goods; amending  
14 s. 680.304, F.S.; revising language with  
15 respect to the subsequent lease of goods by the  
16 lessor; amending s. 680.307, F.S.; revising  
17 language with respect to priority of liens  
18 arising by attachment or levy on security  
19 interests in and other claims to goods;  
20 amending s. 680.309, F.S.; revising language  
21 with respect to lessor's and lessee's rights  
22 when goods become fixtures; creating s. 680.32,  
23 F.S.; providing that nothing in chapter 680,  
24 F.S., prevents subordination by agreement by  
25 any person entitled to priority; amending s.  
26 680.501, F.S.; revising language with respect  
27 to the procedure governing default; amending s.  
28 680.503, F.S.; revising language with respect  
29 to modification or impairment of rights and  
30 remedies; amending s. 680.507, F.S.; revising  
31 language with respect to proof of market rent;

1 amending s. 680.508, F.S.; revising language  
2 with respect to lessee's remedies; amending s.  
3 680.516, F.S.; revising language with respect  
4 to the effect of acceptance of goods, notice of  
5 default, the burden of establishing default  
6 after acceptance, and notice of claim or  
7 litigation to persons answerable over; amending  
8 s. 680.518, F.S.; revising language with  
9 respect to cover and substitute goods; amending  
10 s. 680.519, F.S.; revising language with  
11 respect to lessee's damages for nondelivery,  
12 repudiation, default, or breach of warranty in  
13 regard to accepted goods; amending s. 680.523,  
14 F.S.; revising language with respect to  
15 lessor's remedies; amending s. 680.524, F.S.;  
16 revising language with respect to lessor's  
17 right to identify goods to lease contract;  
18 amending s. 680.525, F.S.; revising language  
19 with respect to lessor's right to possession of  
20 goods; amending s. 680.527, F.S.; revising  
21 language with respect to lessor's rights to  
22 dispose of goods; amending s. 680.528, F.S.;  
23 revising language with respect to lessor's  
24 damages for nonacceptance or repudiation;  
25 amending s. 680.529, F.S.; revising language  
26 with respect to lessor's action for rent;  
27 amending s. 680.532, F.S.; revising language  
28 with respect to lessor recovery for loss of  
29 residual interest; providing for the  
30 application of the act; repealing s. 679.111,  
31

1 F.S., relating to applicability of bulk  
2 transfer laws; providing an effective date.

3  
4 Be It Enacted by the Legislature of the State of Florida:

5  
6 Section 1. Part I of chapter 678, Florida Statutes,  
7 consisting of sections 678.1011, 678.1021, 678.1031, 678.1041,  
8 678.1051, 678.1061, 678.1071, 678.1081, 678.1091, 678.1101,  
9 678.1111, 678.1121, 678.1131, 678.1141, 678.1151, and  
10 678.1161, Florida Statutes, is created to read:

11  
12 PART 1

13  
14 SHORT TITLE AND GENERAL MATTERS

15  
16 678.1011 Short title.--Chapter 678 may be cited as  
17 "Uniform Commercial Code--Investment Securities."

18 678.1021 Definitions.--

19 (1) In this chapter:

20 (a) "Adverse claim" means a claim that a claimant has  
21 a property interest in a financial asset and that it is a  
22 violation of the rights of the claimant for another person to  
23 hold, transfer, or deal with the financial asset.

24 (b) "Bearer form," as applied to a certificated  
25 security, means a form in which the security is payable to the  
26 bearer of the security certificate according to its terms but  
27 not by reason of an indorsement.

28 (c) "Broker" means a person defined as a broker or  
29 dealer under the federal securities laws, but without  
30 excluding a bank acting in that capacity.

31

1           (d) "Certificated security" means a security that is  
2 represented by a certificate.

3           (e) "Clearing corporation" means:

4           1. A person that is registered as a "clearing agency"  
5 under the federal securities laws;

6           2. A federal reserve bank; or

7           3. Any other person that provides clearance or  
8 settlement services with respect to financial assets that  
9 would require it to register as a clearing agency under the  
10 federal securities laws but for an exclusion or exemption from  
11 the registration requirement, if its activities as a clearing  
12 corporation, including promulgation of rules, are subject to  
13 regulation by a federal or state governmental authority.

14           (f) "Communicate" means to:

15           1. Send a signed writing; or

16           2. Transmit information by any mechanism agreed upon  
17 by the persons transmitting and receiving the information.

18           (g) "Entitlement holder" means a person identified in  
19 the records of a securities intermediary as the person having  
20 a security entitlement against the securities intermediary. If  
21 a person acquires a security entitlement by virtue of s.  
22 678.5011(3)(b) or (c), that person is the entitlement holder.

23           (h) "Entitlement order" means a notification  
24 communicated to a securities intermediary directing transfer  
25 or redemption of a financial asset to which the entitlement  
26 holder has a security entitlement.

27           (i) "Financial asset," except as otherwise provided in  
28 s. 678.1031, means:

29           1. A security;

30           2. An obligation of a person or a share,  
31 participation, or other interest in a person or in property or

1 an enterprise of a person, which is, or is of a type, dealt in  
2 or traded on financial markets, or which is recognized in any  
3 area in which it is issued or dealt in as a medium for  
4 investment; or

5 3. Any property that is held by a securities  
6 intermediary for another person in a securities account if the  
7 securities intermediary has expressly agreed with the other  
8 person that the property is to be treated as a financial asset  
9 under this chapter. As context requires, the term means  
10 either the interest itself or the means by which a person's  
11 claim to it is evidenced, including a certificated or  
12 uncertificated security, a security certificate, or a security  
13 entitlement.

14 (j) "Good faith," for purposes of the obligation of  
15 good faith in the performance or enforcement of contracts or  
16 duties within this chapter, means honesty in fact and the  
17 observance of reasonable commercial standards of fair dealing.

18 (k) "Indorsement" means a signature that alone or  
19 accompanied by other words is made on a security certificate  
20 in registered form or on a separate document for the purpose  
21 of assigning, transferring, or redeeming the security or  
22 granting a power to assign, transfer, or redeem it.

23 (l) "Instruction" means a notification communicated to  
24 the issuer of an uncertificated security which directs that  
25 the transfer of the security be registered or that the  
26 security be redeemed.

27 (m) "Registered form," as applied to a certificated  
28 security, means a form in which:

29 1. The security certificate specifies a person  
30 entitled to the security.

31



1           2. A transfer of the security may be registered upon  
2 books maintained for that purpose by or on behalf of the  
3 issuer, or the security certificate so states.

4           (n) "Securities intermediary" means:

5           1. A clearing corporation; or

6           2. A person, including a bank or broker, that in the  
7 ordinary course of its business maintains securities accounts  
8 for others and is acting in that capacity.

9           (o) "Security," except as otherwise provided in  
10 678.1031, means an obligation of an issuer or a share,  
11 participation, or other interest in an issuer or in property  
12 or an enterprise of an issuer:

13           1. Which is represented by a security certificate in  
14 bearer or registered form, or the transfer of which may be  
15 registered upon books maintained for that purpose by or on  
16 behalf of the issuer.

17           2. Which is one of a class or series or by its terms  
18 is divisible into a class or series of shares, participations,  
19 interests, or obligations.

20           3. Which:

21           a. Is, or is of a type, dealt in or traded on  
22 securities exchanges or securities markets; or

23           b. Is a medium for investment and by its terms  
24 expressly provides that it is a security governed by this  
25 chapter.

26           (p) "Security certificate" means a certificate  
27 representing a security.

28           (q) "Security entitlement" means the rights and  
29 property interest of an entitlement holder with respect to a  
30 financial asset specified in Part V.

31

1       (r) "Uncertificated security" means a security that is  
2 not represented by a certificate.

3       (2) Other definitions applying to this chapter and the  
4 sections in which they appear are:

5           "Appropriate person," s. 678.1071

6           "Control," s. 678.1061

7           "Delivery," s. 678.3011

8           "Investment company security," s. 678.1031

9           "Issuer," s. 678.2011

10          "Overissue," s. 678.2101

11          "Protected purchaser," s. 678.3031

12          "Securities account," s. 678.5011

13       (3) In addition, chapter 671 contains general  
14 definitions and principles of construction and interpretation  
15 applicable throughout this chapter.

16       (4) The characterization of a person, business, or  
17 transaction for purposes of this chapter does not determine  
18 the characterization of the person, business, or transaction  
19 for purposes of any other law, regulation, or rule.

20       678.1031 Rules for determining whether certain  
21 obligations and interests are securities or financial  
22 assets.--

23       (1) A share or similar equity interest issued by a  
24 corporation, business trust, joint stock company, or similar  
25 entity is a security.

26       (2) An "investment company security" is a security.

27 "Investment company security" means a share or similar equity  
28 interest issued by an entity that is registered as an  
29 investment company under the federal investment company laws,  
30 an interest in a unit investment trust that is so registered,  
31 or a face-amount certificate issued by a face-amount

1 certificate company that is so registered. Investment company  
2 security does not include an insurance policy or endowment  
3 policy or annuity contract issued by an insurance company.

4 (3) An interest in a partnership or limited liability  
5 company is not a security unless it is dealt in or traded on  
6 securities exchanges or in securities markets, its terms  
7 expressly provide that it is a security governed by this  
8 chapter, or it is an investment company security. However, an  
9 interest in a partnership or limited liability company is a  
10 financial asset if it is held in a securities account.

11 (4) A writing that is a security certificate is  
12 governed by this chapter and not by chapter 673, even though  
13 it also meets the requirements of that chapter. However, a  
14 negotiable instrument governed by chapter 673 is a financial  
15 asset if it is held in a securities account.

16 (5) An option or similar obligation issued by a  
17 clearing corporation to its participants is not a security,  
18 but is a financial asset.

19 (6) A commodity contract, as defined in s. 679.115, is  
20 not a security or a financial asset.

21 678.1041 Acquisition of security or financial asset or  
22 interest therein.--

23 (1) A person acquires a security or an interest  
24 therein, under this chapter, if:

25 (a) The person is a purchaser to whom a security is  
26 delivered pursuant to s. 678.3011; or

27 (b) The person acquires a security entitlement to the  
28 security pursuant to s. 678.5011.

29 (2) A person acquires a financial asset, other than a  
30 security, or an interest therein, under this chapter, if the  
31 person acquires a security entitlement to the financial asset.

1       (3) A person who acquires a security entitlement to a  
2 security or other financial asset has the rights specified in  
3 Part 5, but is a purchaser of any security, security  
4 entitlement, or other financial asset held by the securities  
5 intermediary only to the extent provided in s. 678.5031.

6       (4) Unless the context shows that a different meaning  
7 is intended, a person who is required by other law,  
8 regulation, rule, or agreement to transfer, deliver, present,  
9 surrender, exchange, or otherwise put in the possession of  
10 another person a security or financial asset satisfies that  
11 requirement by causing the other person to acquire an interest  
12 in the security or financial asset pursuant to subsection (1)  
13 or subsection (2).

14       678.1051 Notice of adverse claim.--

15       (1) A person has notice of an adverse claim if:

16       (a) The person knows of the adverse claim;

17       (b) The person is aware of facts sufficient to  
18 indicate that there is a significant probability that the  
19 adverse claim exists and deliberately avoids information that  
20 would establish the existence of the adverse claim; or

21       (c) The person has a duty, imposed by statute or  
22 regulation, to investigate whether an adverse claim exists,  
23 and the investigation so required would establish the  
24 existence of the adverse claim.

25       (2) Having knowledge that a financial asset or  
26 interest therein is or has been transferred by a  
27 representative imposes no duty of inquiry into the  
28 rightfulness of a transaction and is not notice of an adverse  
29 claim. However, a person who knows that a representative has  
30 transferred a financial asset or interest therein in a  
31 transaction that is, or whose proceeds are being used, for the

1 individual benefit of the representative or otherwise in  
2 breach of duty has notice of an adverse claim.

3 (3) An act or event that creates a right to immediate  
4 performance of the principal obligation represented by a  
5 security certificate or sets a date on or after which the  
6 certificate is to be presented or surrendered for redemption  
7 or exchange does not itself constitute notice of an adverse  
8 claim except in the case of a transfer more than:

9 (a) One year after a date set for presentment or  
10 surrender for redemption or exchange; or

11 (b) Six months after a date set for payment of money  
12 against presentation or surrender of the certificate, if money  
13 was available for payment on that date.

14 (4) A purchaser of a certificated security has notice  
15 of an adverse claim if the security certificate:

16 (a) Whether in bearer or registered form, has been  
17 indorsed "for collection" or "for surrender" or for some other  
18 purpose not involving transfer; or

19 (b) Is in bearer form and has on it an unambiguous  
20 statement that it is the property of a person other than the  
21 transferor, but the mere writing of a name on the certificate  
22 is not such a statement.

23 (5) Filing of a financing statement under chapter 679  
24 is not notice of an adverse claim to a financial asset.

25 678.1061 Control.--

26 (1) A purchaser has "control" of a certificated  
27 security in bearer form if the certificated security is  
28 delivered to the purchaser.

29 (2) A purchaser has "control" of a certificated  
30 security in registered form if the certificated security is  
31 delivered to the purchaser, and:

1       (a) The certificate is indorsed to the purchaser or in  
2 blank by an effective indorsement; or  
3       (b) The certificate is registered in the name of the  
4 purchaser, upon original issue or registration of transfer by  
5 the issuer.  
6       (3) A purchaser has "control" of an uncertificated  
7 security if:  
8       (a) The uncertificated security is delivered to the  
9 purchaser; or  
10       (b) The issuer has agreed that it will comply with  
11 instructions originated by the purchaser without further  
12 consent by the registered owner.  
13       (4) A purchaser has "control" of a security  
14 entitlement if:  
15       (a) The purchaser becomes the entitlement holder; or  
16       (b) The securities intermediary has agreed that it  
17 will comply with entitlement orders originated by the  
18 purchaser without further consent by the entitlement holder.  
19       (5) If an interest in a security entitlement is  
20 granted by the entitlement holder to the entitlement holder's  
21 own securities intermediary, the securities intermediary has  
22 control.  
23       (6) A purchaser who has satisfied the requirements of  
24 paragraph (3)(b) or paragraph (4)(b) has control even if the  
25 registered owner in the case of paragraph (3)(b) or the  
26 entitlement holder in the case of paragraph (4)(b) retains the  
27 right to make substitutions for the uncertificated security or  
28 security entitlement, to originate instructions or entitlement  
29 orders to the issuer or securities intermediary, or otherwise  
30 to deal with the uncertificated security or security  
31 entitlement.

1       (7) An issuer or a securities intermediary may not  
2 enter into an agreement of the kind described in paragraph  
3 (3)(b) or (4)(b) without the consent of the registered owner  
4 or entitlement holder, but an issuer or a securities  
5 intermediary is not required to enter into such an agreement  
6 even though the registered owner or entitlement holder so  
7 directs. An issuer or securities intermediary that has entered  
8 into such an agreement is not required to confirm the  
9 existence of the agreement to another party unless requested  
10 to do so by the registered owner or entitlement holder.

11       678.1071 Whether indorsement, instruction, or  
12 entitlement order is effective.--

13       (1) "Appropriate person" means:

14       (a) With respect to an indorsement, the person  
15 specified by a security certificate or by an effective special  
16 indorsement to be entitled to the security;

17       (b) With respect to an instruction, the registered  
18 owner of an uncertificated security;

19       (c) With respect to an entitlement order, the  
20 entitlement holder;

21       (d) If the person designated in paragraph (a),  
22 paragraph (b), or paragraph (c) is deceased, the designated  
23 person's successor taking under other law or the designated  
24 person's personal representative acting for the estate of the  
25 decedent; or

26       (e) If the person designated in paragraph (a),  
27 paragraph (b), or paragraph (c) lacks capacity, the designated  
28 person's guardian, conservator, or other similar  
29 representative who has power under other law to transfer the  
30 security or financial asset.

31

1       (2) An indorsement, instruction, or entitlement order  
2 is effective if:  
3       (a) It is made by the appropriate person;  
4       (b) It is made by a person who has power under the law  
5 of agency to transfer the security or financial asset on  
6 behalf of the appropriate person, including, in the case of an  
7 instruction or entitlement order, a person who has control  
8 under s. 678.1061(3)(b) or (4)(b); or  
9       (c) The appropriate person has ratified it or is  
10 otherwise precluded from asserting its ineffectiveness.  
11       (3) An indorsement, instruction, or entitlement order  
12 made by a representative is effective even if:  
13       (a) The representative has failed to comply with a  
14 controlling instrument or with the law of the State having  
15 jurisdiction of the representative relationship, including any  
16 law requiring the representative to obtain court approval of  
17 the transaction; or  
18       (b) The representative's action in making the  
19 indorsement, instruction, or entitlement order or using the  
20 proceeds of the transaction is otherwise a breach of duty.  
21       (4) If a security is registered in the name of or  
22 specially indorsed to a person described as a representative,  
23 or if a securities account is maintained in the name of a  
24 person described as a representative, an indorsement,  
25 instruction, or entitlement order made by the person is  
26 effective even though the person is no longer serving in the  
27 described capacity.  
28       (5) Effectiveness of an indorsement, instruction, or  
29 entitlement order is determined as of the date the  
30 indorsement, instruction, or entitlement order is made, and an  
31



1 indorsement, instruction, or entitlement order does not become  
2 ineffective by reason of any later change of circumstances.

