

By Senator Silver

38-755-98

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

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

1 intermediary; providing for certain rights of
2 purchaser of security entitlement; providing
3 priority among security interests and
4 entitlement holders; amending s. 679.103, F.S.;
5 providing for perfection of security interests
6 relating to investment property; amending ss.
7 679.105 and 679.106, F.S., to conform; creating
8 s. 679.115, F.S.; providing for perfection of
9 security interests in certain investment
10 properties; providing definitions; providing
11 criteria; providing procedures; creating s.
12 679.116, F.S.; providing for perfection of
13 security interests arising in purchase or
14 delivery of financial interests; amending ss.
15 679.203, 679.301, 679.302, 679.303, 679.304,
16 679.305, 679.306, 679.309, and 679.312, F.S.,
17 to conform; amending ss. 671.105, 671.206,
18 674.104, and 675.114, F.S., to conform;
19 providing for applicability; amending s.
20 680.1031, F.S.; redefining the terms "consumer
21 lease" and "finance lease"; amending s.
22 680.1041, F.S.; revising language with respect
23 to other statutes to which leases are subject;
24 amending s. 680.303, F.S.; revising language
25 with respect to the alienability of a party's
26 interest under a lease contract or of a
27 lessor's residual interest in goods; amending
28 s. 680.304, F.S.; revising language with
29 respect to the subsequent lease of goods by the
30 lessor; amending s. 680.307, F.S.; revising
31 language with respect to priority of liens

1 arising by attachment or levy on security
2 interests in and other claims to goods;
3 amending s. 680.309, F.S.; revising language
4 with respect to lessor's and lessee's rights
5 when goods become fixtures; creating s. 680.32,
6 F.S.; providing that nothing in chapter 680,
7 F.S., prevents subordination by agreement by
8 any person entitled to priority; amending s.
9 680.501, F.S.; revising language with respect
10 to the procedure governing default; amending s.
11 680.503, F.S.; revising language with respect
12 to modification or impairment of rights and
13 remedies; amending s. 680.507, F.S.; revising
14 language with respect to proof of market rent;
15 amending s. 680.508, F.S.; revising language
16 with respect to lessee's remedies; amending s.
17 680.516, F.S.; revising language with respect
18 to the effect of acceptance of goods, notice of
19 default, the burden of establishing default
20 after acceptance, and notice of claim or
21 litigation to persons answerable over; amending
22 s. 680.518, F.S.; revising language with
23 respect to cover and substitute goods; amending
24 s. 680.519, F.S.; revising language with
25 respect to lessee's damages for nondelivery,
26 repudiation, default, or breach of warranty in
27 regard to accepted goods; amending s. 680.523,
28 F.S.; revising language with respect to
29 lessor's remedies; amending s. 680.524, F.S.;
30 revising language with respect to lessor's
31 right to identify goods to lease contract;

1 amending s. 680.525, F.S.; revising language
2 with respect to lessor's right to possession of
3 goods; amending s. 680.527, F.S.; revising
4 language with respect to lessor's rights to
5 dispose of goods; amending s. 680.528, F.S.;
6 revising language with respect to lessor's
7 damages for nonacceptance or repudiation;
8 amending s. 680.529, F.S.; revising language
9 with respect to lessor's action for rent;
10 amending s. 680.532, F.S.; revising language
11 with respect to lessor recovery for loss of
12 residual interest; providing for the
13 application of the act; repealing ss. 610.011,
14 610.021, 610.031, 610.041, 610.051, 610.061,
15 610.071, 610.081, 610.091, 610.101, 610.111,
16 and 671.304(2)(b), F.S., relating to the
17 Uniform Act for Simplification of Fiduciary
18 Security Transfers; repealing ss. 678.101,
19 678.102, 678.103, 678.104, 678.105, 678.106,
20 678.107, 678.108, 678.201, 678.202, 678.203,
21 678.204, 678.205, 678.206, 678.207, 678.208,
22 678.301, 678.302, 678.303, 678.304, 678.305,
23 678.306, 678.307, 678.308, 678.309, 678.310,
24 678.311, 678.312, 678.313, 678.314, 678.315,
25 678.316, 678.317, 678.318, 678.319, 678.320,
26 678.321, 678.401, 678.402, 678.403, 678.404,
27 678.405, 678.406, 678.407, 678.408, F.S.,
28 relating to investment securities under the
29 Uniform Commercial Code; providing an effective
30 date.
31

1 Be It Enacted by the Legislature of the State of Florida:

2
3 Section 1. Part I of chapter 678, Florida Statutes,
4 consisting of sections 678.1011, 678.1021, 678.1031, 678.1041,
5 678.1051, 678.1061, 678.1071, 678.1081, 678.1091, 678.1101,
6 678.1111, 678.1121, 678.1131, 678.1141, 678.1151, and
7 678.1161, Florida Statutes, is created to read:

8
9 PART I

10
11 SHORT TITLE AND GENERAL MATTERS

12
13 678.1011 Short title.--Chapter 678 may be cited as
14 "Uniform Commercial Code--Investment Securities."

15 678.1021 Definitions.--

16 (1) In this chapter:

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

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

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

28 (d) "Certificated security" means a security that is
29 represented by a certificate.

30 (e) "Clearing corporation" means:
31

- 1 1. A person that is registered as a "clearing agency"
2 under the federal securities laws;
3 2. A federal reserve bank; or
4 3. Any other person that provides clearance or
5 settlement services with respect to financial assets that
6 would require it to register as a clearing agency under the
7 federal securities laws but for an exclusion or exemption from
8 the registration requirement, if its activities as a clearing
9 corporation, including promulgation of rules, are subject to
10 regulation by a federal or state governmental authority.
11 (f) "Communicate" means to:
12 1. Send a signed writing; or
13 2. Transmit information by any mechanism agreed-upon
14 by the persons transmitting and receiving the information.
15 (g) "Entitlement holder" means a person identified in
16 the records of a securities intermediary as the person having
17 a security entitlement against the securities intermediary. If
18 a person acquires a security entitlement by virtue of s.
19 678.5011(3)(b) or (c), that person is the entitlement holder.
20 (h) "Entitlement order" means a notification
21 communicated to a securities intermediary directing transfer
22 or redemption of a financial asset to which the entitlement
23 holder has a security entitlement.
24 (i) "Financial asset," except as otherwise provided in
25 s. 678.1031, means:
26 1. A security;
27 2. An obligation of a person or a share,
28 participation, or other interest in a person or in property or
29 an enterprise of a person, which is, or is of a type, dealt in
30 or traded on financial markets, or which is recognized in any
31

1 area in which it is issued or dealt in as a medium for
2 investment; or

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

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

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

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

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

27 1. The security certificate specifies a person
28 entitled to the security.

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

- 1 (n) "Securities intermediary" means:
2 1. A clearing corporation; or
3 2. A person, including a bank or broker, that in the
4 ordinary course of its business maintains securities accounts
5 for others and is acting in that capacity.
6 (o) "Security," except as otherwise provided in
7 678.1031, means an obligation of an issuer or a share,
8 participation, or other interest in an issuer or in property
9 or an enterprise of an issuer:
10 1. Which is represented by a security certificate in
11 bearer or registered form, or the transfer of which may be
12 registered upon books maintained for that purpose by or on
13 behalf of the issuer.
14 2. Which is one of a class or series or by its terms
15 is divisible into a class or series of shares, participations,
16 interests, or obligations.
17 3. Which:
18 a. Is, or is of a type, dealt in or traded on
19 securities exchanges or securities markets; or
20 b. Is a medium for investment and by its terms
21 expressly provides that it is a security governed by this
22 chapter.
23 (p) "Security certificate" means a certificate
24 representing a security.
25 (q) "Security entitlement" means the rights and
26 property interest of an entitlement holder with respect to a
27 financial asset specified in Part V.
28 (r) "Uncertificated security" means a security that is
29 not represented by a certificate.
30 (2) Other definitions applying to this chapter and the
31 sections in which they appear are:

1 "Appropriate person," s. 678.1071.
2 "Control," s. 678.1061.
3 "Delivery," s. 678.3011.
4 "Investment company security," s. 678.1031.
5 "Issuer," s. 678.2011.
6 "Overissue," s. 678.2101.
7 "Protected purchaser," s. 678.3031.
8 "Securities account," s. 678.5011.
9 (3) In addition, chapter 671 contains general
10 definitions and principles of construction and interpretation
11 applicable throughout this chapter.
12 (4) The characterization of a person, business, or
13 transaction for purposes of this chapter does not determine
14 the characterization of the person, business, or transaction
15 for purposes of any other law, regulation, or rule.
16 678.1031 Rules for determining whether certain
17 obligations and interests are securities or financial
18 assets.--
19 (1) A share or similar equity interest issued by a
20 corporation, business trust, joint stock company, or similar
21 entity is a security.
22 (2) An "investment company security" is a security.
23 "Investment company security" means a share or similar equity
24 interest issued by an entity that is registered as an
25 investment company under the federal investment company laws,
26 an interest in a unit investment trust that is so registered,
27 or a face-amount certificate issued by a face-amount
28 certificate company that is so registered. Investment company
29 security does not include an insurance policy or endowment
30 policy or annuity contract issued by an insurance company.
31

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

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

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

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

18 678.1041 Acquisition of security or financial asset or
19 interest therein.--

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

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

24 (b) The person acquires a security entitlement to the
25 security pursuant to s. 678.5011.

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

29 (3) A person who acquires a security entitlement to a
30 security or other financial asset has the rights specified in
31 Part 5, but is a purchaser of any security, security

1 entitlement, or other financial asset held by the securities
2 intermediary only to the extent provided in s. 678.5031.

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

11 678.1051 Notice of adverse claim.--

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

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

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

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

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

31

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

7 (a) One year after a date set for presentment or
8 surrender for redemption or exchange; or

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

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

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

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

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

23 678.1061 Control.--

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

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

30 (a) The certificate is indorsed to the purchaser or in
31 blank by an effective indorsement; or

1 (b) The certificate is registered in the name of the
2 purchaser, upon original issue or registration of transfer by
3 the issuer.

4 (3) A purchaser has "control" of an uncertificated
5 security if:

6 (a) The uncertificated security is delivered to the
7 purchaser; or

8 (b) The issuer has agreed that it will comply with
9 instructions originated by the purchaser without further
10 consent by the registered owner.

11 (4) A purchaser has "control" of a security
12 entitlement if:

13 (a) The purchaser becomes the entitlement holder; or

14 (b) The securities intermediary has agreed that it
15 will comply with entitlement orders originated by the
16 purchaser without further consent by the entitlement holder.

17 (5) If an interest in a security entitlement is
18 granted by the entitlement holder to the entitlement holder's
19 own securities intermediary, the securities intermediary has
20 control.

21 (6) A purchaser who has satisfied the requirements of
22 paragraph (3)(b) or paragraph (4)(b) has control even if the
23 registered owner in the case of paragraph (3)(b) or the
24 entitlement holder in the case of paragraph (4)(b) retains the
25 right to make substitutions for the uncertificated security or
26 security entitlement, to originate instructions or entitlement
27 orders to the issuer or securities intermediary, or otherwise
28 to deal with the uncertificated security or security
29 entitlement.

30 (7) An issuer or a securities intermediary may not
31 enter into an agreement of the kind described in paragraph

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

9 678.1071 Whether indorsement, instruction, or
10 entitlement order is effective.--

11 (1) "Appropriate person" means:

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

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

17 (c) With respect to an entitlement order, the
18 entitlement holder;

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

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

29 (2) An indorsement, instruction, or entitlement order
30 is effective if:

31 (a) It is made by the appropriate person;

1 (b) It is made by a person who has power under the law
2 of agency to transfer the security or financial asset on
3 behalf of the appropriate person, including, in the case of an
4 instruction or entitlement order, a person who has control
5 under s. 678.1061(3)(b) or (4)(b); or

6 (c) The appropriate person has ratified it or is
7 otherwise precluded from asserting its ineffectiveness.

8 (3) An indorsement, instruction, or entitlement order
9 made by a representative is effective even if:

10 (a) The representative has failed to comply with a
11 controlling instrument or with the law of the State having
12 jurisdiction of the representative relationship, including any
13 law requiring the representative to obtain court approval of
14 the transaction; or

15 (b) The representative's action in making the
16 indorsement, instruction, or entitlement order or using the
17 proceeds of the transaction is otherwise a breach of duty.

18 (4) If a security is registered in the name of or
19 specially indorsed to a person described as a representative,
20 or if a securities account is maintained in the name of a
21 person described as a representative, an indorsement,
22 instruction, or entitlement order made by the person is
23 effective even though the person is no longer serving in the
24 described capacity.

25 (5) Effectiveness of an indorsement, instruction, or
26 entitlement order is determined as of the date the
27 indorsement, instruction, or entitlement order is made, and an
28 indorsement, instruction, or entitlement order does not become
29 ineffective by reason of any later change of circumstances.

30 678.1081 Warranties in direct holding.--
31

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

5 (a) The certificate is genuine and has not been
6 materially altered.

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

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

10 (d) The transfer does not violate any restriction on
11 transfer.

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

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

17 (2) A person who originates an instruction for
18 registration of transfer of an uncertificated security to a
19 purchaser for value warrants to the purchaser that:

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

23 (b) The security is valid.

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

25 (d) At the time the instruction is presented to the
26 issuer:

27 1. The purchaser will be entitled to the registration
28 of transfer.

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

1 3. The transfer will not violate any restriction on
2 transfer.

3 4. The requested transfer will otherwise be effective
4 and rightful.

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

8 (a) The uncertificated security is valid.

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

10 (c) The transfer does not violate any restriction on
11 transfer.

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

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

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

16 (b) The indorsement is effective.

17 (5) A person who originates an instruction for
18 registration of transfer of an uncertificated security
19 warrants to the issuer that:

20 (a) The instruction is effective.

21 (b) At the time the instruction is presented to the
22 issuer the purchaser will be entitled to the registration of
23 transfer.

24 (6) A person who presents a certificated security for
25 registration of transfer or for payment or exchange warrants
26 to the issuer that the person is entitled to the registration,
27 payment, or exchange, but a purchaser for value and without
28 notice of adverse claims to whom transfer is registered
29 warrants only that the person has no knowledge of any
30 unauthorized signature in a necessary indorsement.

31

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

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

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

26 678.1091 Warranties in indirect holding.--

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

30 (a) The entitlement order is made by an appropriate
31 person, or if the entitlement order is by an agent, the agent

1 has actual authority to act on behalf of the appropriate
2 person.

3 (b) There is no adverse claim to the security
4 entitlement.

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

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

18 678.1101 Applicability; choice of law.--

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

21 (a) The validity of a security.

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

24 (c) The effectiveness of registration of transfer by
25 the issuer.

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

28 (e) Whether an adverse claim can be asserted against a
29 person to whom transfer of a certificated or uncertificated
30 security is registered or a person who obtains control of an
31 uncertificated security.

1 (2) The local law of the securities intermediary's
2 jurisdiction, as specified in subsection (5), governs:

3 (a) Acquisition of a security entitlement from the
4 securities intermediary.

5 (b) The rights and duties of the securities
6 intermediary and entitlement holder arising out of a security
7 entitlement.

8 (c) Whether the securities intermediary owes any
9 duties to an adverse claimant to a security entitlement.

10 (d) Whether an adverse claim can be asserted against a
11 person who acquires a security entitlement from the securities
12 intermediary or a person who purchases a security entitlement
13 or interest therein from an entitlement holder.

14 (3) The local law of the jurisdiction in which a
15 security certificate is located at the time of delivery
16 governs whether an adverse claim can be asserted against a
17 person to whom the security certificate is delivered.

18 (4) "Issuer's jurisdiction" means the jurisdiction
19 under which the issuer of the security is organized or, if
20 permitted by the law of that jurisdiction, the law of another
21 jurisdiction specified by the issuer. An issuer organized
22 under the law of this State may specify the law of another
23 jurisdiction as the law governing the matters specified in
24 paragraphs (1)(b)-(e).

25 (5) The following rules determine a "securities
26 intermediary's jurisdiction" for purposes of this section:

27 (a) If an agreement between the securities
28 intermediary and its entitlement holder specifies that it is
29 governed by the law of a particular jurisdiction, that
30 jurisdiction is the securities intermediary's jurisdiction.

31

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

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

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

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

29 678.1111 Clearing corporation rules.--A rule adopted
30 by a clearing corporation governing rights and obligations
31 among the clearing corporation and its participants in the

1 clearing corporation is effective even if the rule conflicts
2 with this chapter and affects another party who does not
3 consent to the rule.