3 678.1081 Warranties in direct holding.--

4 (1) A person who transfers a certificated security to  
5 a purchaser for value warrants to the purchaser, and an  
6 indorser, if the transfer is by indorsement, warrants to any  
7 subsequent purchaser, that:

8 (a) The certificate is genuine and has not been  
9 materially altered.

10 (b) The transferor or indorser does not know of any  
11 fact that might impair the validity of the security.

12 (c) There is no adverse claim to the security.

13 (d) The transfer does not violate any restriction on  
14 transfer.

15 (e) If the transfer is by indorsement, the indorsement  
16 is made by an appropriate person, or if the indorsement is by  
17 an agent, the agent has actual authority to act on behalf of  
18 the appropriate person.

19 (f) The transfer is otherwise effective and rightful.

20 (2) A person who originates an instruction for  
21 registration of transfer of an uncertificated security to a  
22 purchaser for value warrants to the purchaser that:

23 (a) The instruction is made by an appropriate person,  
24 or if the instruction is by an agent, the agent has actual  
25 authority to act on behalf of the appropriate person.

26 (b) The security is valid.

27 (c) There is no adverse claim to the security.

28 (d) At the time the instruction is presented to the  
29 issuer:

30 1. The purchaser will be entitled to the registration  
31 of transfer.

1           2. The transfer will be registered by the issuer free  
2 from all liens, security interests, restrictions, and claims  
3 other than those specified in the instruction.

4           3. The transfer will not violate any restriction on  
5 transfer.

6           4. The requested transfer will otherwise be effective  
7 and rightful.

8           (3) A person who transfers an uncertificated security  
9 to a purchaser for value and does not originate an instruction  
10 in connection with the transfer warrants that:

11           (a) The uncertificated security is valid.

12           (b) There is no adverse claim to the security.

13           (c) The transfer does not violate any restriction on  
14 transfer.

15           (d) The transfer is otherwise effective and rightful.

16           (4) A person who indorses a security certificate  
17 warrants to the issuer that:

18           (a) There is no adverse claim to the security.

19           (b) The indorsement is effective.

20           (5) A person who originates an instruction for  
21 registration of transfer of an uncertificated security  
22 warrants to the issuer that:

23           (a) The instruction is effective.

24           (b) At the time the instruction is presented to the  
25 issuer the purchaser will be entitled to the registration of  
26 transfer.

27           (6) A person who presents a certificated security for  
28 registration of transfer or for payment or exchange warrants  
29 to the issuer that the person is entitled to the registration,  
30 payment, or exchange, but a purchaser for value and without  
31 notice of adverse claims to whom transfer is registered

1 warrants only that the person has no knowledge of any  
2 unauthorized signature in a necessary indorsement.

3 (7) If a person acts as agent of another in delivering  
4 a certificated security to a purchaser, the identity of the  
5 principal was known to the person to whom the certificate was  
6 delivered, and the certificate delivered by the agent was  
7 received by the agent from the principal or received by the  
8 agent from another person at the direction of the principal,  
9 the person delivering the security certificate warrants only  
10 that the delivering person has authority to act for the  
11 principal and does not know of any adverse claim to the  
12 certificated security.

13 (8) A secured party who redelivers a security  
14 certificate received, or after payment and on order of the  
15 debtor delivers the security certificate to another person,  
16 makes only the warranties of an agent under subsection (7).

17 (9) Except as otherwise provided in subsection (7), a  
18 broker acting for a customer makes to the issuer and a  
19 purchaser the warranties provided in subsections (1)-(6). A  
20 broker that delivers a security certificate to its customer,  
21 or causes its customer to be registered as the owner of an  
22 uncertificated security, makes to the customer the warranties  
23 provided in subsection (1) or subsection (2), and has the  
24 rights and privileges of a purchaser under this section. The  
25 warranties of and in favor of the broker acting as an agent  
26 are in addition to applicable warranties given by and in favor  
27 of the customer.

28 678.1091 Warranties in indirect holding.--

29 (1) A person who originates an entitlement order to a  
30 securities intermediary warrants to the securities  
31 intermediary that:

1       (a) The entitlement order is made by an appropriate  
2 person, or if the entitlement order is by an agent, the agent  
3 has actual authority to act on behalf of the appropriate  
4 person.

5       (b) There is no adverse claim to the security  
6 entitlement.

7       (2) A person who delivers a security certificate to a  
8 securities intermediary for credit to a securities account or  
9 originates an instruction with respect to an uncertificated  
10 security directing that the uncertificated security be  
11 credited to a securities account makes to the securities  
12 intermediary the warranties specified in s. 678.1081(1) or  
13 (2).

14       (3) If a securities intermediary delivers a security  
15 certificate to its entitlement holder or causes its  
16 entitlement holder to be registered as the owner of an  
17 uncertificated security, the securities intermediary makes to  
18 the entitlement holder the warranties specified in s.  
19 678.1081(1) or (2).

20       678.1101 Applicability; choice of law.--

21       (1) The local law of the issuer's jurisdiction, as  
22 specified in subsection (4), governs:

23       (a) The validity of a security.

24       (b) The rights and duties of the issuer with respect  
25 to registration of transfer.

26       (c) The effectiveness of registration of transfer by  
27 the issuer.

28       (d) Whether the issuer owes any duties to an adverse  
29 claimant to a security.

30       (e) Whether an adverse claim can be asserted against a  
31 person to whom transfer of a certificated or uncertificated

1 security is registered or a person who obtains control of an  
2 uncertificated security.  
3 (2) The local law of the securities intermediary's  
4 jurisdiction, as specified in subsection (5), governs:  
5 (a) Acquisition of a security entitlement from the  
6 securities intermediary.  
7 (b) The rights and duties of the securities  
8 intermediary and entitlement holder arising out of a security  
9 entitlement.  
10 (c) Whether the securities intermediary owes any  
11 duties to an adverse claimant to a security entitlement.  
12 (d) Whether an adverse claim can be asserted against a  
13 person who acquires a security entitlement from the securities  
14 intermediary or a person who purchases a security entitlement  
15 or interest therein from an entitlement holder.  
16 (3) The local law of the jurisdiction in which a  
17 security certificate is located at the time of delivery  
18 governs whether an adverse claim can be asserted against a  
19 person to whom the security certificate is delivered.  
20 (4) "Issuer's jurisdiction" means the jurisdiction  
21 under which the issuer of the security is organized or, if  
22 permitted by the law of that jurisdiction, the law of another  
23 jurisdiction specified by the issuer. An issuer organized  
24 under the law of this State may specify the law of another  
25 jurisdiction as the law governing the matters specified in  
26 paragraphs (1)(b)-(e).  
27 (5) The following rules determine a "securities  
28 intermediary's jurisdiction" for purposes of this section:  
29 (a) If an agreement between the securities  
30 intermediary and its entitlement holder specifies that it is  
31

1 governed by the law of a particular jurisdiction, that  
2 jurisdiction is the securities intermediary's jurisdiction.

3 (b) If an agreement between the securities  
4 intermediary and its entitlement holder does not specify the  
5 governing law as provided in paragraph (a), but expressly  
6 specifies that the securities account is maintained at an  
7 office in a particular jurisdiction, that jurisdiction is the  
8 securities intermediary's jurisdiction.

9 (c) If an agreement between the securities  
10 intermediary and its entitlement holder does not specify a  
11 jurisdiction as provided in paragraph (a) or paragraph (b),  
12 the securities intermediary's jurisdiction is the jurisdiction  
13 in which is located the office identified in an account  
14 statement as the office serving the entitlement holder's  
15 account.

16 (d) If an agreement between the securities  
17 intermediary and its entitlement holder does not specify a  
18 jurisdiction as provided in paragraph (a) or paragraph (b) and  
19 an account statement does not identify an office serving the  
20 entitlement holder's account as provided in paragraph (c), the  
21 securities intermediary's jurisdiction is the jurisdiction in  
22 which is located the chief executive office of the securities  
23 intermediary.

24 (6) A securities intermediary's jurisdiction is not  
25 determined by the physical location of certificates  
26 representing financial assets, or by the jurisdiction in which  
27 is organized the issuer of the financial asset with respect to  
28 which an entitlement holder has a security entitlement, or by  
29 the location of facilities for data processing or other record  
30 keeping concerning the account.

31

1           678.1111 Clearing corporation rules.--A rule adopted  
2 by a clearing corporation governing rights and obligations  
3 among the clearing corporation and its participants in the  
4 clearing corporation is effective even if the rule conflicts  
5 with this chapter and affects another party who does not  
6 consent to the rule.

7           678.1121 Creditor's legal process.--

8           (1) The interest of a debtor in a certificated  
9 security may be reached by a creditor only by actual seizure  
10 of the security certificate by the officer making the  
11 attachment or levy, except as otherwise provided in subsection  
12 (4). However, a certificated security for which the  
13 certificate has been surrendered to the issuer may be reached  
14 by a creditor by legal process upon the issuer.

15           (2) The interest of a debtor in an uncertificated  
16 security may be reached by a creditor only by legal process  
17 upon the issuer at its chief executive office in the United  
18 States, except as otherwise provided in subsection (4).

19           (3) The interest of a debtor in a security entitlement  
20 may be reached by a creditor only by legal process upon the  
21 securities intermediary with whom the debtor's securities  
22 account is maintained, except as otherwise provided in  
23 subsection (4).

24           (4) The interest of a debtor in a certificated  
25 security for which the certificate is in the possession of a  
26 secured party, or in an uncertificated security registered in  
27 the name of a secured party, or a security entitlement  
28 maintained in the name of a secured party, may be reached by a  
29 creditor by legal process upon the secured party.

30           (5) A creditor whose debtor is the owner of a  
31 certificated security, uncertificated security, or security

1 entitlement is entitled to aid from a court of competent  
2 jurisdiction, by injunction or otherwise, in reaching the  
3 certificated security, uncertificated security, or security  
4 entitlement or in satisfying the claim by means allowed at law  
5 or in equity in regard to property that cannot readily be  
6 reached by other legal process.

7 678.1131 Statute of frauds inapplicable.--A contract  
8 or modification of a contract for the sale or purchase of a  
9 security is enforceable whether or not there is a writing  
10 signed or record authenticated by a party against whom  
11 enforcement is sought, even if the contract or modification is  
12 not capable of performance within one year of its making.

13 678.1141 Evidentiary rules concerning certificated  
14 securities.--The following rules apply in an action on a  
15 certificated security against the issuer:

16 (1) Unless specifically denied in the pleadings, each  
17 signature on a security certificate or in a necessary  
18 indorsement is admitted.

19 (2) If the effectiveness of a signature is put in  
20 issue, the burden of establishing effectiveness is on the  
21 party claiming under the signature, but the signature is  
22 presumed to be genuine or authorized.

23 (3) If signatures on a security certificate are  
24 admitted or established, production of the certificate  
25 entitles a holder to recover on it unless the defendant  
26 establishes a defense or a defect going to the validity of the  
27 security.

28 (4) If it is shown that a defense or defect exists,  
29 the plaintiff has the burden of establishing that the  
30 plaintiff or some person under whom the plaintiff claims is a  
31 person against whom the defense or defect cannot be asserted.



1           678.1151 Securities intermediary and others not liable  
2 to adverse claimant.--A securities intermediary that has  
3 transferred a financial asset pursuant to an effective  
4 entitlement order, or a broker or other agent or bailee that  
5 has dealt with a financial asset at the direction of its  
6 customer or principal, is not liable to a person having an  
7 adverse claim to the financial asset, unless the securities  
8 intermediary, or broker or other agent or bailee:

9           (1) Took the action after it had been served with an  
10 injunction, restraining order, or other legal process  
11 enjoining it from doing so, issued by a court of competent  
12 jurisdiction, and had a reasonable opportunity to act on the  
13 injunction, restraining order, or other legal process; or

14           (2) Acted in collusion with the wrongdoer in violating  
15 the rights of the adverse claimant; or

16           (3) In the case of a security certificate that has  
17 been stolen, acted with notice of the adverse claim.

18           678.1161 Securities intermediary as purchaser for  
19 value.--A securities intermediary that receives a financial  
20 asset and establishes a security entitlement to the financial  
21 asset in favor of an entitlement holder is a purchaser for  
22 value of the financial asset. A securities intermediary that  
23 acquires a security entitlement to a financial asset from  
24 another securities intermediary acquires the security  
25 entitlement for value if the securities intermediary acquiring  
26 the security entitlement establishes a security entitlement to  
27 the financial asset in favor of an entitlement holder.

28           Section 2. Part II of chapter 678, Florida Statutes,  
29 consisting of sections 678.2011, 678.2021, 678.2031, 678.2041,  
30 678.2051, 678.2061, 678.2071, 678.2081, 678.2091, and  
31 678.2101, Florida Statutes, is created to read:

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PART II

ISSUE AND ISSUER

678.2011 Issuer.--

(1) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(a) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(d) Becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

678.2021 Issuer's responsibility and defenses; notice of defect or defense.--

1       (1) Even against a purchaser for value and without  
2 notice, the terms of a certificated security include terms  
3 stated on the certificate and terms made part of the security  
4 by reference on the certificate to another instrument,  
5 indenture, or document or to a constitution, statute,  
6 ordinance, rule, regulation, order, or the like, to the extent  
7 the terms referred to do not conflict with terms stated on the  
8 certificate. A reference under this subsection does not of  
9 itself charge a purchaser for value with notice of a defect  
10 going to the validity of the security, even if the certificate  
11 expressly states that a person accepting it admits notice. The  
12 terms of an uncertificated security include those stated in  
13 any instrument, indenture, or document or in a constitution,  
14 statute, ordinance, rule, regulation, order, or the like,  
15 pursuant to which the security is issued.

16       (2) The following rules apply if an issuer asserts  
17 that a security is not valid:

18       (a) A security other than one issued by a government  
19 or governmental subdivision, agency, or instrumentality, even  
20 though issued with a defect going to its validity, is valid in  
21 the hands of a purchaser for value and without notice of the  
22 particular defect unless the defect involves a violation of a  
23 constitutional provision. In that case, the security is valid  
24 in the hands of a purchaser for value and without notice of  
25 the defect, other than one who takes by original issue.

26       (b) Paragraph (a) applies to an issuer that is a  
27 government or governmental subdivision, agency, or  
28 instrumentality only if there has been substantial compliance  
29 with the legal requirements governing the issue or the issuer  
30 has received a substantial consideration for the issue as a  
31 whole or for the particular security and a stated purpose of

1 the issue is one for which the issuer has power to borrow  
2 money or issue the security.

3 (3) Except as otherwise provided in s. 678.2051, lack  
4 of genuineness of a certificated security is a complete  
5 defense, even against a purchaser for value and without  
6 notice.

7 (4) All other defenses of the issuer of a security,  
8 including nondelivery and conditional delivery of a  
9 certificated security, are ineffective against a purchaser for  
10 value who has taken the certificated security without notice  
11 of the particular defense.

12 (5) This section does not affect the right of a party  
13 to cancel a contract for a security "when, as and if issued"  
14 or "when distributed" in the event of a material change in the  
15 character of the security that is the subject of the contract  
16 or in the plan or arrangement pursuant to which the security  
17 is to be issued or distributed.

18 (6) If a security is held by a securities intermediary  
19 against whom an entitlement holder has a security entitlement  
20 with respect to the security, the issuer may not assert any  
21 defense that the issuer could not assert if the entitlement  
22 holder held the security directly.

23 678.2031 Staleness as notice of defect or  
24 defense.--After an act or event, other than a call that has  
25 been revoked, creating a right to immediate performance of the  
26 principal obligation represented by a certificated security or  
27 setting a date on or after which the security is to be  
28 presented or surrendered for redemption or exchange, a  
29 purchaser is charged with notice of any defect in its issue or  
30 defense of the issuer, if the act or event:

31

1       (1) Requires the payment of money, the delivery of a  
2 certificated security, the registration of transfer of an  
3 uncertificated security, or any of them on presentation or  
4 surrender of the security certificate, the money or security  
5 is available on the date set for payment or exchange, and the  
6 purchaser takes the security more than one year after that  
7 date; or

8       (2) Is not covered by paragraph (1) and the purchaser  
9 takes the security more than two years after the date set for  
10 surrender or presentation or the date on which performance  
11 became due.