4 678.1121 Creditor's legal process.--

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

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

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

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

27 (5) A creditor whose debtor is the owner of a
28 certificated security, uncertificated security, or security
29 entitlement is entitled to aid from a court of competent
30 jurisdiction, by injunction or otherwise, in reaching the
31 certificated security, uncertificated security, or security

1 entitlement or in satisfying the claim by means allowed at law
2 or in equity in regard to property that cannot readily be
3 reached by other legal process.

4 678.1131 Statute of frauds inapplicable.--A contract
5 or modification of a contract for the sale or purchase of a
6 security is enforceable whether or not there is a writing
7 signed or record authenticated by a party against whom
8 enforcement is sought, even if the contract or modification is
9 not capable of performance within one year of its making.

10 678.1141 Evidentiary rules concerning certificated
11 securities.--The following rules apply in an action on a
12 certificated security against the issuer:

13 (1) Unless specifically denied in the pleadings, each
14 signature on a security certificate or in a necessary
15 indorsement is admitted.

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

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

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

29 678.1151 Securities intermediary and others not liable
30 to adverse claimant.--A securities intermediary that has
31 transferred a financial asset pursuant to an effective

1 entitlement order, or a broker or other agent or bailee that
2 has dealt with a financial asset at the direction of its
3 customer or principal, is not liable to a person having an
4 adverse claim to the financial asset, unless the securities
5 intermediary, or broker or other agent or bailee:

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

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

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

15 678.1161 Securities intermediary as purchaser for
16 value.--A securities intermediary that receives a financial
17 asset and establishes a security entitlement to the financial
18 asset in favor of an entitlement holder is a purchaser for
19 value of the financial asset. A securities intermediary that
20 acquires a security entitlement to a financial asset from
21 another securities intermediary acquires the security
22 entitlement for value if the securities intermediary acquiring
23 the security entitlement establishes a security entitlement to
24 the financial asset in favor of an entitlement holder.

25 Section 2. Part II of chapter 678, Florida Statutes,
26 consisting of sections 678.2011, 678.2021, 678.2031, 678.2041,
27 678.2051, 678.2061, 678.2071, 678.2081, 678.2091, and
28 678.2101, Florida Statutes, is created to read:

29
30 PART II
31

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) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security

1 by reference on the certificate to another instrument,
2 indenture, or document or to a constitution, statute,
3 ordinance, rule, regulation, order, or the like, to the extent
4 the terms referred to do not conflict with terms stated on the
5 certificate. A reference under this subsection does not of
6 itself charge a purchaser for value with notice of a defect
7 going to the validity of the security, even if the certificate
8 expressly states that a person accepting it admits notice. The
9 terms of an uncertificated security include those stated in
10 any instrument, indenture, or document or in a constitution,
11 statute, ordinance, rule, regulation, order, or the like,
12 pursuant to which the security is issued.

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

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

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

31

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

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

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

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

21 678.2031 Staleness as notice of defect or
22 defense.--After an act or event, other than a call that has
23 been revoked, creating a right to immediate performance of the
24 principal obligation represented by a certificated security or
25 setting a date on or after which the security is to be
26 presented or surrendered for redemption or exchange, a
27 purchaser is charged with notice of any defect in its issue or
28 defense of the issuer, if the act or event:

29 (1) Requires the payment of money, the delivery of a
30 certificated security, the registration of transfer of an
31 uncertificated security, or any of them on presentation or

1 surrender of the security certificate, the money or security
2 is available on the date set for payment or exchange, and the
3 purchaser takes the security more than one year after that
4 date; or

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

9 678.2041 Effect of issuer's restriction on
10 transfer.--A restriction on transfer of a security imposed by
11 the issuer, even if otherwise lawful, is ineffective against a
12 person without knowledge of the restriction unless:

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

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

17 678.2051 Effect of unauthorized signature on security
18 certificate.--An unauthorized signature placed on a security
19 certificate before or in the course of issue is ineffective,
20 but the signature is effective in favor of a purchaser for
21 value of the certificated security if the purchaser is without
22 notice of the lack of authority and the signing has been done
23 by:

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

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

1 678.2061 Completion or alteration of security
2 certificate.--

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

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

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

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

15 678.2071 Rights and duties of issuer with respect to
16 registered owners.--

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

24 (2) This chapter does not affect the liability of the
25 registered owner of a security for a call, assessment, or the
26 like.

27 678.2081 Effect of signature of authenticating
28 trustee, registrar, or transfer agent.--

29 (1) A person signing a security certificate as
30 authenticating trustee, registrar, transfer agent, or the
31 like, warrants to a purchaser for value of the certificated

1 security, if the purchaser is without notice of a particular
2 defect, that:

3 (a) The certificate is genuine.

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

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

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

13 678.2091 Issuer's lien.--A lien in favor of an issuer
14 upon a certificated security is valid against a purchaser only
15 if the right of the issuer to the lien is noted conspicuously
16 on the security certificate.

17 678.2101 Overissue.--

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

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

27 (3) If an identical security not constituting an
28 overissue is reasonably available for purchase, a person
29 entitled to issue or validation may compel the issuer to
30 purchase the security and deliver it if certificated or

31

1 register its transfer if uncertificated, against surrender of
2 any security certificate the person holds.

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

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

12
13 PART III

14
15 TRANSFER OF CERTIFICATED
16 AND UNCERTIFICATED SECURITIES

17
18 678.3011 Delivery.--

19 (1) Delivery of a certificated security to a purchaser
20 occurs when:

21 (a) The purchaser acquires possession of the security
22 certificate;

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

28 (c) A securities intermediary acting on behalf of the
29 purchaser acquires possession of the security certificate,
30 only if the certificate is in registered form and has been
31

1 pecially indorsed to the purchaser by an effective
2 indorsement.

3 (2) Delivery of an uncertificated security to a
4 purchaser occurs when:

5 (a) The issuer registers the purchaser as the
6 registered owner, upon original issue or registration of
7 transfer; or

8 (b) Another person, other than a securities
9 intermediary, either becomes the registered owner of the
10 uncertificated security on behalf of the purchaser or, having
11 previously become the registered owner, acknowledges that it
12 holds for the purchaser.

13 678.3021 Rights of purchaser.--

14 (1) Except as otherwise provided in subsections (2)
15 and (3), upon delivery of a certificated or uncertificated
16 security to a purchaser, the purchaser acquires all rights in
17 the security that the transferor had or had power to transfer.

18 (2) A purchaser of a limited interest acquires rights
19 only to the extent of the interest purchased.

20 (3) A purchaser of a certificated security who as a
21 previous holder had notice of an adverse claim does not
22 improve its position by taking from a protected purchaser.

23 678.3031 Protected purchaser.--

24 (1) "Protected purchaser" means a purchaser of a
25 certificated or uncertificated security, or of an interest
26 therein, who:

27 (a) Gives value.

28 (b) Does not have notice of any adverse claim to the
29 security.

30 (c) Obtains control of the certificated or
31 uncertificated security.

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

4 678.3041 Indorsement.--

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

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

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

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

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

30 (6) Unless otherwise agreed, a person making an
31 indorsement assumes only the obligations provided in s.

1 678.1081 and not an obligation that the security will be
2 honored by the issuer.

3 678.3051 Instruction.--

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

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

13 678.3061 Effect of guaranteeing signature,
14 indorsement, or instruction.--

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

18 (a) The signature was genuine.

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

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

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

26 (a) The signature was genuine.

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

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

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

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

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

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

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

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

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

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

30 (8) The warranties under this section are made to a
31 person taking or dealing with the security in reliance on the

1 guaranty, and the guarantor is liable to the person for loss
2 resulting from their breach. An indorser or originator of an
3 instruction whose signature, indorsement, or instruction has
4 been guaranteed is liable to a guarantor for any loss suffered
5 by the guarantor as a result of breach of the warranties of
6 the guarantor.

7 678.3071 Purchaser's right to requisites for
8 registration of transfer.--Unless otherwise agreed, the
9 transferor of a security on due demand shall supply the
10 purchaser with proof of authority to transfer or with any
11 other requisite necessary to obtain registration of the
12 transfer of the security, but if the transfer is not for
13 value, a transferor need not comply unless the purchaser pays
14 the necessary expenses. If the transferor fails within a
15 reasonable time to comply with the demand, the purchaser may
16 reject or rescind the transfer.

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

21
22 PART IV

23
24 REGISTRATION

25
26 678.4011 Duty of issuer to register transfer.--

27 (1) If a certificated security in registered form is
28 presented to an issuer with a request to register transfer or
29 an instruction is presented to an issuer with a request to
30 register transfer of an uncertificated security, the issuer
31 shall register the transfer as requested if:

1 (a) Under the terms of the security the person seeking
2 registration of transfer is eligible to have the security
3 registered in its name.