12       678.2041 Effect of issuer's restriction on  
13 transfer.--A restriction on transfer of a security imposed by  
14 the issuer, even if otherwise lawful, is ineffective against a  
15 person without knowledge of the restriction unless:

16       (1) The security is certificated and the restriction  
17 is noted conspicuously on the security certificate; or

18       (2) The security is uncertificated and the registered  
19 owner has been notified of the restriction.

20       678.2051 Effect of unauthorized signature on security  
21 certificate.--An unauthorized signature placed on a security  
22 certificate before or in the course of issue is ineffective,  
23 but the signature is effective in favor of a purchaser for  
24 value of the certificated security if the purchaser is without  
25 notice of the lack of authority and the signing has been done  
26 by:

27       (1) An authenticating trustee, registrar, transfer  
28 agent, or other person entrusted by the issuer with the  
29 signing of the security certificate or of similar security  
30 certificates, or the immediate preparation for signing of any  
31 of them; or

1       (2) An employee of the issuer, or of any of the  
2 persons listed in subsection (1), entrusted with responsible  
3 handling of the security certificate.

4       678.2061 Completion or alteration of security  
5 certificate.--

6       (1) If a security certificate contains the signatures  
7 necessary to its issue or transfer but is incomplete in any  
8 other respect:

9       (a) Any person may complete it by filling in the  
10 blanks as authorized; and

11       (b) Even if the blanks are incorrectly filled in, the  
12 security certificate as completed is enforceable by a  
13 purchaser who took it for value and without notice of the  
14 incorrectness.

15       (2) A complete security certificate that has been  
16 improperly altered, even if fraudulently, remains enforceable,  
17 but only according to its original terms.

18       678.2071 Rights and duties of issuer with respect to  
19 registered owners.--

20       (1) Before due presentment for registration of  
21 transfer of a certificated security in registered form or of  
22 an instruction requesting registration of transfer of an  
23 uncertificated security, the issuer or indenture trustee may  
24 treat the registered owner as the person exclusively entitled  
25 to vote, receive notifications, and otherwise exercise all the  
26 rights and powers of an owner.

27       (2) This chapter does not affect the liability of the  
28 registered owner of a security for a call, assessment, or the  
29 like.

30       678.2081 Effect of signature of authenticating  
31 trustee, registrar, or transfer agent.--

1       (1) A person signing a security certificate as  
2 authenticating trustee, registrar, transfer agent, or the  
3 like, warrants to a purchaser for value of the certificated  
4 security, if the purchaser is without notice of a particular  
5 defect, that:

6           (a) The certificate is genuine.

7           (b) The person's own participation in the issue of the  
8 security is within the person's capacity and within the scope  
9 of the authority received by the person from the issuer.

10          (c) The person has reasonable grounds to believe that  
11 the certificated security is in the form and within the amount  
12 the issuer is authorized to issue.

13       (2) Unless otherwise agreed, a person signing under  
14 subsection (1) does not assume responsibility for the validity  
15 of the security in other respects.

16       678.2091 Issuer's lien.--A lien in favor of an issuer  
17 upon a certificated security is valid against a purchaser only  
18 if the right of the issuer to the lien is noted conspicuously  
19 on the security certificate.

20       678.2101 Overissue.--

21       (1) In this section, "overissue" means the issue of  
22 securities in excess of the amount the issuer has corporate  
23 power to issue, but an overissue does not occur if appropriate  
24 action has cured the overissue.

25       (2) Except as otherwise provided in subsections (3)  
26 and (4), the provisions of this chapter which validate a  
27 security or compel its issue or reissue do not apply to the  
28 extent that validation, issue, or reissue would result in  
29 overissue.

30       (3) If an identical security not constituting an  
31 overissue is reasonably available for purchase, a person

1 entitled to issue or validation may compel the issuer to  
2 purchase the security and deliver it if certificated or  
3 register its transfer if uncertificated, against surrender of  
4 any security certificate the person holds.

5 (4) If a security is not reasonably available for  
6 purchase, a person entitled to issue or validation may recover  
7 from the issuer the price the person or the last purchaser for  
8 value paid for it with interest from the date of the person's  
9 demand.

10 Section 3. Part III of chapter 678, Florida Statutes,  
11 consisting of sections 678.3011, 678.3021, 678.3031, 678.3041,  
12 678.3051, 678.3061, and 678.3071, Florida Statutes, is created  
13 to read:

14  
15 PART III

16  
17 TRANSFER OF CERTIFICATED  
18 AND UNCERTIFICATED SECURITIES

19  
20 678.3011 Delivery.--

21 (1) Delivery of a certificated security to a purchaser  
22 occurs when:

23 (a) The purchaser acquires possession of the security  
24 certificate;

25 (b) Another person, other than a securities  
26 intermediary, either acquires possession of the security  
27 certificate on behalf of the purchaser or, having previously  
28 acquired possession of the certificate, acknowledges that it  
29 holds for the purchaser; or

30 (c) A securities intermediary acting on behalf of the  
31 purchaser acquires possession of the security certificate,



1 only if the certificate is in registered form and has been  
2 specially indorsed to the purchaser by an effective  
3 indorsement.  
4 (2) Delivery of an uncertificated security to a  
5 purchaser occurs when:  
6 (a) The issuer registers the purchaser as the  
7 registered owner, upon original issue or registration of  
8 transfer; or  
9 (b) Another person, other than a securities  
10 intermediary, either becomes the registered owner of the  
11 uncertificated security on behalf of the purchaser or, having  
12 previously become the registered owner, acknowledges that it  
13 holds for the purchaser.  
14 678.3021 Rights of purchaser.--  
15 (1) Except as otherwise provided in subsections (2)  
16 and (3), upon delivery of a certificated or uncertificated  
17 security to a purchaser, the purchaser acquires all rights in  
18 the security that the transferor had or had power to transfer.  
19 (2) A purchaser of a limited interest acquires rights  
20 only to the extent of the interest purchased.  
21 (3) A purchaser of a certificated security who as a  
22 previous holder had notice of an adverse claim does not  
23 improve its position by taking from a protected purchaser.  
24 678.3031 Protected purchaser.--  
25 (1) "Protected purchaser" means a purchaser of a  
26 certificated or uncertificated security, or of an interest  
27 therein, who:  
28 (a) Gives value.  
29 (b) Does not have notice of any adverse claim to the  
30 security.  
31

1       (c) Obtains control of the certificated or  
2 uncertificated security.

3       (2) In addition to acquiring the rights of a  
4 purchaser, a protected purchaser also acquires its interest in  
5 the security free of any adverse claim.

6       678.3041 Indorsement.--

7       (1) An indorsement may be in blank or special. An  
8 indorsement in blank includes an indorsement to bearer. A  
9 special indorsement specifies to whom a security is to be  
10 transferred or who has power to transfer it. A holder may  
11 convert a blank indorsement to a special indorsement.

12       (2) An indorsement purporting to be only of part of a  
13 security certificate representing units intended by the issuer  
14 to be separately transferable is effective to the extent of  
15 the indorsement.

16       (3) An indorsement, whether special or in blank, does  
17 not constitute a transfer until delivery of the certificate on  
18 which it appears or, if the indorsement is on a separate  
19 document, until delivery of both the document and the  
20 certificate.

21       (4) If a security certificate in registered form has  
22 been delivered to a purchaser without a necessary indorsement,  
23 the purchaser may become a protected purchaser only when the  
24 indorsement is supplied. However, against a transferor, a  
25 transfer is complete upon delivery and the purchaser has a  
26 specifically enforceable right to have any necessary  
27 indorsement supplied.

28       (5) An indorsement of a security certificate in bearer  
29 form may give notice of an adverse claim to the certificate,  
30 but it does not otherwise affect a right to registration that  
31 the holder possesses.

1           (6) Unless otherwise agreed, a person making an  
2 indorsement assumes only the obligations provided in s.  
3 678.1081 and not an obligation that the security will be  
4 honored by the issuer.

5           678.3051 Instruction.--

6           (1) If an instruction has been originated by an  
7 appropriate person but is incomplete in any other respect, any  
8 person may complete it as authorized and the issuer may rely  
9 on it as completed, even though it has been completed  
10 incorrectly.

11           (2) Unless otherwise agreed, a person initiating an  
12 instruction assumes only the obligations imposed by s.  
13 678.1081 and not an obligation that the security will be  
14 honored by the issuer.

15           678.3061 Effect of guaranteeing signature,  
16 indorsement, or instruction.--

17           (1) A person who guarantees a signature of an indorser  
18 of a security certificate warrants that at the time of  
19 signing:

20           (a) The signature was genuine.

21           (b) The signer was an appropriate person to indorse,  
22 or if the signature is by an agent, the agent had actual  
23 authority to act on behalf of the appropriate person.

24           (c) The signer had legal capacity to sign.

25           (2) A person who guarantees a signature of the  
26 originator of an instruction warrants that at the time of  
27 signing:

28           (a) The signature was genuine.

29           (b) The signer was an appropriate person to originate  
30 the instruction, or if the signature is by an agent, the agent  
31 had actual authority to act on behalf of the appropriate

1 person, if the person specified in the instruction as the  
2 registered owner was, in fact, the registered owner, as to  
3 which fact the signature guarantor does not make a warranty.

4 (c) The signer had legal capacity to sign.

5 (3) A person who specially guarantees the signature of  
6 an originator of an instruction makes the warranties of a  
7 signature guarantor under subsection (2) and also warrants  
8 that at the time the instruction is presented to the issuer:

9 (a) The person specified in the instruction as the  
10 registered owner of the uncertificated security will be the  
11 registered owner.

12 (b) The transfer of the uncertificated security  
13 requested in the instruction will be registered by the issuer  
14 free from all liens, security interests, restrictions, and  
15 claims other than those specified in the instruction.

16 (4) A guarantor under subsections (1) and (2) or a  
17 special guarantor under subsection (3) does not otherwise  
18 warrant the rightfulness of the transfer.

19 (5) A person who guarantees an indorsement of a  
20 security certificate makes the warranties of a signature  
21 guarantor under subsection (1) and also warrants the  
22 rightfulness of the transfer in all respects.

23 (6) A person who guarantees an instruction requesting  
24 the transfer of an uncertificated security makes the  
25 warranties of a special signature guarantor under subsection  
26 (3) and also warrants the rightfulness of the transfer in all  
27 respects.

28 (7) An issuer may not require a special guaranty of  
29 signature, a guaranty of indorsement, or a guaranty of  
30 instruction as a condition to registration of transfer.

31

1       (8) The warranties under this section are made to a  
2 person taking or dealing with the security in reliance on the  
3 guaranty, and the guarantor is liable to the person for loss  
4 resulting from their breach. An indorser or originator of an  
5 instruction whose signature, indorsement, or instruction has  
6 been guaranteed is liable to a guarantor for any loss suffered  
7 by the guarantor as a result of breach of the warranties of  
8 the guarantor.

9       678.3071 Purchaser's right to requisites for  
10 registration of transfer.--Unless otherwise agreed, the  
11 transferor of a security on due demand shall supply the  
12 purchaser with proof of authority to transfer or with any  
13 other requisite necessary to obtain registration of the  
14 transfer of the security, but if the transfer is not for  
15 value, a transferor need not comply unless the purchaser pays  
16 the necessary expenses. If the transferor fails within a  
17 reasonable time to comply with the demand, the purchaser may  
18 reject or rescind the transfer.

19       Section 4. Part IV of chapter 678, Florida Statutes,  
20 consisting of sections 678.4011, 678.4021, 678.4031, 678.4041,  
21 678.4051, 678.4061, and 678.4071, Florida Statutes, is created  
22 to read:

23  
24                                   PART IV

25  
26                                   REGISTRATION

27  
28       678.4011 Duty of issuer to register transfer.--

29       (1) If a certificated security in registered form is  
30 presented to an issuer with a request to register transfer or  
31 an instruction is presented to an issuer with a request to

1 register transfer of an uncertificated security, the issuer  
2 shall register the transfer as requested if:  
3       (a) Under the terms of the security the person seeking  
4 registration of transfer is eligible to have the security  
5 registered in its name.  
6       (b) The indorsement or instruction is made by the  
7 appropriate person or by an agent who has actual authority to  
8 act on behalf of the appropriate person.  
9       (c) Reasonable assurance is given that the indorsement  
10 or instruction is genuine and authorized (s. 678.4021).  
11       (d) Any applicable law relating to the collection of  
12 taxes has been complied with.  
13       (e) The transfer does not violate any restriction on  
14 transfer imposed by the issuer in accordance with s. 678.2041.  
15       (f) A demand that the issuer not register transfer has  
16 not become effective under s. 678.4031, or the issuer has  
17 complied with s. 678.4031(2) but no legal process or indemnity  
18 bond is obtained as provided in s. 678.4031(4).  
19       (g) The transfer is in fact rightful or is to a  
20 protected purchaser.  
21       (h) If an issuer is under a duty to register a  
22 transfer of a security, the issuer is liable to a person  
23 presenting a certificated security or an instruction for  
24 registration or to the person's principal for loss resulting  
25 from unreasonable delay in registration or failure or refusal  
26 to register the transfer.  
27       678.4021 Assurance that indorsement or instruction is  
28 effective.--  
29       (1) An issuer may require the following assurance that  
30 each necessary indorsement or each instruction is genuine and  
31 authorized:

1       (a) In all cases, a guaranty of the signature of the  
2 person making an indorsement or originating an instruction  
3 including, in the case of an instruction, reasonable assurance  
4 of identity.

5       (b) If the indorsement is made or the instruction is  
6 originated by an agent, appropriate assurance of actual  
7 authority to sign.

8       (c) If the indorsement is made or the instruction is  
9 originated by a fiduciary pursuant to s. 678.1071(1)(d) or  
10 (1)(e), appropriate evidence of appointment or incumbency.

11       (d) If there is more than one fiduciary, reasonable  
12 assurance that all who are required to sign have done so.

13       (e) If the indorsement is made or the instruction is  
14 originated by a person not covered by another provision of  
15 this subsection, assurance appropriate to the case  
16 corresponding as nearly as may be to the provisions of this  
17 subsection.

18       (2) An issuer may elect to require reasonable  
19 assurance beyond that specified in this section.

20       (3) In this section:

21       (a) "Guaranty of the signature" means a guaranty  
22 signed by or on behalf of a person reasonably believed by the  
23 issuer to be responsible. An issuer may adopt standards with  
24 respect to responsibility if they are not manifestly  
25 unreasonable.

26       (b) "Appropriate evidence of appointment or  
27 incumbency" means:

28       1. In the case of a fiduciary appointed or qualified  
29 by a court, a certificate issued by or under the direction or  
30 supervision of the court or an officer thereof and dated  
31

1 within 60 days before the date of presentation for transfer;  
2 or

3 2. In any other case, a copy of a document showing the  
4 appointment or a certificate issued by or on behalf of a  
5 person reasonably believed by an issuer to be responsible or,  
6 in the absence of that document or certificate, other evidence  
7 the issuer reasonably considers appropriate.

8 678.4031 Demand that issuer not register transfer.--

9 (1) A person who is an appropriate person to make an  
10 indorsement or originate an instruction may demand that the  
11 issuer not register transfer of a security by communicating to  
12 the issuer a notification that identifies the registered owner  
13 and the issue of which the security is a part and provides an  
14 address for communications directed to the person making the  
15 demand. The demand is effective only if it is received by the  
16 issuer at a time and in a manner affording the issuer  
17 reasonable opportunity to act on it.

18 (2) If a certificated security in registered form is  
19 presented to an issuer with a request to register transfer or  
20 an instruction is presented to an issuer with a request to  
21 register transfer of an uncertificated security after a demand  
22 that the issuer not register transfer has become effective,  
23 the issuer shall promptly communicate to the person who  
24 initiated the demand at the address provided in the demand and  
25 to the person who presented the security for registration of  
26 transfer or initiated the instruction requesting registration  
27 of transfer a notification stating that:

28 (a) The certificated security has been presented for  
29 registration of transfer or the instruction for registration  
30 of transfer of the uncertificated security has been received.  
31



1       (b) A demand that the issuer not register transfer had  
2 previously been received.

3       (c) The issuer will withhold registration of transfer  
4 for a period of time stated in the notification in order to  
5 provide the person who initiated the demand an opportunity to  
6 obtain legal process or an indemnity bond.