4 (b) The indorsement or instruction is made by the
5 appropriate person or by an agent who has actual authority to
6 act on behalf of the appropriate person.

7 (c) Reasonable assurance is given that the indorsement
8 or instruction is genuine and authorized (s. 678.4021).

9 (d) Any applicable law relating to the collection of
10 taxes has been complied with.

11 (e) The transfer does not violate any restriction on
12 transfer imposed by the issuer in accordance with s. 678.2041.

13 (f) A demand that the issuer not register transfer has
14 not become effective under s. 678.4031, or the issuer has
15 complied with s. 678.4031(2) but no legal process or indemnity
16 bond is obtained as provided in s. 678.4031(4).

17 (g) The transfer is in fact rightful or is to a
18 protected purchaser.

19 (h) If an issuer is under a duty to register a
20 transfer of a security, the issuer is liable to a person
21 presenting a certificated security or an instruction for
22 registration or to the person's principal for loss resulting
23 from unreasonable delay in registration or failure or refusal
24 to register the transfer.

25 678.4021 Assurance that indorsement or instruction is
26 effective.--

27 (1) An issuer may require the following assurance that
28 each necessary indorsement or each instruction is genuine and
29 authorized:

30 (a) In all cases, a guaranty of the signature of the
31 person making an indorsement or originating an instruction

1 including, in the case of an instruction, reasonable assurance
2 of identity.

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

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

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

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

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

18 (3) In this section:

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

24 (b) "Appropriate evidence of appointment or
25 incumbency" means:

26 1. In the case of a fiduciary appointed or qualified
27 by a court, a certificate issued by or under the direction or
28 supervision of the court or an officer thereof and dated
29 within 60 days before the date of presentation for transfer;
30 or

31

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

6 678.4031 Demand that issuer not register transfer.--

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

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

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

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

31

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

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

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

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

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

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

27 678.4041 Wrongful registration.--

28 (1) Except as otherwise provided in s. 678.4061, an
29 issuer is liable for wrongful registration of transfer if the
30 issuer has registered a transfer of a security to a person not
31 entitled to it, and the transfer was registered:

1 (a) Pursuant to an ineffective indorsement or
2 instruction;

3 (b) After a demand that the issuer not register
4 transfer became effective under s. 678.4031(1) and the issuer
5 did not comply with s. 678.4031(2);

6 (c) After the issuer had been served with an
7 injunction, restraining order, or other legal process
8 enjoining it from registering the transfer, issued by a court
9 of competent jurisdiction, and the issuer had a reasonable
10 opportunity to act on the injunction, restraining order, or
11 other legal process; or

12 (d) By an issuer acting in collusion with the
13 wrongdoer.

14 (2) An issuer that is liable for wrongful registration
15 of transfer under subsection (1) on demand shall provide the
16 person entitled to the security with a like certificated or
17 uncertificated security, and any payments or distributions
18 that the person did not receive as a result of the wrongful
19 registration. If an overissue would result, the issuer's
20 liability to provide the person with a like security is
21 governed by s. 678.2101.

22 (3) Except as otherwise provided in subsection (1) or
23 in a law relating to the collection of taxes, an issuer is not
24 liable to an owner or other person suffering loss as a result
25 of the registration of a transfer of a security if
26 registration was made pursuant to an effective indorsement or
27 instruction.

28 678.4051 Replacement of lost, destroyed, or wrongfully
29 taken security certificate.--

30 (1) If an owner of a certificated security, whether in
31 registered or bearer form, claims that the certificate has

1 been lost, destroyed, or wrongfully taken, the issuer shall
2 issue a new certificate if the owner:

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

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

6 (c) Satisfies other reasonable requirements imposed by
7 the issuer.

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

16 678.4061 Obligation to notify issuer of lost,
17 destroyed, or wrongfully taken security certificate.--If a
18 security certificate has been lost, apparently destroyed, or
19 wrongfully taken, and the owner fails to notify the issuer of
20 that fact within a reasonable time after the owner has notice
21 of it and the issuer registers a transfer of the security
22 before receiving notification, the owner may not assert
23 against the issuer a claim for registering the transfer under
24 s. 678.4041 or a claim to a new security certificate under s.
25 678.4051.

26 678.4071 Authenticating trustee, transfer agent, and
27 registrar.--A person acting as authenticating trustee,
28 transfer agent, registrar, or other agent for an issuer in the
29 registration of a transfer of its securities, in the issue of
30 new security certificates or uncertificated securities, or in
31 the cancellation of surrendered security certificates has the

1 same obligation to the holder or owner of a certificated or
2 uncertificated security with regard to the particular
3 functions performed as the issuer has in regard to those
4 functions.

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

9
10 PART V

11
12 SECURITY ENTITLEMENTS

13
14 678.5011 Securities account; acquisition of security
15 entitlement from securities intermediary.--

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

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

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

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

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 ~~UNCERTIFICATED SECURITIES~~.--

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.~~The law (including the~~
3 ~~conflict of laws rules) of the jurisdiction of organization of~~
4 ~~the issuer governs the perfection and the effect of perfection~~
5 ~~or nonperfection of a security interest in uncertificated~~
6 ~~securities.~~

7 Section 7. Subsections (1), (2), and (3) of section
8 679.105, Florida Statutes, are amended to read:

9 679.105 Definitions and index of definitions.--

10 (1) In this chapter, unless the context otherwise
11 requires, the term:

12 (a) "Account debtor" means the person who is obligated
13 on an account, chattel paper, or general intangible. †

14 (b) "Chattel paper" means a writing or writings which
15 evidence both a monetary obligation and a security interest in
16 or a lease of specific goods, but a charter or other contract
17 involving the use or hire of a vessel is not chattel paper.
18 When a transaction is evidenced both by such a security
19 agreement or a lease and by an instrument or a series of
20 instruments, the group of writings taken together constitutes
21 chattel paper. †

22 (c) "Collateral" means the property subject to a
23 security interest, and includes accounts and chattel paper
24 which have been sold. †

25 (d) "Debtor" means the person who owes payment or
26 other performance of the obligation secured, whether or not he
27 or she owns or has rights in the collateral, and includes the
28 seller of accounts or chattel paper. Where the debtor and the
29 owner of the collateral are not the same person, the term
30 "debtor" means the owner of the collateral in any provision of
31 the chapter dealing with the collateral, the obligor in any

1 provision dealing with the obligation, and may include both
2 where the context so requires.†

3 (e) "Deposit account" means a demand, time, savings,
4 passbook, or like account maintained with a bank, savings and
5 loan association, credit union, or like organization, other
6 than an account evidenced by a certificate of deposit.†

7 (f) "Document" means document of title as defined in
8 the general definitions of chapter 671 (s. 671.201) and a
9 receipt of the kind described in s. 677.201(2).†

10 (g) "Encumbrance" includes real estate mortgages and
11 other liens on real estate and all other rights in real estate
12 that are not ownership interests.†

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 (j) "Mortgage" means an instrument deemed such under
31 chapter 697.†

1 (k) An advance is made "pursuant to a commitment" if
2 the secured party has bound himself or herself to make it,
3 whether or not a subsequent event of default or other event
4 not within the secured party's control has relieved or may
5 relieve him or her from his or her obligation.†

6 (l) "Security agreement" means an agreement which
7 creates or provides for a security interest.†

8 (m) "Secured party" means a lender, seller, or other
9 person in whose favor there is a security interest, including
10 a person to whom accounts or chattel paper have been sold.
11 When the holders of obligations issued under an indenture of
12 trust, equipment trust agreement, or the like are represented
13 by a trustee or other person, the representative is the
14 secured party.†

15 (n) "Transmitting utility" means any person primarily
16 engaged in the railroad, street railway, or trolley bus
17 business; the electric or electronics communications
18 transmission business, including a telephone company; the
19 transmission of goods by pipeline; the transmission or the
20 production and transmission of electricity, steam, gas, or
21 water; or the provision of sewer service.

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

24 "Account," s. 679.106.

25 "Attach," s. 679.203.

26 "Commodity contract," s. 679.115.

27 "Commodity customer," s. 679.115.

28 "Commodity intermediary," s. 679.115.

29 "Consumer goods," s. 679.109(1).

30 "Control," s. 679.115.

31 "Equipment," s. 679.109(2).