7       (3) The period described in paragraph (2)(c) may not  
8 exceed 30 days after the date of communication of the  
9 notification. A shorter period may be specified by the issuer  
10 if it is not manifestly unreasonable.

11       (4) An issuer is not liable to a person who initiated  
12 a demand that the issuer not register transfer for any loss  
13 the person suffers as a result of registration of a transfer  
14 pursuant to an effective indorsement or instruction if the  
15 person who initiated the demand does not, within the time  
16 stated in the issuer's communication, either:

17       (a) Obtain an appropriate restraining order,  
18 injunction, or other process from a court of competent  
19 jurisdiction enjoining the issuer from registering the  
20 transfer; or

21       (b) File with the issuer an indemnity bond, sufficient  
22 in the issuer's judgment to protect the issuer and any  
23 transfer agent, registrar, or other agent of the issuer  
24 involved from any loss it or they may suffer by refusing to  
25 register the transfer.

26       (5) This section does not relieve an issuer from  
27 liability for registering transfer pursuant to an indorsement  
28 or instruction that was not effective.

29       678.4041 Wrongful registration.--

30       (1) Except as otherwise provided in s. 678.4061, an  
31 issuer is liable for wrongful registration of transfer if the

1 issuer has registered a transfer of a security to a person not  
2 entitled to it, and the transfer was registered:  
3 (a) Pursuant to an ineffective indorsement or  
4 instruction;  
5 (b) After a demand that the issuer not register  
6 transfer became effective under s. 678.4031(1) and the issuer  
7 did not comply with s. 678.4031(2);  
8 (c) After the issuer had been served with an  
9 injunction, restraining order, or other legal process  
10 enjoining it from registering the transfer, issued by a court  
11 of competent jurisdiction, and the issuer had a reasonable  
12 opportunity to act on the injunction, restraining order, or  
13 other legal process; or  
14 (d) By an issuer acting in collusion with the  
15 wrongdoer.  
16 (2) An issuer that is liable for wrongful registration  
17 of transfer under subsection (1) on demand shall provide the  
18 person entitled to the security with a like certificated or  
19 uncertificated security, and any payments or distributions  
20 that the person did not receive as a result of the wrongful  
21 registration. If an overissue would result, the issuer's  
22 liability to provide the person with a like security is  
23 governed by s. 678.2101.  
24 (3) Except as otherwise provided in subsection (1) or  
25 in a law relating to the collection of taxes, an issuer is not  
26 liable to an owner or other person suffering loss as a result  
27 of the registration of a transfer of a security if  
28 registration was made pursuant to an effective indorsement or  
29 instruction.  
30 678.4051 Replacement of lost, destroyed, or wrongfully  
31 taken security certificate.--

1       (1) If an owner of a certificated security, whether in  
2 registered or bearer form, claims that the certificate has  
3 been lost, destroyed, or wrongfully taken, the issuer shall  
4 issue a new certificate if the owner:

5           (a) So requests before the issuer has notice that the  
6 certificate has been acquired by a protected purchaser.

7           (b) Files with the issuer a sufficient indemnity bond.

8           (c) Satisfies other reasonable requirements imposed by  
9 the issuer.

10       (2) If, after the issue of a new security certificate,  
11 a protected purchaser of the original certificate presents it  
12 for registration of transfer, the issuer shall register the  
13 transfer unless an overissue would result. In that case, the  
14 issuer's liability is governed by s. 678.2101. In addition to  
15 any rights on the indemnity bond, an issuer may recover the  
16 new certificate from a person to whom it was issued or any  
17 person taking under that person, except a protected purchaser.

18       678.4061 Obligation to notify issuer of lost,  
19 destroyed, or wrongfully taken security certificate.--If a  
20 security certificate has been lost, apparently destroyed, or  
21 wrongfully taken, and the owner fails to notify the issuer of  
22 that fact within a reasonable time after the owner has notice  
23 of it and the issuer registers a transfer of the security  
24 before receiving notification, the owner may not assert  
25 against the issuer a claim for registering the transfer under  
26 s. 678.4041 or a claim to a new security certificate under s.  
27 678.4051.

28       678.4071 Authenticating trustee, transfer agent, and  
29 registrar.--A person acting as authenticating trustee,  
30 transfer agent, registrar, or other agent for an issuer in the  
31 registration of a transfer of its securities, in the issue of

1 new security certificates or uncertificated securities, or in  
2 the cancellation of surrendered security certificates has the  
3 same obligation to the holder or owner of a certificated or  
4 uncertificated security with regard to the particular  
5 functions performed as the issuer has in regard to those  
6 functions.

7 Section 5. Part V of chapter 678, Florida Statutes,  
8 consisting of sections 678.5011, 678.5021, 678.5031, 678.5041,  
9 678.5051, 678.5061, 678.5071, 678.5081, 678.5091, 678.5101,  
10 and 678.5111, Florida Statutes, is created to read:

11  
12 PART V

13  
14 SECURITY ENTITLEMENTS

15  
16 678.5011 Securities account; acquisition of security  
17 entitlement from securities intermediary.--

18 (1) "Securities account" means an account to which a  
19 financial asset is or may be credited in accordance with an  
20 agreement under which the person maintaining the account  
21 undertakes to treat the person for whom the account is  
22 maintained as entitled to exercise the rights that comprise  
23 the financial asset.

24 (2) Except as otherwise provided in subsections (4)  
25 and (5), a person acquires a security entitlement if a  
26 securities intermediary:

27 (a) Indicates by book entry that a financial asset has  
28 been credited to the person's securities account;

29 (b) Receives a financial asset from the person or  
30 acquires a financial asset for the person and, in either case,  
31 accepts it for credit to the person's securities account; or

1        (c) Becomes obligated under other law, regulation, or  
2 rule to credit a financial asset to the person's securities  
3 account.

4        (3) If a condition of subsection (2) has been met, a  
5 person has a security entitlement even though the securities  
6 intermediary does not itself hold the financial asset.

7        (4) If a securities intermediary holds a financial  
8 asset for another person, and the financial asset is  
9 registered in the name of, payable to the order of, or  
10 specially indorsed to the other person, and has not been  
11 indorsed to the securities intermediary or in blank, the other  
12 person is treated as holding the financial asset directly  
13 rather than as having a security entitlement with respect to  
14 the financial asset.

15        (5) Issuance of a security is not establishment of a  
16 security entitlement.

17        678.5021 Assertion of adverse claim against  
18 entitlement holder.--An action based on an adverse claim to a  
19 financial asset, whether framed in conversion, replevin,  
20 constructive trust, equitable lien, or other theory, may not  
21 be asserted against a person who acquires a security  
22 entitlement under s. 678.5011 for value and without notice of  
23 the adverse claim.

24        678.5031 Property interest of entitlement holder in  
25 financial asset held by securities intermediary.--

26        (1) To the extent necessary for a securities  
27 intermediary to satisfy all security entitlements with respect  
28 to a particular financial asset, all interests in that  
29 financial asset held by the securities intermediary are held  
30 by the securities intermediary for the entitlement holders,  
31 are not property of the securities intermediary, and are not

1 subject to claims of creditors of the securities intermediary,  
2 except as otherwise provided in 678.5111.

3 (2) An entitlement holder's property interest with  
4 respect to a particular financial asset under subsection (1)  
5 is a pro rata property interest in all interests in that  
6 financial asset held by the securities intermediary, without  
7 regard to the time the entitlement holder acquired the  
8 security entitlement or the time the securities intermediary  
9 acquired the interest in that financial asset.

10 (3) An entitlement holder's property interest with  
11 respect to a particular financial asset under subsection (a)  
12 may be enforced against the securities intermediary only by  
13 exercise of the entitlement holder's rights under ss.  
14 678.5051-678.5081.

15 (4) An entitlement holder's property interest with  
16 respect to a particular financial asset under subsection (1)  
17 may be enforced against a purchaser of the financial asset or  
18 interest therein only if:

19 (a) Insolvency proceedings have been initiated by or  
20 against the securities intermediary.

21 (b) The securities intermediary does not have  
22 sufficient interests in the financial asset to satisfy the  
23 security entitlements of all of its entitlement holders to  
24 that financial asset.

25 (c) The securities intermediary violated its  
26 obligations under s. 678.5041 by transferring the financial  
27 asset or interest therein to the purchaser.

28 (d) The purchaser is not protected under subsection  
29 (5). The trustee or other liquidator, acting on behalf of all  
30 entitlement holders having security entitlements with respect  
31 to a particular financial asset, may recover the financial

1 asset, or interest therein, from the purchaser. If the trustee  
2 or other liquidator elects not to pursue that right, an  
3 entitlement holder whose security entitlement remains  
4 unsatisfied has the right to recover its interest in the  
5 financial asset from the purchaser.

6 (5) An action based on the entitlement holder's  
7 property interest with respect to a particular financial asset  
8 under subsection (1), whether framed in conversion, replevin,  
9 constructive trust, equitable lien, or other theory, may not  
10 be asserted against any purchaser of a financial asset or  
11 interest therein who gives value, obtains control, and does  
12 not act in collusion with the securities intermediary in  
13 violating the securities intermediary's obligations under s.  
14 678.5041.

15 678.5041 Duty of securities intermediary to maintain  
16 financial asset.--

17 (1) A securities intermediary shall promptly obtain  
18 and thereafter maintain a financial asset in a quantity  
19 corresponding to the aggregate of all security entitlements it  
20 has established in favor of its entitlement holders with  
21 respect to that financial asset. The securities intermediary  
22 may maintain those financial assets directly or through one or  
23 more other securities intermediaries.

24 (2) Except to the extent otherwise agreed by its  
25 entitlement holder, a securities intermediary may not grant  
26 any security interests in a financial asset it is obligated to  
27 maintain pursuant to subsection (1).

28 (3) A securities intermediary satisfies the duty in  
29 subsection (1) if:  
30  
31

1       (a) The securities intermediary acts with respect to  
2 the duty as agreed upon by the entitlement holder and the  
3 securities intermediary; or

4       (b) In the absence of agreement, the securities  
5 intermediary exercises due care in accordance with reasonable  
6 commercial standards to obtain and maintain the financial  
7 asset.

8       (4) This section does not apply to a clearing  
9 corporation that is itself the obligor of an option or similar  
10 obligation to which its entitlement holders have security  
11 entitlements.

12       678.5051 Duty of securities intermediary with respect  
13 to payments and distributions.--

14       (1) A securities intermediary shall take action to  
15 obtain a payment or distribution made by the issuer of a  
16 financial asset. A securities intermediary satisfies the duty  
17 if:

18       (a) The securities intermediary acts with respect to  
19 the duty as agreed upon by the entitlement holder and the  
20 securities intermediary; or

21       (b) In the absence of agreement, the securities  
22 intermediary exercises due care in accordance with reasonable  
23 commercial standards to attempt to obtain the payment or  
24 distribution.

25       (2) A securities intermediary is obligated to its  
26 entitlement holder for a payment or distribution made by the  
27 issuer of a financial asset if the payment or distribution is  
28 received by the securities intermediary.

29       678.5061 Duty of securities intermediary to exercise  
30 rights as directed by entitlement holder.--A securities  
31 intermediary shall exercise rights with respect to a financial



1 asset if directed to do so by an entitlement holder. A  
2 securities intermediary satisfies the duty if:  
3 (1) The securities intermediary acts with respect to  
4 the duty as agreed upon by the entitlement holder and the  
5 securities intermediary; or  
6 (2) In the absence of agreement, the securities  
7 intermediary either places the entitlement holder in a  
8 position to exercise the rights directly or exercises due care  
9 in accordance with reasonable commercial standards to follow  
10 the direction of the entitlement holder.  
11 678.5071 Duty of securities intermediary to comply  
12 with entitlement order.--  
13 (1) A securities intermediary shall comply with an  
14 entitlement order if the entitlement order is originated by  
15 the appropriate person, the securities intermediary has had  
16 reasonable opportunity to assure itself that the entitlement  
17 order is genuine and authorized, and the securities  
18 intermediary has had reasonable opportunity to comply with the  
19 entitlement order. A securities intermediary satisfies the  
20 duty if:  
21 (a) The securities intermediary acts with respect to  
22 the duty as agreed upon by the entitlement holder and the  
23 securities intermediary; or  
24 (b) In the absence of agreement, the securities  
25 intermediary exercises due care in accordance with reasonable  
26 commercial standards to comply with the entitlement order.  
27 (2) If a securities intermediary transfers a financial  
28 asset pursuant to an ineffective entitlement order, the  
29 securities intermediary shall reestablish a security  
30 entitlement in favor of the person entitled to it, and pay or  
31 credit any payments or distributions that the person did not

1 receive as a result of the wrongful transfer. If the  
2 securities intermediary does not reestablish a security  
3 entitlement, the securities intermediary is liable to the  
4 entitlement holder for damages.

5 678.5081 Duty of securities intermediary to change  
6 entitlement holder's position to other form of security  
7 holding.--A securities intermediary shall act at the direction  
8 of an entitlement holder to change a security entitlement into  
9 another available form of holding for which the entitlement  
10 holder is eligible, or to cause the financial asset to be  
11 transferred to a securities account of the entitlement holder  
12 with another securities intermediary. A securities  
13 intermediary satisfies the duty if:

14 (1) The securities intermediary acts as agreed upon by  
15 the entitlement holder and the securities intermediary; or

16 (2) In the absence of agreement, the securities  
17 intermediary exercises due care in accordance with reasonable  
18 commercial standards to follow the direction of the  
19 entitlement holder.

20 678.5091 Specification of duties of securities  
21 intermediary by other statute or regulation; manner of  
22 performance of duties of securities intermediary and exercise  
23 of rights of entitlement holder.--

24 (1) If the substance of a duty imposed upon a  
25 securities intermediary by ss. 678.5041-678.5081 is the  
26 subject of other statute, regulation, or rule, compliance with  
27 that statute, regulation, or rule satisfies the duty.

28 (2) To the extent that specific standards for the  
29 performance of the duties of a securities intermediary or the  
30 exercise of the rights of an entitlement holder are not  
31 specified by other statute, regulation, or rule or by

1 agreement between the securities intermediary and entitlement  
2 holder, the securities intermediary shall perform its duties  
3 and the entitlement holder shall exercise its rights in a  
4 commercially reasonable manner.

5 (3) The obligation of a securities intermediary to  
6 perform the duties imposed by ss.678.5041-678.5081 is subject  
7 to:

8 (a) Rights of the securities intermediary arising out  
9 of a security interest under a security agreement with the  
10 entitlement holder or otherwise.

11 (b) Rights of the securities intermediary under other  
12 law, regulation, rule, or agreement to withhold performance of  
13 its duties as a result of unfulfilled obligations of the  
14 entitlement holder to the securities intermediary.

15 (4) Sections 678.5041-678.5081 do not require a  
16 securities intermediary to take any action that is prohibited  
17 by other statute, regulation, or rule.

18 678.5101 Rights of purchaser of security entitlement  
19 from entitlement holder.--

20 (1) An action based on an adverse claim to a financial  
21 asset or security entitlement, whether framed in conversion,  
22 replevin, constructive trust, equitable lien, or other theory,  
23 may not be asserted against a person who purchases a security  
24 entitlement, or an interest therein, from an entitlement  
25 holder if the purchaser gives value, does not have notice of  
26 the adverse claim, and obtains control.

27 (2) If an adverse claim could not have been asserted  
28 against an entitlement holder under s. 678.5021, the adverse  
29 claim cannot be asserted against a person who purchases a  
30 security entitlement, or an interest therein, from the  
31 entitlement holder.

1       (3) In a case not covered by the priority rules in  
2 chapter 679, a purchaser for value of a security entitlement,  
3 or an interest therein, who obtains control has priority over  
4 a purchaser of a security entitlement, or an interest therein,  
5 who does not obtain control. Purchasers who have control rank  
6 equally, except that a securities intermediary as purchaser  
7 has priority over a conflicting purchaser who has control  
8 unless otherwise agreed by the securities intermediary.

9       678.5111 Priority among security interests and  
10 entitlement holders.--

11       (1) Except as otherwise provided in subsections (2)  
12 and (3), if a securities intermediary does not have sufficient  
13 interests in a particular financial asset to satisfy both its  
14 obligations to entitlement holders who have security  
15 entitlements to that financial asset and its obligation to a  
16 creditor of the securities intermediary who has a security  
17 interest in that financial asset, the claims of entitlement  
18 holders, other than the creditor, have priority over the claim  
19 of the creditor.

20       (2) A claim of a creditor of a securities intermediary  
21 who has a security interest in a financial asset held by a  
22 securities intermediary has priority over claims of the  
23 securities intermediary's entitlement holders who have  
24 security entitlements with respect to that financial asset if  
25 the creditor has control over the financial asset.

26       (3) If a clearing corporation does not have sufficient  
27 financial assets to satisfy both its obligations to  
28 entitlement holders who have security entitlements with  
29 respect to a financial asset and its obligation to a creditor  
30 of the clearing corporation who has a security interest in  
31

1 that financial asset, the claim of the creditor has priority  
2 over the claims of entitlement holders.

3 Section 6. Subsection (6) of section 679.103, Florida  
4 Statutes, is amended to read:

5 679.103 Perfection of security interests in multiple  
6 state transactions.--

7 (6) INVESTMENT PROPERTY.--

8 (a) This subsection applies to investment property.

9 (b) Except as otherwise provided in paragraph (f),  
10 during the time that a security certificate is located in a  
11 jurisdiction, perfection of a security interest, the effect of  
12 perfection or nonperfection, and the priority of a security  
13 interest in the certificated security represented thereby are  
14 governed by the local law of that jurisdiction.

15 (c) Except as otherwise provided in paragraph (f),  
16 perfection of a security interest, the effect of perfection or  
17 nonperfection, and the priority of a security interest in an  
18 uncertificated security are governed by the local law of the  
19 issuer's jurisdiction as specified in s. 678.1101(4).

20 (d) Except as otherwise provided in paragraph (f),  
21 perfection of a security interest, the effect of perfection or  
22 nonperfection, and the priority of a security interest in a  
23 security entitlement or securities account are governed by the  
24 local law of the securities intermediary's jurisdiction as  
25 specified in s. 678.1101(5).

26 (e) Except as otherwise provided in paragraph (f),  
27 perfection of a security interest, the effect of perfection or  
28 nonperfection, and the priority of a security interest in a  
29 commodity contract or commodity account are governed by the  
30 local law of the commodity intermediary's jurisdiction. The  
31

1 following rules determine a commodity intermediary's  
2 jurisdiction for purposes of this paragraph:  
3       1. If an agreement between the commodity intermediary  
4 and commodity customer specifies that it is governed by the  
5 law of a particular jurisdiction, that jurisdiction is the  
6 commodity intermediary's jurisdiction.  
7       2. If an agreement between the commodity intermediary  
8 and commodity customer does not specify the governing law as  
9 provided in subparagraph 1., but expressly specifies that the  
10 commodity account is maintained at an office in a particular  
11 jurisdiction, that jurisdiction is the commodity  
12 intermediary's jurisdiction.  
13       3. If an agreement between the commodity intermediary  
14 and commodity customer does not specify a jurisdiction as  
15 provided in subparagraph 1. or subparagraph 2., the commodity  
16 intermediary's jurisdiction is the jurisdiction in which is  
17 located the office identified in an account statement as the  
18 office serving the commodity customer's account.  
19       4. If an agreement between the commodity intermediary  
20 and commodity customer does not specify a jurisdiction as  
21 provided in subparagraph 1. or subparagraph 2. and an account  
22 statement does not identify an office serving the commodity  
23 customer's account as provided in subparagraph 3., the  
24 commodity intermediary's jurisdiction is the jurisdiction in  
25 which is located the chief executive office of the commodity  
26 intermediary.  
27       (f) Perfection of a security interest by filing,  
28 automatic perfection of a security interest in investment  
29 property granted by a broker or securities intermediary, and  
30 automatic perfection of a security interest in a commodity  
31 contract or commodity account granted by a commodity

1 intermediary are governed by the local law of the jurisdiction  
2 in which the debtor is located.~~UNCERTIFICATED~~  
3 ~~SECURITIES.--The law (including the conflict of laws rules) of~~  
4 ~~the jurisdiction of organization of the issuer governs the~~  
5 ~~perfection and the effect of perfection or nonperfection of a~~  
6 ~~security interest in uncertificated securities.~~

7 Section 7. Paragraphs (h) and (i) of subsection (1)  
8 and subsections (2) and (3) of section 679.105, Florida  
9 Statutes, are amended to read:

10 679.105 Definitions and index of definitions.--

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

13 (h) "Goods" includes all things which are movable at  
14 the time the security interest attaches or which are fixtures  
15 (s. 679.313), but does not include money, documents,  
16 instruments, investment property, accounts, chattel paper,  
17 general intangibles, or minerals or the like (including oil  
18 and gas) before extraction. "Goods" also includes standing  
19 timber which is to be cut and removed under a conveyance or  
20 contract for sale, the unborn young of animals, and growing  
21 crops;

22 (i) "Instrument" means a negotiable instrument  
23 (defined in s. 673.1041), ~~or a certificated security (defined~~  
24 ~~in s. 678.102),~~ or any other writing which evidences a right  
25 to the payment of money and is not itself a security agreement  
26 or lease and is of a type which is in ordinary course of  
27 business transferred by delivery with any necessary  
28 indorsement or assignment, however, the term does not include  
29 investment property;

30 (2) Other definitions applying to this chapter and the  
31 sections in which they appear are:

1 "Account," s. 679.106.  
2 "Attach," s. 679.203.  
3 "Commodity contract," s. 679.115.  
4 "Commodity customer," s. 679.115.  
5 "Commodity intermediary," s. 679.115.  
6 "Consumer goods," s. 679.109(1).  
7 "Control," s. 679.115.  
8 "Equipment," s. 679.109(2).  
9 "Farm products," s. 679.109(3).  
10 "Fixtures," s. 679.313.  
11 "General intangibles," s. 679.106.  
12 "Inventory," s. 679.109(4).  
13 "Investment property," s. 679.115.  
14 "Lien creditor," s. 679.301(3).  
15 "Proceeds," s. 679.306(1).  
16 "Purchase money security interest," s. 679.107.  
17 "United States," s. 679.103.  
18 (3) The following definitions in other chapters apply  
19 to this chapter:  
20 "Broker," s. 678.1021.  
21 "Certificated security," s. 678.1021.  
22 "Check," s. 673.1041.  
23 "Clearing corporation," s. 678.1021.  
24 "Contract for sale," s. 672.106.  
25 "Control," s. 678.1061.  
26 "Delivery," s. 678.3011.  
27 "Entitlement holder," s. 678.1021.  
28 "Financial asset," s. 678.1021.  
29 "Holder in due course," s. 673.3021.  
30 "Note," s. 673.1041.  
31 "Sale," s. 672.106.



1       "Securities intermediary," s. 678.1021.

2       "Security," s. 678.1021.

3       "Security certificate," s. 678.1021.

4       "Security entitlement," s. 678.1021.

5       "Uncertified security," s. 678.1021.

6       Section 8. Section 679.106, Florida Statutes, is  
7 amended to read:

8           679.106 Definitions: "account"; "general  
9 intangibles."--"Account" means any right to payment for goods  
10 sold or leased or for services rendered which is not evidenced  
11 by an instrument or chattel paper whether or not it has been  
12 earned by performance. "General intangibles" means any  
13 personal property (including things in action) other than  
14 goods, accounts, chattel paper, documents, instruments,  
15 investment property, and money. All rights to payment earned  
16 or unearned under a charter or other contract involving the  
17 use or hire of a vessel and all rights incident to the charter  
18 or contract are accounts.

19       Section 9. Section 679.115, Florida Statutes, is  
20 created to read:

21           679.115 Investment property.--

22           (1) In this chapter:

23           (a) "Commodity account" means an account maintained by  
24 a commodity intermediary in which a commodity contract is  
25 carried for a commodity customer.

26           (b) "Commodity contract" means a commodity futures  
27 contract, an option on a commodity futures contract, a  
28 commodity option, or other contract that, in each case, is:

29           1. Traded on or subject to the rules of a board of  
30 trade that has been designated as a contract market for such a  
31 contract pursuant to the federal commodities laws; or

1           2. Traded on a foreign commodity board of trade,  
2 exchange, or market, and is carried on the books of a  
3 commodity intermediary for a commodity customer.

4           (c) "Commodity customer" means a person for whom a  
5 commodity intermediary carries a commodity contract on its  
6 books.

7           (d) "Commodity intermediary" means:

8           1. A person who is registered as a futures commission  
9 merchant under the federal commodities laws; or

10           2. A person who in the ordinary course of its business  
11 provides clearance or settlement services for a board of trade  
12 that has been designated as a contract market pursuant to the  
13 federal commodities laws.

14           (e) "Control" with respect to a certificated security,  
15 uncertificated security, or security entitlement has the  
16 meaning specified in s. 678.1061. A secured party has control  
17 over a commodity contract if by agreement among the commodity  
18 customer, the commodity intermediary, and the secured party,  
19 the commodity intermediary has agreed that it will apply any  
20 value distributed on account of the commodity contract as  
21 directed by the secured party without further consent by the  
22 commodity customer. If a commodity customer grants a security  
23 interest in a commodity contract to its own commodity  
24 intermediary, the commodity intermediary as secured party has  
25 control. A secured party has control over a securities account  
26 or commodity account if the secured party has control over all  
27 security entitlements or commodity contracts carried in the  
28 securities account or commodity account.

29           (f) "Investment property" means:

30           1. A security, whether certificated or uncertificated;

31           2. A security entitlement;

1           3. A securities account;

2           4. A commodity contract; or

3           5. A commodity account.

4           (2) Attachment or perfection of a security interest in  
5 a securities account is also attachment or perfection of a  
6 security interest in all security entitlements carried in the  
7 securities account. Attachment or perfection of a security  
8 interest in a commodity account is also attachment or  
9 perfection of a security interest in all commodity contracts  
10 carried in the commodity account.

11           (3) A description of collateral in a security  
12 agreement or financing statement is sufficient to create or  
13 perfect a security interest in a certificated security,  
14 uncertificated security, security entitlement, securities  
15 account, commodity contract, or commodity account whether it  
16 describes the collateral by those terms, or as investment  
17 property, or by description of the underlying security,  
18 financial asset, or commodity contract. A description of  
19 investment property collateral in a security agreement or  
20 financing statement is sufficient if it identifies the  
21 collateral by specific listing, by category, by quantity, by a  
22 computational or allocational formula or procedure, or by any  
23 other method, if the identity of the collateral is objectively  
24 determinable.

25           (4) Perfection of a security interest in investment  
26 property is governed by the following rules:

27           (a) A security interest in investment property may be  
28 perfected by control.

29           (b) Except as otherwise provided in paragraphs (c) and  
30 (d), a security interest in investment property may be  
31 perfected by filing.

1       (c) If the debtor is a broker or securities  
2 intermediary, a security interest in investment property is  
3 perfected when it attaches. The filing of a financing  
4 statement with respect to a security interest in investment  
5 property granted by a broker or securities intermediary has no  
6 effect for purposes of perfection or priority with respect to  
7 that security interest.

8       (d) If a debtor is a commodity intermediary, a  
9 security interest in a commodity contract or a commodity  
10 account is perfected when it attaches. The filing of a  
11 financing statement with respect to a security interest in a  
12 commodity contract or a commodity account granted by a  
13 commodity intermediary has no effect for purposes of  
14 perfection or priority with respect to that security interest.

15       (5) Priority between conflicting security interests in  
16 the same investment property is governed by the following  
17 rules:

18       (a) A security interest of a secured party who has  
19 control over investment property has priority over a security  
20 interest of a secured party who does not have control over the  
21 investment property.

22       (b) Except as otherwise provided in paragraphs (c) and  
23 (d), conflicting security interests of secured parties each of  
24 whom has control rank equally.

25       (c) Except as otherwise agreed by the securities  
26 intermediary, a security interest in a security entitlement or  
27 a securities account granted to the debtor's own securities  
28 intermediary has priority over any security interest granted  
29 by the debtor to another secured party.

30       (d) Except as otherwise agreed by the commodity  
31 intermediary, a security interest in a commodity contract or a

1 commodity account granted to the debtor's own commodity  
2 intermediary has priority over any security interest granted  
3 by the debtor to another secured party.

4 (e) Conflicting security interests granted by a  
5 broker, a securities intermediary, or a commodity intermediary  
6 which are perfected without control rank equally.

7 (f) In all other cases, priority between conflicting  
8 security interests in investment property is governed by s.  
9 679.312(5), (6), and (7). Section 679.312(4) does not apply to  
10 investment property.

11 (6) If a security certificate in registered form is  
12 delivered to a secured party pursuant to agreement, a written  
13 security agreement is not required for attachment or  
14 enforceability of the security interest, delivery suffices for  
15 perfection of the security interest, and the security interest  
16 has priority over a conflicting security interest perfected by  
17 means other than control, even if a necessary indorsement is  
18 lacking.

19 Section 10. Section 679.116, Florida Statutes, is  
20 created to read:

21 679.116 Security interest arising in purchase or  
22 delivery of financial asset.--

23 (1) If a person buys a financial asset through a  
24 securities intermediary in a transaction in which the buyer is  
25 obligated to pay the purchase price to the securities  
26 intermediary at the time of the purchase, and the securities  
27 intermediary credits the financial asset to the buyer's  
28 securities account before the buyer pays the securities  
29 intermediary, the securities intermediary has a security  
30 interest in the buyer's security entitlement securing the  
31 buyer's obligation to pay. A security agreement is not

1 required for attachment or enforceability of the security  
2 interest, and the security interest is automatically  
3 perfected.

4 (2) If a certificated security, or other financial  
5 asset represented by a writing which in the ordinary course of  
6 business is transferred by delivery with any necessary  
7 indorsement or assignment is delivered pursuant to an  
8 agreement between persons in the business of dealing with such  
9 securities or financial assets and the agreement calls for  
10 delivery versus payment, the person delivering the certificate  
11 or other financial asset has a security interest in the  
12 certificated security or other financial asset securing the  
13 seller's right to receive payment. A security agreement is not  
14 required for attachment or enforceability of the security  
15 interest, and the security interest is automatically  
16 perfected.

17 Section 11. Subsection (1) of section 679.203, Florida  
18 Statutes, is amended to read:

19 679.203 Attachment and enforceability of security  
20 interest; proceeds, formal requisites.--

21 (1) Subject to the provisions of s. 674.2101 on the  
22 security interest of a collecting bank, ss. 679.115 and  
23 679.116 on security interests in investment property,  
24 ~~678.321 on security interests in securities~~ and s. 679.113 on  
25 a security interest arising under the chapter on sales, a  
26 security interest is not enforceable against the debtor or  
27 third parties with respect to the collateral and does not  
28 attach unless:

29 (a) The collateral is in the possession of the secured  
30 party pursuant to agreement, the collateral is investment  
31 property and the secured party has control pursuant to

1 agreement, or the debtor has signed a security agreement which  
2 contains a description of the collateral and in addition, when  
3 the security interest covers crops growing or to be grown or  
4 timber to be cut, a description of the land concerned; and

5 (b) Value has been given; and

6 (c) The debtor has rights in the collateral.

7 Section 12. Paragraph (d) of subsection (1) of section  
8 679.301, Florida Statutes, is amended to read:

9 679.301 Persons who take priority over unperfected  
10 security interests; right of "lien creditor."--

11 (1) Except as otherwise provided in subsection (2), an  
12 unperfected security interest is subordinate to the rights of:

13 (d) In the case of accounts, investment property, and  
14 general intangibles, a person who is not a secured party and  
15 who is a transferee to the extent that he gives value without  
16 knowledge of the security interest and before it is perfected.

17 Section 13. Subsection (1) of section 679.302, Florida  
18 Statutes, is amended to read:

19 679.302 When filing is required to perfect security  
20 interest; security interests to which filing provisions of  
21 this chapter do not apply.--

22 (1) A financing statement must be filed to perfect all  
23 security interests except the following:

24 (a) A security interest in collateral in possession of  
25 the secured party under s. 679.304(1) or s. 679.305;

26 (b) A security interest temporarily perfected in  
27 instruments, certificated securities, or documents without  
28 delivery under s. 679.304 or in proceeds for a 10-day period  
29 under s. 679.306;

30 (c) A security interest created by an assignment of a  
31 beneficial interest in a decedent's estate;

1 (d) A purchase money security interest in consumer  
2 goods; but filing is required for a fixture under s. 679.313;

3 (e) An assignment of accounts which does not alone or  
4 in conjunction with other assignments to the same assignee  
5 transfer a significant part of the outstanding accounts of the  
6 assignor;

7 (f) A security interest of a collecting bank (s.  
8 674.2101) ~~or in securities (s. 678.321)~~ or arising under the  
9 chapter on sales (see s. 679.113) or covered in subsection (3)  
10 of this section;

11 (g) An assignment for the benefit of all the creditors  
12 of the transferor, and subsequent transfers by the assignee  
13 thereunder; or—

14 (h) A security interest in investment property which  
15 is perfected without filing under s. 679.115 or s. 679.116.