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

1 679.106 Definitions: "account"; "general
2 intangibles."--"Account" means any right to payment for goods
3 sold or leased or for services rendered which is not evidenced
4 by an instrument or chattel paper whether or not it has been
5 earned by performance. "General intangibles" means any
6 personal property (including things in action) other than
7 goods, accounts, chattel paper, documents, instruments,
8 investment property, and money. All rights to payment earned
9 or unearned under a charter or other contract involving the
10 use or hire of a vessel and all rights incident to the charter
11 or contract are accounts.

12 Section 9. Section 679.115, Florida Statutes, is
13 created to read:

14 679.115 Investment property.--

15 (1) In this chapter:

16 (a) "Commodity account" means an account maintained by
17 a commodity intermediary in which a commodity contract is
18 carried for a commodity customer.

19 (b) "Commodity contract" means a commodity futures
20 contract, an option on a commodity futures contract, a
21 commodity option, or other contract that, in each case, is:

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

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

28 (c) "Commodity customer" means a person for whom a
29 commodity intermediary carries a commodity contract on its
30 books.

31 (d) "Commodity intermediary" means:

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

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

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

22 (f) "Investment property" means:

23 1. A security, whether certificated or uncertificated;

24 2. A security entitlement;

25 3. A securities account;

26 4. A commodity contract; or

27 5. A commodity account.

28 (2) Attachment or perfection of a security interest in
29 a securities account is also attachment or perfection of a
30 security interest in all security entitlements carried in the
31 securities account. Attachment or perfection of a security

1 interest in a commodity account is also attachment or
2 perfection of a security interest in all commodity contracts
3 carried in the commodity account.

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

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

20 (a) A security interest in investment property may be
21 perfected by control.

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

25 (c) If the debtor is a broker or securities
26 intermediary, a security interest in investment property is
27 perfected when it attaches. The filing of a financing
28 statement with respect to a security interest in investment
29 property granted by a broker or securities intermediary has no
30 effect for purposes of perfection or priority with respect to
31 that security interest.

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

8 (5) Priority between conflicting security interests in
9 the same investment property is governed by the following
10 rules:

11 (a) A security interest of a secured party who has
12 control over investment property has priority over a security
13 interest of a secured party who does not have control over the
14 investment property.

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

18 (c) Except as otherwise agreed by the securities
19 intermediary, a security interest in a security entitlement or
20 a securities account granted to the debtor's own securities
21 intermediary has priority over any security interest granted
22 by the debtor to another secured party.

23 (d) Except as otherwise agreed by the commodity
24 intermediary, a security interest in a commodity contract or a
25 commodity account granted to the debtor's own commodity
26 intermediary has priority over any security interest granted
27 by the debtor to another secured party.

28 (e) Conflicting security interests granted by a
29 broker, a securities intermediary, or a commodity intermediary
30 which are perfected without control rank equally.

31

1 (f) In all other cases, priority between conflicting
2 security interests in investment property is governed by s.
3 679.312(5), (6), and (7). Section 679.312(4) does not apply to
4 investment property.

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

13 Section 10. Section 679.116, Florida Statutes, is
14 created to read:

15 679.116 Security interest arising in purchase or
16 delivery of financial asset.--

17 (1) If a person buys a financial asset through a
18 securities intermediary in a transaction in which the buyer is
19 obligated to pay the purchase price to the securities
20 intermediary at the time of the purchase, and the securities
21 intermediary credits the financial asset to the buyer's
22 securities account before the buyer pays the securities
23 intermediary, the securities intermediary has a security
24 interest in the buyer's security entitlement securing the
25 buyer's obligation to pay. A security agreement is not
26 required for attachment or enforceability of the security
27 interest, and the security interest is automatically
28 perfected.

29 (2) If a certificated security, or other financial
30 asset represented by a writing which in the ordinary course of
31 business is transferred by delivery with any necessary

1 indorsement or assignment is delivered pursuant to an
2 agreement between persons in the business of dealing with such
3 securities or financial assets and the agreement calls for
4 delivery versus payment, the person delivering the certificate
5 or other financial asset has a security interest in the
6 certificated security or other financial asset securing the
7 seller's right to receive payment. A security agreement is not
8 required for attachment or enforceability of the security
9 interest, and the security interest is automatically
10 perfected.

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

13 679.203 Attachment and enforceability of security
14 interest; proceeds, formal requisites.--

15 (1) Subject to the provisions of s. 674.2101 on the
16 security interest of a collecting bank, ss. 679.115 and
17 679.116 on security interests in investment property,~~s.~~
18 ~~678.321 on security interests in securities~~ and s. 679.113 on
19 a security interest arising under the chapter on sales, a
20 security interest is not enforceable against the debtor or
21 third parties with respect to the collateral and does not
22 attach unless:

23 (a) The collateral is in the possession of the secured
24 party pursuant to agreement, the collateral is investment
25 property and the secured party has control pursuant to
26 agreement, or the debtor has signed a security agreement which
27 contains a description of the collateral and in addition, when
28 the security interest covers crops growing or to be grown or
29 timber to be cut, a description of the land concerned; and

30 (b) Value has been given; and

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

1 Section 12. Paragraph (d) of subsection (1) of section
2 679.301, Florida Statutes, is amended to read:

3 679.301 Persons who take priority over unperfected
4 security interests; right of "lien creditor."--

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

7 (d) In the case of accounts, investment property, and
8 general intangibles, a person who is not a secured party and
9 who is a transferee to the extent that he or she gives value
10 without knowledge of the security interest and before it is
11 perfected.

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

14 679.302 When filing is required to perfect security
15 interest; security interests to which filing provisions of
16 this chapter do not apply.--

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

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

21 (b) A security interest temporarily perfected in
22 instruments, certificated securities, or documents without
23 delivery under s. 679.304 or in proceeds for a 10-day period
24 under s. 679.306;

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

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

29 (e) An assignment of accounts which does not alone or
30 in conjunction with other assignments to the same assignee
31

1 transfer a significant part of the outstanding accounts of the
2 assignor;

3 (f) A security interest of a collecting bank (s.
4 674.2101) ~~or in securities (s. 678.321)~~ or arising under the
5 chapter on sales (see s. 679.113) or covered in subsection (3)
6 of this section;

7 (g) An assignment for the benefit of all the creditors
8 of the transferor, and subsequent transfers by the assignee
9 thereunder; or-

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

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

14 679.303 When security interest is perfected;
15 continuity of perfection.--

16 (1) A security interest is perfected when it has
17 attached and when all of the applicable steps required for
18 perfection have been taken. Such steps are specified in ss.
19 679.115, 679.302, 679.304-679.306. If such steps are taken
20 before the security interest attaches, it is perfected at the
21 time when it attaches.

22 Section 15. Subsections (1), (4), and (5) of section
23 679.304, Florida Statutes, are amended to read:

24 679.304 Perfection of security interest in
25 instruments, documents, and goods covered by documents;
26 perfection by permissive filing; temporary perfection without
27 filing or transfer of possession.--

28 (1) A security interest in chattel paper or negotiable
29 documents may be perfected by filing. A security interest in
30 money or instruments (other than ~~certificated securities or~~
31 instruments which constitute part of chattel paper) can be

1 perfected only by the secured party's taking possession,
2 except as provided in subsections (4) and (5) of this section
3 and subsections (2) and (3) of s. 679.306 on proceeds.

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

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

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

23 (b) Delivers the instrument or certificated security
24 to the debtor for the purpose of ultimate sale or exchange or
25 of presentation, collection, renewal or registration of
26 transfer.

27 Section 16. Section 679.305, Florida Statutes, is
28 amended to read:

29 679.305 When possession by secured party perfects
30 security interest without filing.--A security interest in
31 letters of credit and advices of credit (s. 675.116(2)(a)),

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

13 Section 17. Subsections (1) and (3) of section
14 679.306, Florida Statutes, are amended to read:

15 679.306 "Proceeds"; secured party's rights on
16 disposition of collateral.--

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

26 (3) The security interest in proceeds is a
27 continuously perfected security interest if the interest in
28 the original collateral was perfected, but it ceases to be a
29 perfected security interest and becomes unperfected 10 days
30 after receipt of the proceeds by the debtor unless:

31

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

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

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

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

14
15 Except as provided in this section, a security interest in
16 proceeds can be perfected only by the methods or under the
17 circumstances permitted in this chapter for original
18 collateral of the same type.