16 Section 14. Subsection (1) of section 679.303, Florida  
17 Statutes, is amended to read:

18 679.303 When security interest is perfected;  
19 continuity of perfection.--

20 (1) A security interest is perfected when it has  
21 attached and when all of the applicable steps required for  
22 perfection have been taken. Such steps are specified in ss.  
23 679.115, 679.302, 679.304-679.306. If such steps are taken  
24 before the security interest attaches, it is perfected at the  
25 time when it attaches.

26 Section 15. Subsections (1), (4), and (5) of section  
27 679.304, Florida Statutes, are amended to read:

28 679.304 Perfection of security interest in  
29 instruments, documents, and goods covered by documents;  
30 perfection by permissive filing; temporary perfection without  
31 filing or transfer of possession.--



1           (1) A security interest in chattel paper or negotiable  
2 documents may be perfected by filing. A security interest in  
3 money or instruments (~~other than certificated securities or~~  
4 instruments which constitute part of chattel paper) can be  
5 perfected only by the secured party's taking possession,  
6 except as provided in subsections (4) and (5) of this section  
7 and subsections (2) and (3) of s. 679.306 on proceeds.

8           (4) A security interest in instruments, ~~(other than~~  
9 certificated securities, ~~)~~ or negotiable documents is perfected  
10 without filing or the taking of possession for a period of 21  
11 days from the time it attaches to the extent that it arises  
12 for new value given under a written security agreement.

13           (5) A security interest remains perfected for a period  
14 of 21 days without filing where a secured party having a  
15 perfected security interest in an instrument, ~~(other than a~~  
16 certificated security, ~~)~~ a negotiable document, or goods in  
17 possession of a bailee other than one who has issued a  
18 negotiable document therefor:

19           (a) Makes available to the debtor the goods or  
20 documents representing the goods for the purpose of ultimate  
21 sale or exchange or for the purpose of loading, unloading,  
22 storing, shipping, transshipping, manufacturing, processing,  
23 or otherwise dealing with them in a manner preliminary to  
24 their sale or exchange but priority between conflicting  
25 security interests in the goods is subject to s. 679.312(3);  
26 or

27           (b) Delivers the instrument or certificated security  
28 to the debtor for the purpose of ultimate sale or exchange or  
29 of presentation, collection, renewal or registration of  
30 transfer.

31

1           Section 16. Section 679.305, Florida Statutes, is  
2 amended to read:

3           679.305 When possession by secured party perfects  
4 security interest without filing.--A security interest in  
5 letters of credit and advices of credit (s. 675.116(2)(a)),  
6 goods, instruments, money, negotiable documents, or chattel  
7 paper may be perfected by the secured party's taking  
8 possession of the collateral. If such collateral other than  
9 goods covered by a negotiable document is held by a bailee,  
10 the secured party is deemed to have possession from the time  
11 the bailee receives notification of the secured party's  
12 interest. A security interest is perfected by possession from  
13 the time possession is taken without relation back and  
14 continues only so long as possession is retained, unless  
15 otherwise specified in this chapter. The security interest  
16 may be otherwise perfected as provided in this chapter before  
17 or after the period of possession by the secured party.

18           Section 17. Subsections (1) and (3) of section  
19 679.306, Florida Statutes, are amended to read:

20           679.306 "Proceeds"; secured party's rights on  
21 disposition of collateral.--

22           (1) "Proceeds" includes whatever is received upon the  
23 sale, exchange, collection, or other disposition of collateral  
24 or proceeds. Insurance payable by reason of loss or damage to  
25 the collateral is proceeds, except to the extent that it is  
26 payable to a person other than a party to the security  
27 agreement. Any payments or distributions made with respect to  
28 investment property collateral are proceeds. Money, checks,  
29 deposit accounts, and the like are "cash proceeds." All other  
30 proceeds are "noncash proceeds."  
31

1           (3) The security interest in proceeds is a  
2 continuously perfected security interest if the interest in  
3 the original collateral was perfected, but it ceases to be a  
4 perfected security interest and becomes unperfected 10 days  
5 after receipt of the proceeds by the debtor unless:

6           (a) A filed financing statement covers the original  
7 collateral and the proceeds are collateral in which a security  
8 interest may be perfected by filing in the office or offices  
9 where the financing statement has been filed and, if the  
10 proceeds are acquired with cash proceeds, the description of  
11 collateral in the financing statement indicates the types of  
12 property constituting the proceeds; or

13           (b) A filed financing statement covers the original  
14 collateral and the proceeds are identifiable cash proceeds; or

15           (c) The original collateral was investment property  
16 and the proceeds are identifiable cash proceeds; or

17           (d)~~(e)~~ The security interest in the proceeds is  
18 perfected before the expiration of the 10-day period.

19  
20 Except as provided in this section, a security interest in  
21 proceeds can be perfected only by the methods or under the  
22 circumstances permitted in this chapter for original  
23 collateral of the same type.

24           Section 18. Section 679.309, Florida Statutes, is  
25 amended to read:

26           679.309 Protection of purchasers of instruments,  
27 documents, and securities.--Nothing in this chapter limits the  
28 rights of a holder in due course of a negotiable instrument  
29 (s. 673.3021) or a holder to whom a negotiable document of  
30 title has been duly negotiated (s. 677.501) or a protected  
31 ~~bona fide~~ purchaser of a security (s. 678.3031 ~~s. 678.302~~),

1 and such holders or purchasers take priority over an earlier  
2 security interest even though perfected. Filing under this  
3 chapter does not constitute notice of the security interest to  
4 such holders or purchasers.

5 Section 19. Subsections (1) and (7) of section  
6 679.312, Florida Statutes, are amended to read:

7 679.312 Priorities among conflicting security  
8 interests in the same collateral.--

9 (1) The rules of priority stated in other sections of  
10 this part and in the following sections shall govern when  
11 applicable: s. 674.2101 with respect to the security  
12 interests of collecting banks in items being collected,  
13 accompanying documents, and proceeds; s. 679.103 on security  
14 interests related to other jurisdictions; s. 679.114 on  
15 consignments; s. 679.115 on security interests in investment  
16 property.

17 (7) If future advances are made while a security  
18 interest is perfected by filing, the taking of possession, or  
19 under s. 679.115 or s. 679.116 on investment property ~~s.~~  
20 ~~678.321 on securities~~, the security interest has the same  
21 priority for the purposes of subsection (5) or s. 679.115(5)  
22 with respect to the future advances as it does with respect to  
23 the first advance. If a commitment is made before or while  
24 the security interest is so perfected, the security interest  
25 has the same priority with respect to advances made pursuant  
26 thereto. In other cases, a perfected security interest has  
27 priority from the date the advance is made.

28 Section 20. Paragraph (d) of subsection (2) of section  
29 671.105, Florida Statutes, is amended to read:

30 671.105 Territorial application of the code; parties'  
31 power to choose applicable law.--

1           (2) When one of the following provisions of this code  
2 specifies the applicable law, that provision governs; and a  
3 contrary agreement is effective only to the extent permitted  
4 by the law (including the conflict-of-laws rules) so  
5 specified:

6           (d) Applicability of the chapter on investment  
7 securities. (s. 678.1061 ~~s. 678.106~~)

8           Section 21. Subsection (2) of section 671.206, Florida  
9 Statutes, is amended to read:

10           671.206 Statute of frauds for kinds of personal  
11 property not otherwise covered.--

12           (2) Subsection (1) of this section does not apply to  
13 contracts for the sale of goods (s. 672.201) nor of securities  
14 (s. 678.1131 ~~s. 678.319~~) nor to security agreements (s.  
15 679.203).

16           Section 22. Paragraph (f) of subsection (1) of section  
17 674.104, Florida Statutes, is amended to read:

18           674.104 Definitions and index of definitions.--

19           (1) In this chapter, unless the context otherwise  
20 requires, the term:

21           (f) "Documentary draft" means a draft to be presented  
22 for acceptance or payment if specified documents, certificated  
23 securities (s. 678.1021 ~~s. 678.102~~) or instructions for  
24 uncertificated securities (s. 678.1021 ~~s. 678.308~~), or other  
25 certificates, statements, or the like are to be received by  
26 the drawee or other payor before acceptance or payment of the  
27 draft.

28           Section 23. Subsection (2) of section 675.114, Florida  
29 Statutes, is amended to read:

30           675.114 Issuer's duty and privilege to honor; right to  
31 reimbursement.--

1 (2) Unless otherwise agreed when documents appear on  
2 their face to comply with the terms of a credit but a required  
3 document does not in fact conform to the warranties made on  
4 negotiation or transfer of a document of title (s. 677.507) or  
5 of a certificated security (s. 678.1081 ~~s. 678.306~~) or is  
6 forged or fraudulent or there is fraud in the transaction:

7 (a) The issuer must honor the draft or demand for  
8 payment if honor is demanded by a negotiating bank or other  
9 holder of the draft or demand which has taken the draft or  
10 demand under the credit and under circumstances which would  
11 make it a holder in due course (s. 673.3021) and in an  
12 appropriate case would make it a person to whom a document of  
13 title has been duly negotiated (s. 677.502) or a bona fide  
14 purchaser of a certificated security (s. 678.3021 ~~s. 678.302~~);  
15 and

16 (b) In all other cases as against its customer, an  
17 issuer acting in good faith may honor the draft or demand for  
18 payment despite notification from the customer of fraud,  
19 forgery or other defect not apparent on the face of the  
20 documents but a court of appropriate jurisdiction may enjoin  
21 such honor.

22 Section 24. (1) This act does not affect an action or  
23 proceeding commenced before this act takes effect.

24 (2) If a security interest in a security is perfected  
25 at the date this act takes effect, and the action by which the  
26 security interest was perfected would suffice to perfect a  
27 security interest under this act, no further action is  
28 required to continue perfection. If a security interest in a  
29 security is perfected at the date this act takes effect but  
30 the action by which the security interest was perfected would  
31 not suffice to perfect a security interest under this act, the

1 security interest remains perfected for a period of 4 months  
2 after the effective date and continues perfected thereafter if  
3 appropriate action to perfect under this act is taken within  
4 that period. If a security interest is perfected at the date  
5 this act takes effect and the security interest can be  
6 perfected by filing under this act, a financing statement  
7 signed by the secured party instead of the debtor may be filed  
8 within that period to continue perfection or thereafter to  
9 perfect.

10 Section 25. Sections 610.011, 610.021, 610.031,  
11 610.041, 610.051, 610.061, 610.071, 610.081, 610.091, 610.101,  
12 and 610.111, Florida Statutes, paragraph (b) of subsection (2)  
13 of section 671.304, Florida Statutes, and sections 678.102,  
14 678.103, 678.104, 678.105, 678.106, 678.107, 678.108, 678.201,  
15 678.202, 678.203, 678.204, 678.205, 678.206, 678.207, 678.208,  
16 678.301, 678.302, 678.303, 678.304, 678.305, 678.306, 678.307,  
17 678.308, 678.309, 678.310, 678.311, 678.312, 678.313, 678.314,  
18 678.315, 678.316, 678.317, 678.318, 678.319, 678.320, 678.321,  
19 678.401, 678.402, 678.403, 678.404, 678.405, 678.406, 678.407,  
20 and 678.408, Florida Statutes, are hereby repealed.

21 Section 26. Paragraphs (e) and (g) of subsection (1)  
22 of section 680.1031, Florida Statutes, are amended to read:

23 680.1031 Definitions and index of definitions.--

24 (1) In this chapter, unless the context otherwise  
25 requires:

26 (e) "Consumer lease" means a lease that a lessor  
27 regularly engaged in the business of leasing or selling makes  
28 to a lessee who is an individual and who ~~a natural person and~~  
29 takes under the lease primarily for a personal, family, or  
30 household purpose if the total payments to be made under the  
31

1 lease contract, excluding payments for options to renew or  
2 buy, do not exceed \$25,000.

3 (g) "Finance lease" means a lease with respect to ~~in~~  
4 which:

5 1. The lessor does not select, manufacture, or supply  
6 the goods;

7 2. The lessor acquires the goods or the right to  
8 possession and use of the goods in connection with the lease;  
9 and

10 3. One of the following occurs ~~Either~~:

11 a. The lessee receives a copy of the contract by which  
12 the lessor acquired the goods or the right to possession and  
13 use evidencing the lessor's purchase of the goods ~~on or~~ before  
14 signing the lease contract;

15 b. The lessee's approval of the contract by which the  
16 lessor acquired the goods or the right to possession and use  
17 evidencing the lessor's purchase of the goods is a condition  
18 to effectiveness of the lease contract;

19 c. The lessee, before signing the lease contract,  
20 receives an accurate and complete statement designating the  
21 promises and warranties, and any disclaimers of warranties,  
22 limitations or modifications of remedies, or liquidated  
23 damages, including those of a third party, such as the  
24 manufacturer of the goods, provided to the lessor by the  
25 person supplying the goods in connection with or as part of  
26 the contract by which the lessor acquired the goods or the  
27 right to possession and use of the goods; or

28 d. If the lease is not a consumer lease, the lessor,  
29 before the lessee signs the lease contract, informs the lessee  
30 in writing:

31



1           I. Of the identity of the person supplying the goods  
2 to the lessor, unless the lessee has selected that person and  
3 directed the lessor to acquire the goods or the right to  
4 possession and use of the goods from that person.

5           II. That the lessee is entitled under this chapter to  
6 the promises and warranties, including those of any third  
7 party, provided to the lessor by the person supplying the  
8 goods in connection with or as part of the contract by which  
9 the lessor acquired the goods or the right to possession and  
10 use of the goods.

11           III. That the lessee may communicate with the person  
12 supplying the goods to the lessor and receive an accurate and  
13 complete record of the goods; and a complete statement of  
14 those promises and warranties, including any disclaimers and  
15 limitations of them or of remedies.

16           ~~c. The lease contract discloses all warranties and~~  
17 ~~other rights provided to the lessee by the lessor and supplier~~  
18 ~~in connection with the lease contract and informs the lessee~~  
19 ~~that there are no warranties or other rights provided to the~~  
20 ~~lessee by the lessor and supplier other than those disclosed~~  
21 ~~in the lease contract; or~~

22           ~~d. Only if the lease is not a consumer lease, on or~~  
23 ~~before the signing of the lease contract by the lessee the~~  
24 ~~lessor:~~

25           ~~i. Informs the lessee in writing of the identity of~~  
26 ~~the supplier unless the lessee has selected the supplier and~~  
27 ~~directed the lessor to purchase the goods from the supplier;~~

28           ~~ii. Informs the lessee in writing that the lessee may~~  
29 ~~have rights under the contract evidencing the lessor's~~  
30 ~~purchase of the goods; and~~

31

1           ~~III. Advises the lessee in writing to contact the~~  
2 ~~supplier for a description of any such rights.~~

3           Section 27. Section 680.1041, Florida Statutes, is  
4 amended to read:

5           680.1041 Leases subject to other statutes.--

6           (1) A lease, although subject to this chapter, is also  
7 subject to any applicable:

8           ~~(a) Statute of the United States;~~

9           ~~(b)~~ Certificate-of-title statute of this state:  
10 chapter 319 or chapter 328;

11           ~~(b)(c)~~ Certificate-of-title statute of another  
12 jurisdiction (s. 680.1051); or

13           ~~(c)(d)~~ Consumer protection statute of this state or  
14 final consumer protection decision of a court of this state  
15 existing on the effective date of this chapter.

16           (2) In case of conflict between ~~the provisions of this~~  
17 chapter, other than ss. 680.1051, 680.304(3), and 680.305(3),  
18 and a any statute or decision referred to in subsection (1),  
19 the ~~provisions of that statute or decision controls control.~~

20           (3) Failure to comply with an any applicable law  
21 ~~statute~~ has only the effect specified therein.

22           Section 28. Section 680.303, Florida Statutes, is  
23 amended to read:

24           680.303 Alienability of party's interest under lease  
25 contract or of lessor's residual interest in goods; delegation  
26 of performance; transfer assignment of rights.--

27           (1) As used in this section, "creation of a security  
28 interest" includes the sale of a lease contract that is  
29 subject to chapter 679.

30           (2) Except as provided in subsections (3) and (4), a  
31 provision in a lease agreement which:

1       (a) Prohibits the voluntary or involuntary transfer,  
2 including a transfer by sale, sublease, creation or  
3 enforcement of a security interest, or attachment, levy, or  
4 other judicial process, of an interest of a party under the  
5 lease contract or of the lessor's residual interest in the  
6 goods; or

7       (b) Makes such a transfer an event of default, gives  
8 rise to the rights and remedies provided in subsection (5),  
9 but a transfer that is prohibited or is an event of default  
10 under the lease agreement is otherwise effective.

11       (3) A provision in a lease agreement which:

12       (a) Prohibits the creation or enforcement of a  
13 security interest in an interest of a party under the lease  
14 contract or in the lessor's residual interest in the goods; or

15       (b) Makes such a transfer an event of default, is not  
16 enforceable unless, and then only to the extent that, there is  
17 an actual transfer by the lessee of the lessee's right of  
18 possession or use of the goods in violation of the provision  
19 or an actual delegation of a material performance of either  
20 party to the lease contract in violation of the provision.

21 Neither the granting nor the enforcement of a security  
22 interest in the lessor's interest under the lease contract or  
23 the lessor's residual interest in the goods is a transfer that  
24 materially impairs the prospect of obtaining return  
25 performance by, materially changes the duty of, or materially  
26 increases the burden or risk imposed on, the lessee within the  
27 purview of subsection (5) unless, and then only to the extent  
28 that, there is an actual delegation of a material performance  
29 of the lessor.

30  
31

1           ~~(1) Any interest of a party under a lease contract and~~  
2 ~~the lessor's residual interest in the goods may be transferred~~  
3 ~~unless:~~  
4           ~~(a) Except as provided in paragraph (a) of subsection~~  
5 ~~(3), the transfer is voluntary and the lease contract~~  
6 ~~prohibits the transfer; or~~  
7           ~~(b) Except as provided in paragraph (c) or paragraph~~  
8 ~~(d) of subsection (3), the transfer materially changes the~~  
9 ~~duty of or materially increases the burden or risk imposed on~~  
10 ~~the other party to the lease contract, and within a reasonable~~  
11 ~~time after notice of the transfer the other party demands that~~  
12 ~~the transferee comply with subsection (2) and the transferee~~  
13 ~~fails to comply.~~  
14           ~~(2) Within a reasonable time after demand pursuant to~~  
15 ~~paragraph (1)(b), the transferee shall:~~  
16           ~~(a) Cure or provide adequate assurance that he will~~  
17 ~~promptly cure any default other than one arising from the~~  
18 ~~transfer.~~  
19           ~~(b) Compensate or provide adequate assurance that he~~  
20 ~~will promptly compensate the other party to the lease contract~~  
21 ~~and any other person holding an interest in the lease~~  
22 ~~contract, except the party whose interest is being~~  
23 ~~transferred, for any loss to that party resulting from the~~  
24 ~~transfer.~~  
25           ~~(c) Provide adequate assurance of future due~~  
26 ~~performance under the lease contract.~~  
27           ~~(d) Assume the lease contract.~~  
28           ~~(3)(a) No prohibition upon transfer of any interest of~~  
29 ~~a party under a lease contract or the lessor's residual~~  
30 ~~interest in the goods shall invalidate the creation or~~  
31 ~~enforcement of a security interest in any interest of the~~

1 ~~lessor under a lease contract or the lessor's residual~~  
2 ~~interest in the goods.~~

3 ~~(b) Demand pursuant to paragraph (1)(b) is without~~  
4 ~~prejudice to the other party's rights against the transferee~~  
5 ~~and the party whose interest is transferred.~~

6 ~~(c) Paragraph (b) of subsection (1) shall not apply~~  
7 ~~to:~~

8 ~~1. The creation of a security interest in the interest~~  
9 ~~of the lessor under the lease contract or the lessor's~~  
10 ~~residual interest in the goods; or~~

11 ~~2. The exercise of rights as a secured party pursuant~~  
12 ~~to the security interest other than a transfer of the interest~~  
13 ~~of the lessor under the lease contract or the lessor's~~  
14 ~~residual interest in the goods pursuant to s. 680.504 or s.~~  
15 ~~680.505.~~

16 ~~(d) Paragraph (b) of subsection (1) shall not affect~~  
17 ~~the validity of a provision in a lease contract obligating the~~  
18 ~~lessee to keep the lessee's interest in the lease contract or~~  
19 ~~the goods free from liens or encumbrances.~~

20 ~~(4)(6)~~ A provision in a lease agreement which:

21 (a) Prohibits a transfer of a right to damages for  
22 default with respect to the whole lease contract or of a right  
23 to payment arising out of the transferor's assignor's due  
24 performance of the transferor's his entire obligation can be  
25 assigned despite agreement otherwise; or

26 (b) Makes such a transfer an event of default, is not  
27 enforceable, and such a transfer is not a transfer that  
28 materially impairs the prospect of obtaining return  
29 performance by, materially changes the duty of, or materially  
30 increases the burden or risk imposed on, the other party to  
31 the lease contract within the purview of subsection (5).

1           (5) Subject to subsections (3) and (4):

2           (a) If a transfer is made which is made an event of  
3 default under a lease agreement, the party to the lease  
4 contract not making the transfer, unless that party waives the  
5 default or otherwise agrees, has the rights and remedies  
6 described in s. 680.501(2);

7           (b) If paragraph (a) is not applicable and if a  
8 transfer is made that is prohibited under a lease agreement or  
9 materially impairs the prospect of obtaining return  
10 performance by, materially changes the duty of, or materially  
11 increases the burden or risk imposed on, the other party to  
12 the lease contract, unless the party not making the transfer  
13 agrees at any time to the transfer in the lease contract or  
14 otherwise, then, except as limited by contract, the transferor  
15 is liable to the party not making the transfer for damages  
16 caused by the transfer to the extent that the damages could  
17 not reasonably be prevented by the party not making the  
18 transfer and a court having jurisdiction may grant other  
19 appropriate relief, including cancellation of the lease  
20 contract or an injunction against the transfer.

21           (6)(4) A transfer ~~An assignment~~ of "the lease" or of  
22 "all my rights under the lease" or a transfer ~~an assignment~~ in  
23 similar general terms is a transfer of rights, and unless the  
24 language or the circumstances, as in a transfer ~~an assignment~~  
25 for security, indicate the contrary, the transfer ~~assignment~~  
26 is a delegation of duties by the transferor to the transferee.  
27 ~~assignor to the assignee~~ and Acceptance by the transferee  
28 ~~assignee~~ constitutes a promise by the transferee ~~him~~ to  
29 perform those duties. The ~~This~~ promise is enforceable by  
30 either the transferor ~~assignor~~ or the other party to the lease  
31 contract.

1           ~~(7)(5)~~ Unless otherwise agreed by the lessor and the  
2 lessee, a no delegation of performance does not relieve  
3 ~~relieves~~ the transferor assignor as against the other party of  
4 any duty to perform or of any liability for default.

5           ~~(8)(7)~~ In a consumer lease, to prohibit the transfer  
6 of an interest of a party under the ~~a~~ lease contract or to  
7 make a transfer an event of default, the language ~~of~~  
8 ~~prohibition~~ must be specific, by a writing, and conspicuous.

9           Section 29. Subsection (1) of section 680.304, Florida  
10 Statutes, is amended to read:

11           680.304 Subsequent lease of goods by lessor.--

12           (1) Subject to ~~the provisions of~~ s. 680.303, a  
13 subsequent lessee from a lessor of goods under an existing  
14 lease contract obtains, to the extent of the leasehold  
15 interest transferred, the leasehold interest in the goods that  
16 the lessor had or had power to transfer and, except as  
17 provided in subsection (2) and s. 680.527(4), takes subject to  
18 the existing lease contract. A lessor with voidable title has  
19 power to transfer a good leasehold interest to a good faith  
20 subsequent lessee for value, but only to the extent set forth  
21 in the preceding sentence. If ~~when~~ goods have been delivered  
22 under a transaction of purchase, the lessor has that power  
23 even though:

24           (a) The lessor's transferor was deceived as to the  
25 identity of the lessor;

26           (b) The delivery was in exchange for a check which is  
27 later dishonored;

28           (c) It was agreed that the transaction was to be a  
29 "cash sale"; or

30           (d) The delivery was procured through fraud punishable  
31 as larcenous under the criminal law.

1 Section 30. Subsections (2) and (3) of section  
2 680.307, Florida Statutes, are amended to read:

3 680.307 Priority of liens arising by attachment or  
4 levy on, security interests in, and other claims to goods.--

5 (2) Except as otherwise provided in subsections (3)  
6 and (4) ~~of this section~~ and in ss. 680.306 and 680.308, a  
7 creditor of a lessor takes subject to the lease contract  
8 unless:

9 (a) ~~Unless~~ The creditor holds a lien that attached to  
10 the goods before the lease contract became enforceable;

11 (b) ~~Unless~~ The creditor holds a security interest in  
12 the goods and the lessee did not give value and receive  
13 delivery of the goods without knowledge of the security  
14 interests ~~and the lessee did not give value and receive~~  
15 ~~delivery of the goods without knowledge of the security~~  
16 ~~interest; or~~

17 (c) ~~Unless~~ The creditor holds a security interest in  
18 the goods which ~~that attached and~~ was perfected(s. 679.303)  
19 before:

20 1. ~~the lease contract became enforceable.~~

21 2. ~~The lessee gave value and received delivery of the~~  
22 ~~goods; or~~

23 3. ~~In the case of a purchase money security interest,~~  
24 ~~the date that is 15 days after the date that the lessor~~  
25 ~~received possession of the goods or the date that the lessee~~  
26 ~~received possession of the goods, whichever is earlier.~~

27 (3) A lessee in the ordinary course of business takes  
28 the leasehold interest free of a security interest in the  
29 goods created by the lessor even though the security interest  
30 is perfected(s. 679.303)and the lessee knows of its  
31 existence.



1           Section 31. Subsections (6), (7), (8), and (9) of  
2 section 680.309, Florida Statutes, are amended to read:

3           680.309 Lessor's and lessee's rights when goods become  
4 fixtures.--

5           (6) Notwithstanding paragraph~~(a)~~ of ~~subsection (4)(a)~~  
6 but otherwise subject to subsections (4) and (5), the interest  
7 of a lessor of fixtures including the lessor's residual  
8 interest, is subordinate to the conflicting interest of an  
9 encumbrancer of the real estate under a construction mortgage  
10 recorded before the goods become fixtures if the goods become  
11 fixtures before the completion of the construction. To the  
12 extent given to refinance a construction mortgage, the  
13 conflicting interest of an encumbrancer of the real estate  
14 under a mortgage has this priority to the same extent as the  
15 encumbrancer of the real estate under the construction  
16 mortgage.

17           (7) In cases not within the preceding subsections,  
18 priority between the interest of a lessor of fixtures,  
19 including the lessor's residual interest, and the conflicting  
20 interest of an encumbrancer or owner of the real estate who is  
21 not the lessee is determined by the priority rules governing  
22 conflicting interests in real estate.

23           (8) If the interest of a lessor of fixtures, including  
24 the lessor's residual interest, has priority over all  
25 conflicting interests of all owners and encumbrancers of the  
26 real estate, the lessor or the lessee may, on default,  
27 expiration, termination, or cancellation of the lease  
28 agreement ~~by the other party~~ but subject to the ~~provisions of~~  
29 ~~the~~ lease agreement and this chapter, or if necessary to  
30 enforce ~~his~~ other rights and remedies of the lessor or lessee  
31 under this chapter, remove the goods from the real estate,

1 free and clear of all conflicting interests of all owners and  
2 encumbrancers of the real estate, but the lessor or lessee ~~he~~  
3 must reimburse any encumbrancer or owner of the real estate  
4 who is not the lessee and who has not otherwise agreed for the  
5 cost of repair of any physical injury but not for any  
6 diminution in value of the real estate caused by the absence  
7 of the goods removed or by any necessity of replacing them. A  
8 person entitled to reimbursement may refuse permission to  
9 remove until the party seeking removal gives adequate security  
10 for the performance of this obligation.

11 (9) Even though the lease agreement does not create a  
12 security interest, the interest of a lessor of fixtures,  
13 including the lessor's residual interest, is perfected by  
14 filing a financing statement as a fixture filing for leased  
15 goods that are or are to become fixtures in accordance with  
16 the relevant provisions of chapter 679.

17 Section 32. Section 680.32, Florida Statutes, is  
18 created to read:

19 680.32 Priority subject to subordination.--Nothing in  
20 this chapter prevents subordination by agreement by any person  
21 entitled to priority.

22 Section 33. Subsection (5) of section 680.501, Florida  
23 Statutes, is amended to read:

24 680.501 Default: procedure.--

25 (5) If the lease agreement covers both real property  
26 and goods, the party seeking enforcement may proceed under  
27 this part as to the goods, or under other applicable law as to  
28 both the real property and the goods in accordance with that  
29 party's ~~his~~ rights and remedies in respect of the real  
30 property, in which case this part does not apply.

31

1           Section 34. Section 680.503, Florida Statutes, is  
2 amended to read:

3           (Substantial rewording of section. See  
4           s. 680.503, F.S., for present text.)

5           680.503 Modification or impairment of rights and  
6 remedies.--

7           (1) Except as otherwise provided in this chapter, the  
8 lease agreement may include rights and remedies for default in  
9 addition to or in substitution for those provided in this  
10 chapter and may limit or alter the measure of damages  
11 recoverable under this chapter.

12           (2) Resort to a remedy provided under this chapter or  
13 in the lease agreement is optional unless the remedy is  
14 expressly agreed to be exclusive. If circumstances cause an  
15 exclusive or limited remedy to fail of its essential purpose,  
16 or provision for an exclusive remedy is unconscionable, remedy  
17 may be had as provided in this chapter.

18           (3) Consequential damages may be liquidated under s.  
19 680.504, or may otherwise be limited, altered, or excluded  
20 unless the limitation, alteration, or exclusion is  
21 unconscionable. Limitation, alteration, or exclusion of  
22 consequential damages for injury to the person in the case of  
23 consumer goods is prima facie unconscionable but limitation,  
24 alteration, or exclusion of damages where the loss is  
25 commercial is not prima facie unconscionable.

26           (4) Rights and remedies on default by the lessor or  
27 the lessee with respect to any obligation or promise  
28 collateral or ancillary to the lease contract are not impaired  
29 by this chapter.

30           Section 35. Subsection (1) of section 680.507, Florida  
31 Statutes, is amended to read:

1           680.507 Proof of market rent; time and place.--  
2           (1) Damages based on market rent (s. 680.519 or s.  
3 680.528) are determined according to the rent for the use of  
4 the goods concerned for a lease term identical to the  
5 remaining lease term of the original lease agreement and  
6 prevailing at the times specified in s. 680.519 or s. 680.528  
7 ~~time of the default.~~

8           Section 36. Subsections (1) and (3) of section  
9 680.508, Florida Statutes, are amended to read:

10          680.508 Lessee's remedies.--

11          (1) If a lessor fails to deliver the goods in  
12 conformity to the lease contract (s. 680.509) or repudiates  
13 the lease contract (s. 680.402), or a lessee rightfully  
14 rejects the goods (s. 680.509) or justifiably revokes  
15 acceptance of the goods (s. 680.517), then with respect to any  
16 goods involved, and with respect to all of the goods if under  
17 an installment lease contract the value of the whole lease  
18 contract is substantially impaired (s. 680.51), the lessor is  
19 in default under the lease contract; and the lessee may:

20           (a) Cancel the lease contract (s. 680.505(1)).

21           (b) Recover so much of the rent and security as has  
22 been paid and, ~~but in the case of an installment lease~~  
23 ~~contract the recovery~~ is that which is just under the  
24 circumstances.

25           (c) Cover and recover damages as to all goods  
26 affected, whether or not they have been identified to the  
27 lease contract (ss. 680.518 and 680.52), or recover damages  
28 for nondelivery (ss. 680.519 and 680.52).

29           (d) Exercise any other rights or pursue any other  
30 remedies provided in the lease contract.

31

1           (3) If a lessor is otherwise in default under a the  
2 lease contract ~~pursuant to subsection (1) or subsection (2) or~~  
3 ~~is otherwise in default under the lease contract~~, the lessee  
4 may exercise ~~any of the rights and~~ pursue the remedies  
5 provided for in the lease contract, which may include a right  
6 to cancel the lease, and in s. 680.519(3)~~this chapter if not~~  
7 ~~effectively excluded or modified by the lease contract, or any~~  
8 ~~rights and remedies effectively provided for in the lease~~  
9 ~~contract.~~

10           Section 37. Sections (3), (4), and (5) of section  
11 680.516, Florida Statutes, are amended to read:

12           680.516 Effect of acceptance of goods; notice of  
13 default; burden of establishing default after acceptance;  
14 notice of claim or litigation to person answerable over.--

15           (3) If a tender has been accepted:

16           (a) Within a reasonable time after the lessee  
17 discovers or should have discovered any default,

18           ~~1.~~ the lessee shall notify the lessor and the  
19 supplier, if any, or be barred from any remedy against the  
20 party not notified.~~lessor, and in addition~~

21           ~~2. In the case of a finance lease, the lessee shall~~  
22 ~~notify the supplier or be barred from any remedy against the~~  
23 ~~supplier.~~

24           (b) Within a reasonable time after the lessee receives  
25 notice of litigation for infringement or the like (s.  
26 680.211), the lessee shall notify the lessor or be barred from  
27 any remedy over for liability established by the litigation.