19 Section 18. Section 679.309, Florida Statutes, is
20 amended to read:

21 679.309 Protection of purchasers of instruments,
22 documents, and securities.--Nothing in this chapter limits the
23 rights of a holder in due course of a negotiable instrument
24 (s. 673.3021) or a holder to whom a negotiable document of
25 title has been duly negotiated (s. 677.501) or a protected
26 ~~bona fide~~ purchaser of a security (s. 678.3031 ~~s. 678.302~~),
27 and such holders or purchasers take priority over an earlier
28 security interest even though perfected. Filing under this
29 chapter does not constitute notice of the security interest to
30 such holders or purchasers.

31

1 Section 19. Subsections (1) and (7) of section
2 679.312, Florida Statutes, are amended to read:

3 679.312 Priorities among conflicting security
4 interests in the same collateral.--

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

13 (7) If future advances are made while a security
14 interest is perfected by filing, the taking of possession, or
15 under s. 679.115 or s. 679.116 on investment property ~~s.~~
16 ~~678.321 on securities~~, the security interest has the same
17 priority for the purposes of subsection (5) or s. 679.115(5)
18 with respect to the future advances as it does with respect to
19 the first advance. If a commitment is made before or while
20 the security interest is so perfected, the security interest
21 has the same priority with respect to advances made pursuant
22 thereto. In other cases, a perfected security interest has
23 priority from the date the advance is made.

24 Section 20. Subsection (2) of section 671.105, Florida
25 Statutes, is amended to read:

26 671.105 Territorial application of the code; parties'
27 power to choose applicable law.--

28 (2) When one of the following provisions of this code
29 specifies the applicable law, that provision governs; and a
30 contrary agreement is effective only to the extent permitted
31

1 by the law (including the conflict-of-laws rules) so
2 specified:

3 (a) Governing law in the chapter on funds transfers.
4 (s. 670.507).

5 (b) Rights of sellers' creditors against sold goods.
6 (s. 672.402).

7 (c) Applicability of the chapter on bank deposits and
8 collections. (s. 674.102).

9 (d) Applicability of the chapter on investment
10 securities. (s. 678.1061 ~~s. 678.106~~).

11 (e) Perfection provisions of the chapter on secured
12 transactions. (s. 679.103).

13 (f) Applicability of the chapter on leases. (ss.
14 680.1051 and 680.1061).

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

17 671.206 Statute of frauds for kinds of personal
18 property not otherwise covered.--

19 (2) Subsection (1) of this section does not apply to
20 contracts for the sale of goods (s. 672.201) nor of securities
21 (s. 678.1131 ~~s. 678.319~~) nor to security agreements (s.
22 679.203).

23 Section 22. Paragraph (f) of subsection (1) of section
24 674.104, Florida Statutes, is amended to read:

25 674.104 Definitions and index of definitions.--

26 (1) In this chapter, unless the context otherwise
27 requires, the term:

28 (f) "Documentary draft" means a draft to be presented
29 for acceptance or payment if specified documents, certificated
30 securities (s. 678.1021 ~~s. 678.102~~) or instructions for
31 uncertificated securities (s. 678.1021 ~~s. 678.308~~), or other

1 certificates, statements, or the like are to be received by
2 the drawee or other payor before acceptance or payment of the
3 draft.

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

6 675.114 Issuer's duty and privilege to honor; right to
7 reimbursement.--

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

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

23 (b) In all other cases as against its customer, an
24 issuer acting in good faith may honor the draft or demand for
25 payment despite notification from the customer of fraud,
26 forgery or other defect not apparent on the face of the
27 documents but a court of appropriate jurisdiction may enjoin
28 such honor.

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

31

1 (2) If a security interest in a security is perfected
2 at the date this act takes effect, and the action by which the
3 security interest was perfected would suffice to perfect a
4 security interest under this act, no further action is
5 required to continue perfection. If a security interest in a
6 security is perfected at the date this act takes effect but
7 the action by which the security interest was perfected would
8 not suffice to perfect a security interest under this act, the
9 security interest remains perfected for a period of 4 months
10 after the effective date and continues perfected thereafter if
11 appropriate action to perfect under this act is taken within
12 that period. If a security interest is perfected at the date
13 this act takes effect and the security interest can be
14 perfected by filing under this act, a financing statement
15 signed by the secured party instead of the debtor may be filed
16 within that period to continue perfection or thereafter to
17 perfect.

18 Section 25. Sections 610.011, 610.021, 610.031,
19 610.041, 610.051, 610.061, 610.071, 610.081, 610.091, 610.101,
20 and 610.111, Florida Statutes, paragraph (b) of subsection (2)
21 of section 671.304, Florida Statutes, and sections 678.102,
22 678.103, 678.104, 678.105, 678.106, 678.107, 678.108, 678.201,
23 678.202, 678.203, 678.204, 678.205, 678.206, 678.207, 678.208,
24 678.301, 678.302, 678.303, 678.304, 678.305, 678.306, 678.307,
25 678.308, 678.309, 678.310, 678.311, 678.312, 678.313, 678.314,
26 678.315, 678.316, 678.317, 678.318, 678.319, 678.320, 678.321,
27 678.401, 678.402, 678.403, 678.404, 678.405, 678.406, 678.407,
28 and 678.408, Florida Statutes, are repealed.

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

31 680.1031 Definitions and index of definitions.--

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

3 (e) "Consumer lease" means a lease that a lessor
4 regularly engaged in the business of leasing or selling makes
5 to a lessee who is an individual and who ~~a natural person and~~
6 takes under the lease primarily for a personal, family, or
7 household purpose if the total payments to be made under the
8 lease contract, excluding payments for options to renew or
9 buy, do not exceed \$25,000.

10 (g) "Finance lease" means a lease with respect to ~~in~~
11 which:

12 1. The lessor does not select, manufacture, or supply
13 the goods;

14 2. The lessor acquires the goods or the right to
15 possession and use of the goods in connection with the lease;
16 and

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

18 a. The lessee receives a copy of the contract by which
19 the lessor acquired the goods or the right to possession and
20 use ~~evidencing the lessor's purchase~~ of the goods ~~on or~~ before
21 signing the lease contract;

22 b. The lessee's approval of the contract by which the
23 lessor acquired the goods or the right to possession and use
24 ~~evidencing the lessor's purchase~~ of the goods is a condition
25 to effectiveness of the lease contract;

26 c. The lessee, before signing the lease contract,
27 receives an accurate and complete statement designating the
28 promises and warranties, and any disclaimers of warranties,
29 limitations or modifications of remedies, or liquidated
30 damages, including those of a third party, such as the
31 manufacturer of the goods, provided to the lessor by the

1 person supplying the goods in connection with or as part of
2 the contract by which the lessor acquired the goods or the
3 right to possession and use of the goods; or

4 d. If the lease is not a consumer lease, the lessor,
5 before the lessee signs the lease contract, informs the lessee
6 in writing:

7 I. Of the identity of the person supplying the goods
8 to the lessor, unless the lessee has selected that person and
9 directed the lessor to acquire the goods or the right to
10 possession and use of the goods from that person.

11 II. That the lessee is entitled under this chapter to
12 the promises and warranties, including those of any third
13 party, provided to the lessor by the person supplying the
14 goods in connection with or as part of the contract by which
15 the lessor acquired the goods or the right to possession and
16 use of the goods.

17 III. That the lessee may communicate with the person
18 supplying the goods to the lessor and receive an accurate and
19 complete record of the goods; and a complete statement of
20 those promises and warranties, including any disclaimers and
21 limitations of them or of remedies.

22 ~~c. The lease contract discloses all warranties and~~
23 ~~other rights provided to the lessee by the lessor and supplier~~
24 ~~in connection with the lease contract and informs the lessee~~
25 ~~that there are no warranties or other rights provided to the~~
26 ~~lessee by the lessor and supplier other than those disclosed~~
27 ~~in the lease contract; or~~

28 ~~d. Only if the lease is not a consumer lease, on or~~
29 ~~before the signing of the lease contract by the lessee the~~
30 ~~lessor+~~

31

1 ~~I. Informs the lessee in writing of the identity of~~
2 ~~the supplier unless the lessee has selected the supplier and~~
3 ~~directed the lessor to purchase the goods from the supplier;~~

4 ~~II. Informs the lessee in writing that the lessee may~~
5 ~~have rights under the contract evidencing the lessor's~~
6 ~~purchase of the goods; and~~

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

9 Section 27. Section 680.1041, Florida Statutes, is
10 amended to read:

11 680.1041 Leases subject to other statutes.--

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

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

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

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

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

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

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

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

30
31

1 680.303 Alienability of party's interest under lease
2 contract or of lessor's residual interest in goods; delegation
3 of performance; transfer ~~assignment~~ of rights.--

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

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

9 (a) Prohibits the voluntary or involuntary transfer,
10 including a transfer by sale, sublease, creation or
11 enforcement of a security interest, or attachment, levy, or
12 other judicial process, of an interest of a party under the
13 lease contract or of the lessor's residual interest in the
14 goods; or

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

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

20 (a) Prohibits the creation or enforcement of a
21 security interest in an interest of a party under the lease
22 contract or in the lessor's residual interest in the goods; or

23 (b) Makes such a transfer an event of default, is not
24 enforceable unless, and then only to the extent that, there is
25 an actual transfer by the lessee of the lessee's right of
26 possession or use of the goods in violation of the provision
27 or an actual delegation of a material performance of either
28 party to the lease contract in violation of the provision.