28           (c) The burden is on the lessee to establish any  
29 default.  
30  
31

1           (4) If a lessee is sued for breach of a warranty or  
2 other obligation for which a lessor or a supplier is  
3 answerable over, the following apply:

4           (a) The lessee may give the lessor or the supplier, or  
5 both, written notice of the litigation. If the notice states  
6 that the person notified ~~lessor or the supplier~~ may come in  
7 and defend and that if the person notified ~~lessor or the~~  
8 ~~supplier~~ does not do so that person ~~he~~ will be bound in any  
9 action against that person ~~him~~ by the lessee by any  
10 determination of fact common to the two litigations, then  
11 unless the person notified ~~lessor or the supplier~~ after  
12 reasonable receipt of the notice does come in and defend that  
13 person ~~he~~ is so bound.

14           (b) The lessor or the supplier may demand in writing  
15 that the lessee turn over control of the litigation including  
16 settlement if the claim is one for infringement or the like  
17 (s. 680.211) or else be barred from any remedy over. If the  
18 demand states that the lessor or the supplier agrees to bear  
19 all expense and to satisfy any adverse judgment, then unless  
20 the lessee after reasonable receipt of the demand does turn  
21 over control the lessee is so barred.

22           (5) ~~The provisions of~~ Subsections (3) and (4) apply to  
23 any obligation of a lessee to hold the lessor or the supplier  
24 harmless against infringement or the like (s. 680.211).

25           Section 38. Subsections (1) and (2) of section  
26 680.518, Florida Statutes, are amended to read:

27           680.518 Cover; substitute goods.--

28           (1) After default by a lessor under the lease contract  
29 of the type described in(s. 680.508), or, if agreed, after  
30 another default by the lessor, the lessee may cover by making  
31

1 any purchase or lease of or contract to purchase or lease  
2 goods in substitution for those due from the lessor.

3 (2) Except as otherwise provided with respect to  
4 damages liquidated in the lease agreement (s. 680.504) or  
5 otherwise determined pursuant to ~~by~~ agreement of the parties  
6 (~~ss. s-671.102(3) and 680.503~~), if a lessee's cover is by  
7 lease agreement substantially similar to the original lease  
8 agreement and the new lease agreement is made in good faith  
9 and in a commercially reasonable manner, the lessee may  
10 recover from the lessor as damages:

11 (a) The present value, as of the date of the  
12 commencement of the term of the new lease agreement, of the  
13 ~~difference between the total rent under for the lease term of~~  
14 the new lease agreement and applicable to that period of the  
15 new lease term which is comparable to the then remaining term  
16 of the original lease agreement minus the present value as of  
17 the same date of the total rent for the then remaining lease  
18 term of the original lease agreement; ~~and-~~

19 (b) Any incidental or consequential damages, less  
20 expenses saved in consequence of the lessor's default.

21 Section 39. Subsections (1), (3), and (4) of section  
22 680.519, Florida Statutes, are amended to read:

23 680.519 Lessee's damages for nondelivery, repudiation,  
24 default, or breach of warranty in regard to accepted goods.--

25 (1) Except as otherwise provided with respect to  
26 damages liquidated in the lease agreement (s. 680.504) or  
27 otherwise determined pursuant to ~~by~~ agreement of the parties  
28 (~~ss. s-671.102(3) and 680.503~~), if a lessee elects not to  
29 cover or a lessee elects to cover and the cover is by lease  
30 agreement, whether or not the lease agreement qualifies for  
31 treatment under s. 680.518(2), or is by purchase or otherwise,

1 the measure of damages for nondelivery or repudiation by the  
2 lessor or for rejection or revocation of acceptance by the  
3 lessee ~~default by the lessor (s. 680.508)~~ is the present  
4 value, as of the date of the default, of the difference  
5 ~~between the~~ then market rent minus the present value as of the  
6 same date of ~~and~~ the original rent, computed for the remaining  
7 lease term of the original lease agreement, together with  
8 incidental and consequential damages, less expenses saved in  
9 consequence of the lessor's default.

10 (3) Except as otherwise agreed, if the lessee has  
11 accepted goods and given notification (s. 680.516(3)), the  
12 measure of damages for nonconforming tender or delivery or  
13 other default by a lessor is the loss resulting in the  
14 ordinary course of events from the lessor's default as  
15 determined in any manner that is reasonable together with  
16 incidental and consequential damages, less expenses saved in  
17 consequence of the lessor's default.

18 (4) Except as otherwise agreed, the measure of damages  
19 for breach of warranty is the present value at the time and  
20 place of acceptance of the difference between the value of the  
21 use of the goods accepted and the value if they had been as  
22 warranted for the lease term, unless special circumstances  
23 show proximate damages of a different amount, together with  
24 incidental and consequential damages, less expenses saved in  
25 consequence of the lessor's default or breach of warranty.

26 Section 40. Section 680.523, Florida Statutes, is  
27 amended to read:

28 680.523 Lessor's remedies.--

29 (1) If a lessee wrongfully rejects or revokes  
30 acceptance of goods or fails to make a payment when due or  
31 repudiates with respect to a part or the whole, then, with



1 respect to any goods involved, and with respect to all of the  
2 goods if under an installment lease contract the value of the  
3 whole lease contract is substantially impaired (s. 680.51),  
4 the lessee is in default under the lease contract; and the  
5 lessor may:

6 (a) Cancel the lease contract (s. 680.505(1));

7 (b) Proceed respecting goods not identified to the  
8 lease contract (s. 680.524);

9 (c) Withhold delivery of the goods and take possession  
10 of goods previously delivered (s. 680.525);

11 (d) Stop delivery of the goods by any bailee (s.  
12 680.526); ~~or~~

13 (e) Dispose of the goods and recover damages (s.  
14 680.527), or retain the goods and recover damages (s.  
15 680.528), or in a proper case recover rent (s. 680.529); ~~or-~~

16 (f) Exercise any other rights or pursue any other  
17 remedies provided in the lease contract.

18 (2) If a lessor does not fully exercise a right or  
19 obtain a remedy to which the lessor is entitled under  
20 subsection (1), the lessor may recover the loss resulting in  
21 the ordinary course of events from the lessee's default as  
22 determined in any reasonable manner, together with incidental  
23 damages, less expenses saved in consequence of the lessee's  
24 default.

25 ~~(3)~~(2) If a lessee is otherwise in default under a the  
26 lease contract ~~pursuant to subsection (1) or is otherwise in~~  
27 ~~default under the lease contract~~, the lessor may exercise any  
28 ~~of the rights and~~ pursue the remedies provided for in ~~this~~  
29 ~~chapter if not effectively excluded or modified by the lease~~  
30 ~~contract, or any rights and remedies effectively provided for~~  
31 ~~in the lease contract, which may include a right to cancel the~~

1 lease. In addition, unless otherwise provided in the lease  
2 contract:

3 (a) If the default substantially impairs the value of  
4 the lease contract to the lessor, the lessor may exercise the  
5 rights and pursue the remedies provided in subsection (1) or  
6 subsection (2); or

7 (b) If the default does not substantially impair the  
8 value of the lease contract to the lessor, the lessor may  
9 recover as provided in subsection (2).

10 Section 41. Subsection (1) of section 680.524, Florida  
11 Statutes, is amended to read:

12 680.524 Lessor's right to identify goods to lease  
13 contract.--

14 (1) After default by the lessee under the lease  
15 contract of the type described in s. 680.523(1) or s.  
16 680.523(3)(a) or, if agreed, after other default by the  
17 lessee, the lessor ~~A lessor aggrieved under s. 680.523~~ may:

18 (a) Identify to the lease contract conforming goods  
19 not already identified if at the time the lessor learned of  
20 the default they were in the lessor's or the supplier's  
21 possession or control; and

22 (b) Dispose of goods (s. 680.527(1)) that demonstrably  
23 have been intended for the particular lease contract even  
24 though those goods are unfinished.

25 Section 42. Subsections (2) and (3) of section  
26 680.525, Florida Statutes, are amended to read:

27 680.525 Lessor's right to possession of goods.--

28 (2) After a ~~The lessor has on~~ default by the lessee  
29 under the lease contract of the type described in s.  
30 680.523(1) or s. 680.523(3)(a) or, if agreed, after other  
31 default by the lessee, the lessor has the right to take

1 possession of the goods. If the lease contract so provides,  
2 the lessor may require the lessee to assemble the goods and  
3 make them available to the lessor at a place to be designated  
4 by the lessor which is reasonably convenient to both parties.  
5 Without removal, the lessor may render unusable any goods  
6 employed in trade or business and may dispose of goods on the  
7 lessee's premises (s. 680.527).

8 (3) The lessor may proceed under subsection (2)  
9 without judicial process if it ~~that~~ can be done without breach  
10 of the peace, or the lessor may proceed by action.

11 Section 43. Subsections (1) and (2) of section  
12 680.527, Florida Statutes, are amended to read:

13 680.527 Lessor's rights to dispose of goods.--

14 (1) After a default by a lessee under the lease  
15 contract of the type described in(s. 680.523(1) or s.  
16 680.523(3)(a))~~or~~ after the lessor refuses to deliver or takes  
17 possession of goods (s. 680.525 or s. 680.526), or, if agreed,  
18 after other default by a lessee,the lessor may dispose of the  
19 goods concerned or the undelivered balance thereof by lease,  
20 sale, or otherwise.

21 (2) Except as otherwise provided with respect to  
22 damages liquidated in the lease agreement (s. 680.504) or  
23 otherwise determined pursuant to ~~by~~ agreement of the parties  
24 (~~ss. s.~~671.102(3) and 680.503), if the disposition is by  
25 lease agreement substantially similar to the original lease  
26 agreement and the new lease agreement is made in good faith  
27 and in a commercially reasonable manner, the lessor may  
28 recover from the lessee as damages:

29 (a) Accrued and unpaid rent as of the date of the  
30 commencement of the term of the new lease agreement;

31

1 (b) The present value, as of the same date, of the  
2 commencement of the term of the new lease agreement of the  
3 ~~difference between the~~ total rent for the then remaining lease  
4 term of the original lease agreement minus the present value,  
5 as of the same date, ~~and the total rent for the lease term of~~  
6 the rent under the new lease agreement applicable to that  
7 period of the new lease term which is comparable to the then  
8 remaining term of the original lease agreement; and

9 (c) Any incidental damages allowed under s. 680.53,  
10 less expenses saved in consequence of the lessee's default.

11 Section 44. Subsection (1) of section 680.528, Florida  
12 Statutes, is amended to read:

13 680.528 Lessor's damages for nonacceptance or  
14 repudiation.--

15 (1) Except as otherwise provided with respect to  
16 damages liquidated in the lease agreement (s. 680.504) or  
17 otherwise determined pursuant to ~~by~~ agreement of the parties  
18 ~~(ss. s. 671.102(3) and 580.503)~~, if a lessor elects to retain  
19 the goods or a lessor elects to dispose of the goods and the  
20 disposition is by lease agreement that for any reason does not  
21 qualify, ~~whether or not the lease agreement qualifies~~ for  
22 treatment under s. 680.527(2), or is by sale or otherwise, the  
23 lessor may recover from the lessee as damages a default of the  
24 type described in s. 680.523(1) or s. 680.523(3)(a), or if  
25 agreed, for other default of ~~for default by~~ the lessee ~~(s.~~  
26 ~~680.523)~~:

27 (a) Accrued and unpaid rent as of the date of default  
28 if the lessee has never taken possession of the goods, or, if  
29 the lessee has taken possession of the goods, as of the date  
30 the lessor repossesses the goods or an earlier date on which  
31 the lessee makes a tender of the goods to the lessor ~~obtained~~

1 ~~possession of the goods or such earlier date as the lessee has~~  
2 ~~made an effective tender of possession of the goods back to~~  
3 ~~the lessor.~~

4 (b) The present value as of the date determined under  
5 paragraph (a) of the ~~difference between the~~ total rent for the  
6 then remaining lease term of the original lease agreement  
7 minus the present value as of the same date of ~~and~~ the market  
8 ~~rent on the date determined under paragraph (a) and at the~~  
9 place where the goods were located on that date computed for  
10 the same lease term.

11 (c) Any incidental damages allowed under s. 680.53,  
12 less expenses saved in consequence of the lessee's default.

13 Section 45. Subsections (1), (4), and (5) of section  
14 680.529, Florida Statutes, are amended to read:

15 680.529 Lessor's action for the rent.--

16 (1) After default by the lessee under the lease  
17 contract of the type described in(s. 680.523(1) or s.  
18 680.523(3)(a) or, if agreed, after other default by the  
19 lessee), if the lessor complies with subsection (2), the  
20 lessor may recover from the lessee as damages:

21 (a) For goods accepted by the lessee and not  
22 repossessed by or ~~effectively~~ tendered ~~back~~ to the lessor and  
23 for conforming goods lost or damaged after risk of loss passes  
24 to the lessee (s. 680.219):

25 1. Accrued and unpaid rent as of the date of entry of  
26 judgment in favor of the lessor.

27 2. The present value as of the same date ~~determined~~  
28 ~~under subparagraph 1.~~of the rent for the then remaining lease  
29 term of the lease agreement.

30 3. Any incidental damages allowed under s. 680.53,  
31 less expenses saved in consequence of the lessee's default.

1 (b) For goods identified to the lease contract if  
2 ~~where the lessor has never delivered the goods or has taken~~  
3 ~~possession of them or the lessee has effectively tendered them~~  
4 ~~back to the lessor, if the lessor~~ is unable after reasonable  
5 effort to dispose of them at a reasonable price or the  
6 circumstances reasonably indicate that such an effort will be  
7 unavailing:

8 1. Accrued and unpaid rent as of the date of entry of  
9 judgment in favor of the lessor.

10 2. The present value as of the same date ~~determined~~  
11 ~~under subparagraph 1.~~of the rent for the then remaining lease  
12 term of the lease agreement.

13 3. Any incidental damages allowed under s. 680.53,  
14 less expenses saved in consequence of the lessee's default.

15 (2) Except as provided in subsection (3), the lessor  
16 shall hold for the lessee for the remaining lease term of the  
17 lease agreement any goods that have been identified to the  
18 lease contract and are in the lessor's control.

19 (4) Payment of the judgment for damages obtained  
20 pursuant to subsection (1) entitles the lessee to the use and  
21 possession of the goods not then disposed of for the remaining  
22 lease term of and in accordance with the lease agreement,  
23 provided that the lessee complies with all other terms and  
24 conditions of the lease agreement.

25 (5) After a default by the lessee under the lease  
26 contract of the type described in s. 680.523(1) or s.  
27 680.523(3)(a) or, if agreed, after other default by the lessee  
28 ~~has wrongfully rejected or revoked acceptance of goods, has~~  
29 ~~failed to pay rent then due, or has repudiated (s. 680.402), a~~  
30 lessor who is held not entitled to rent under this section  
31

1 must nevertheless be awarded damages for nonacceptance under  
2 ss. 680.527 and 680.528.

3 Section 46. Section 680.532, Florida Statutes, is  
4 amended to read:

5 680.532 Lessor's rights to ~~Lessor recovery for loss of~~  
6 residual interest.--In addition to any other recovery  
7 permitted by this chapter, the lessor may ~~shall be entitled to~~  
8 recover from the lessee an amount that will fully compensate  
9 the lessor for any loss of or damage to the lessor's residual  
10 interest in the goods caused by the default of the lessee.

11 Section 47. This act does not apply to any lease  
12 contract entered into before the effective date of this act  
13 unless the parties thereto specifically agree in writing that  
14 the lease contract as expanded, amended, modified, renewed, or  
15 supplemented shall be governed by applicable law as  
16 supplemented or amended by this act. Absent such specific  
17 agreement, transactions validly entered into before that date  
18 and the rights, duties, and interests flowing from them remain  
19 valid thereafter and may be terminated, completed,  
20 consummated, or enforced as though this act had not taken  
21 effect.

22 Section 48. Section 679.111, Florida Statutes, is  
23 hereby repealed.

24 Section 49. This act shall take effect October 1,  
25 1997.

26  
27 \*\*\*\*\*

28 HOUSE SUMMARY

29  
30 Revises Article 8 of the Uniform Commercial Code enacted  
31 as chapter 678, Florida Statutes, relating to investment  
securities. Revises provisions of chapter 680, Florida  
Statutes, relating to leases under the Uniform Commercial  
Code. See bill for details.