29 Neither the granting nor the enforcement of a security
30 interest in the lessor's interest under the lease contract or
31 the lessor's residual interest in the goods is a transfer that

1 materially impairs the prospect of obtaining return
2 performance by, materially changes the duty of, or materially
3 increases the burden or risk imposed on, the lessee within the
4 purview of subsection (5) unless, and then only to the extent
5 that, there is an actual delegation of a material performance
6 of the lessor.

7 ~~(1) Any interest of a party under a lease contract and~~
8 ~~the lessor's residual interest in the goods may be transferred~~
9 ~~unless:~~

10 ~~(a) Except as provided in paragraph (a) of subsection~~
11 ~~(3), the transfer is voluntary and the lease contract~~
12 ~~prohibits the transfer; or~~

13 ~~(b) Except as provided in paragraph (c) or paragraph~~
14 ~~(d) of subsection (3), the transfer materially changes the~~
15 ~~duty of or materially increases the burden or risk imposed on~~
16 ~~the other party to the lease contract, and within a reasonable~~
17 ~~time after notice of the transfer the other party demands that~~
18 ~~the transferee comply with subsection (2) and the transferee~~
19 ~~fails to comply.~~

20 ~~(2) Within a reasonable time after demand pursuant to~~
21 ~~paragraph (1)(b), the transferee shall:~~

22 ~~(a) Cure or provide adequate assurance that he will~~
23 ~~promptly cure any default other than one arising from the~~
24 ~~transfer.~~

25 ~~(b) Compensate or provide adequate assurance that he~~
26 ~~will promptly compensate the other party to the lease contract~~
27 ~~and any other person holding an interest in the lease~~
28 ~~contract, except the party whose interest is being~~
29 ~~transferred, for any loss to that party resulting from the~~
30 ~~transfer.~~

31

1 ~~(c) Provide adequate assurance of future due~~
2 ~~performance under the lease contract.~~

3 ~~(d) Assume the lease contract.~~

4 ~~(3)(a) No prohibition upon transfer of any interest of~~
5 ~~a party under a lease contract or the lessor's residual~~
6 ~~interest in the goods shall invalidate the creation or~~
7 ~~enforcement of a security interest in any interest of the~~
8 ~~lessor under a lease contract or the lessor's residual~~
9 ~~interest in the goods.~~

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

13 ~~(c) Paragraph (b) of subsection (1) shall not apply~~
14 ~~to:~~

15 ~~1. The creation of a security interest in the interest~~
16 ~~of the lessor under the lease contract or the lessor's~~
17 ~~residual interest in the goods; or~~

18 ~~2. The exercise of rights as a secured party pursuant~~
19 ~~to the security interest other than a transfer of the interest~~
20 ~~of the lessor under the lease contract or the lessor's~~
21 ~~residual interest in the goods pursuant to s. 680.504 or s.~~
22 ~~680.505.~~

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

27 ~~(4)(6)~~ A provision in a lease agreement which:

28 (a) Prohibits a transfer of a right to damages for
29 default with respect to the whole lease contract or of a right
30 to payment arising out of the transferor's assignor's due
31

1 performance of the transferor's ~~his or her~~ entire obligation
2 ~~can be assigned despite agreement otherwise; or.~~

3 (b) Makes such a transfer an event of default and is
4 not enforceable, and such a transfer is not a transfer that
5 materially impairs the prospect of obtaining return
6 performance by, materially changes the duty of, or materially
7 increases the burden or risk imposed on, the other party to
8 the lease contract within the purview of subsection (5).

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

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

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

29 (6)(4) A transfer ~~An assignment~~ of "the lease" or of
30 "all my rights under the lease" or a transfer ~~an assignment~~ in
31 similar general terms is a transfer of rights, and unless the

1 language or the circumstances, as in a transfer ~~an assignment~~
2 for security, indicate the contrary, the transfer assignment
3 is a delegation of duties by the transferor to the transferee.
4 ~~assignor to the assignee and~~ Acceptance by the transferee
5 ~~assignee~~ constitutes a promise by the transferee ~~him or her~~ to
6 perform those duties. The ~~This~~ promise is enforceable by
7 either the transferor ~~assignor~~ or the other party to the lease
8 contract.

9 ~~(7)(5)~~ Unless otherwise agreed by the lessor and the
10 lessee, a no delegation of performance does not relieve
11 ~~relieves~~ the transferor ~~assignor~~ as against the other party of
12 any duty to perform or of any liability for default.

13 ~~(8)(7)~~ In a consumer lease, to prohibit the transfer
14 of an interest of a party under the ~~a~~ lease contract or to
15 make a transfer an event of default, the language ~~of~~
16 ~~prohibition~~ must be specific, by a writing, and conspicuous.

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

19 680.304 Subsequent lease of goods by lessor.--

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

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

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

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

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

9 Section 30. Subsections (2) and (3) of section
10 680.307, Florida Statutes, are amended to read:

11 680.307 Priority of liens arising by attachment or
12 levy on, security interests in, and other claims to goods.--

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

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

19 (b) ~~Unless~~ The creditor holds a security interest in
20 the goods and the lessee did not give value and receive
21 delivery of the goods without knowledge of the security
22 interests ~~and the lessee did not give value and receive~~
23 ~~delivery of the goods without knowledge of the security~~
24 ~~interest; or~~

25 (c) ~~Unless~~ The creditor holds a security interest in
26 the goods which ~~that attached and~~ was perfected (s. 679.303)
27 before~~+~~

28 ~~1. the lease contract became enforceable.~~+

29 ~~2. The lessee gave value and received delivery of the~~
30 ~~goods; or~~

31

1 ~~3. In the case of a purchase money security interest,~~
2 ~~the date that is 15 days after the date that the lessor~~
3 ~~received possession of the goods or the date that the lessee~~
4 ~~received possession of the goods, whichever is earlier.~~

5 (3) A lessee in the ordinary course of business takes
6 the leasehold interest free of a security interest in the
7 goods created by the lessor even though the security interest
8 is perfected (s. 679.303) and the lessee knows of its
9 existence.

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

12 680.309 Lessor's and lessee's rights when goods become
13 fixtures.--

14 (6) Notwithstanding paragraph ~~(a)~~ of subsection (4) (a)
15 but otherwise subject to subsections (4) and (5), the interest
16 of a lessor of fixtures including the lessor's residual
17 interest, is subordinate to the conflicting interest of an
18 encumbrancer of the real estate under a construction mortgage
19 recorded before the goods become fixtures if the goods become
20 fixtures before the completion of the construction. To the
21 extent given to refinance a construction mortgage, the
22 conflicting interest of an encumbrancer of the real estate
23 under a mortgage has this priority to the same extent as the
24 encumbrancer of the real estate under the construction
25 mortgage.

26 (7) In cases not within the preceding subsections,
27 priority between the interest of a lessor of fixtures,
28 including the lessor's residual interest, and the conflicting
29 interest of an encumbrancer or owner of the real estate who is
30 not the lessee is determined by the priority rules governing
31 conflicting interests in real estate.

1 (8) If the interest of a lessor of fixtures, including
2 the lessor's residual interest, has priority over all
3 conflicting interests of all owners and encumbrancers of the
4 real estate, the lessor or the lessee may, on default,
5 expiration, termination, or cancellation of the lease
6 agreement ~~by the other party~~ but subject to the ~~provisions of~~
7 ~~the~~ lease agreement and this chapter, or if necessary to
8 enforce ~~his or her~~ other rights and remedies of the lessor or
9 lessee under this chapter, remove the goods from the real
10 estate, free and clear of all conflicting interests of all
11 owners and encumbrancers of the real estate, but the lessor or
12 lessee ~~he~~ must reimburse any encumbrancer or owner of the real
13 estate who is not the lessee and who has not otherwise agreed
14 for the cost of repair of any physical injury but not for any
15 diminution in value of the real estate caused by the absence
16 of the goods removed or by any necessity of replacing them. A
17 person entitled to reimbursement may refuse permission to
18 remove until the party seeking removal gives adequate security
19 for the performance of this obligation.

20 (9) Even though the lease agreement does not create a
21 security interest, the interest of a lessor of fixtures,
22 including the lessor's residual interest, is perfected by
23 filing a financing statement as a fixture filing for leased
24 goods that are or are to become fixtures in accordance with
25 the relevant provisions of chapter 679.

26 Section 32. Section 680.32, Florida Statutes, is
27 created to read:

28 680.32 Priority subject to subordination.--Nothing in
29 this chapter prevents subordination by agreement by any person
30 entitled to priority.

31

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

3 680.501 Default: procedure.--

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

10 Section 34. Section 680.503, Florida Statutes, is
11 amended to read:

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

14 680.503 Modification or impairment of rights and
15 remedies.--

16 (1) Except as otherwise provided in this chapter, the
17 lease agreement may include rights and remedies for default in
18 addition to or in substitution for those provided in this
19 chapter and may limit or alter the measure of damages
20 recoverable under this chapter.

21 (2) Resort to a remedy provided under this chapter or
22 in the lease agreement is optional unless the remedy is
23 expressly agreed to be exclusive. If circumstances cause an
24 exclusive or limited remedy to fail of its essential purpose,
25 or provision for an exclusive remedy is unconscionable, remedy
26 may be had as provided in this chapter.

27 (3) Consequential damages may be liquidated under s.
28 680.504, or may otherwise be limited, altered, or excluded
29 unless the limitation, alteration, or exclusion is
30 unconscionable. Limitation, alteration, or exclusion of
31 consequential damages for injury to the person in the case of

1 consumer goods is prima facie unconscionable but limitation,
2 alteration, or exclusion of damages where the loss is
3 commercial is not prima facie unconscionable.

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

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

10 680.507 Proof of market rent; time and place.--

11 (1) Damages based on market rent (s. 680.519 or s.
12 680.528) are determined according to the rent for the use of
13 the goods concerned for a lease term identical to the
14 remaining lease term of the original lease agreement and
15 prevailing at the times specified in s. 680.519 or s. 680.528
16 ~~time of the default.~~

17 Section 36. Subsections (1) and (3) of section
18 680.508, Florida Statutes, are amended to read:

19 680.508 Lessee's remedies.--

20 (1) If a lessor fails to deliver the goods in
21 conformity to the lease contract (s. 680.509) or repudiates
22 the lease contract (s. 680.402), or a lessee rightfully
23 rejects the goods (s. 680.509) or justifiably revokes
24 acceptance of the goods (s. 680.517), then with respect to any
25 goods involved, and with respect to all of the goods if under
26 an installment lease contract the value of the whole lease
27 contract is substantially impaired (s. 680.51), the lessor is
28 in default under the lease contract; and the lessee may:

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

30 (b) Recover so much of the rent and security as has
31 been paid and, ~~but in the case of an installment lease~~

1 ~~contract the recovery~~ is that which is just under the
2 circumstances.

3 (c) Cover and recover damages as to all goods
4 affected, whether or not they have been identified to the
5 lease contract (ss. 680.518 and 680.52), or recover damages
6 for nondelivery (ss. 680.519 and 680.52).

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

9 (3) If a lessor is otherwise in default under a the
10 lease contract ~~pursuant to subsection (1) or subsection (2) or~~
11 ~~is otherwise in default under the lease contract~~, the lessee
12 may exercise ~~any of the rights and~~ pursue the remedies
13 provided for in the lease contract, which may include a right
14 to cancel the lease, and in s. 680.519(3) this chapter if not
15 ~~effectively excluded or modified by the lease contract, or any~~
16 ~~rights and remedies effectively provided for in the lease~~
17 ~~contract.~~

18 Section 37. Sections (3), (4), and (5) of section
19 680.516, Florida Statutes, are amended to read:

20 680.516 Effect of acceptance of goods; notice of
21 default; burden of establishing default after acceptance;
22 notice of claim or litigation to person answerable over.--

23 (3) If a tender has been accepted:

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

26 ~~1. the lessee shall notify the lessor and the~~
27 ~~supplier, if any, or be barred from any remedy against the~~
28 ~~party not notified. lessor, and in addition:~~

29 ~~2. In the case of a finance lease, the lessee shall~~
30 ~~notify the supplier or be barred from any remedy against the~~
31 ~~supplier.~~

1 (b) Within a reasonable time after the lessee receives
2 notice of litigation for infringement or the like (s.
3 680.211), the lessee shall notify the lessor or be barred from
4 any remedy over for liability established by the litigation.

5 (c) The burden is on the lessee to establish any
6 default.

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

10 (a) The lessee may give the lessor or the supplier, or
11 both, written notice of the litigation. If the notice states
12 that the person notified ~~lessor or the supplier~~ may come in
13 and defend and that if the person notified ~~lessor or the~~
14 ~~supplier~~ does not do so that person ~~he or she~~ will be bound in
15 any action against that person ~~him or her~~ by the lessee by any
16 determination of fact common to the two litigations, then,
17 unless the person notified ~~lessor or the supplier~~ after
18 seasonable receipt of the notice does come in and defend, that
19 person ~~he or she~~ is so bound.

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

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

31

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

3 680.518 Cover; substitute goods.--

4 (1) After default by a lessor under the lease contract
5 of the type described in(s. 680.508), or, if agreed, after
6 another default by the lessor,the lessee may cover by making
7 any purchase or lease of or contract to purchase or lease
8 goods in substitution for those due from the lessor.

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

17 (a) The present value, as of the date of the
18 commencement of the term of the new lease agreement, of the
19 ~~difference between the total rent under for the lease term of~~
20 ~~the new lease agreement and~~ applicable to that period of the
21 new lease term which is comparable to the then remaining term
22 of the original lease agreement minus the present value as of
23 the same date of the total rent for the then remaining lease
24 term of the original lease agreement; ~~and-~~

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

27 Section 39. Subsections (1), (3), and (4) of section
28 680.519, Florida Statutes, are amended to read:

29 680.519 Lessee's damages for nondelivery, repudiation,
30 default, or breach of warranty in regard to accepted goods.--

31

1 (1) Except as otherwise provided with respect to
2 damages liquidated in the lease agreement (s. 680.504) or
3 otherwise determined pursuant to ~~by~~ agreement of the parties
4 (~~ss. s.~~671.102(3) and 680.503), if a lessee elects not to
5 cover or a lessee elects to cover and the cover is by lease
6 agreement, whether or not the lease agreement qualifies for
7 treatment under s. 680.518(2), or is by purchase or otherwise,
8 the measure of damages for nondelivery or repudiation by the
9 lessor or for rejection or revocation of acceptance by the
10 lessee default by the lessor (~~s. 680.508~~) is the present
11 value, as of the date of the default, of the difference
12 ~~between the~~ then market rent minus the present value as of the
13 same date of ~~and~~ the original rent, computed for the remaining
14 lease term of the original lease agreement, together with
15 incidental and consequential damages, less expenses saved in
16 consequence of the lessor's default.

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

25 (4) Except as otherwise agreed, the measure of damages
26 for breach of warranty is the present value at the time and
27 place of acceptance of the difference between the value of the
28 use of the goods accepted and the value if they had been as
29 warranted for the lease term, unless special circumstances
30 show proximate damages of a different amount, together with
31

1 incidental and consequential damages, less expenses saved in
2 consequence of the lessor's default or breach of warranty.

3 Section 40. Section 680.523, Florida Statutes, is
4 amended to read:

5 680.523 Lessor's remedies.--

6 (1) If a lessee wrongfully rejects or revokes
7 acceptance of goods or fails to make a payment when due or
8 repudiates with respect to a part or the whole, then, with
9 respect to any goods involved, and with respect to all of the
10 goods if under an installment lease contract the value of the
11 whole lease contract is substantially impaired (s. 680.51),
12 the lessee is in default under the lease contract; and the
13 lessor may:

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

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

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

19 (d) Stop delivery of the goods by any bailee (s.
20 680.526); ~~or~~

21 (e) Dispose of the goods and recover damages (s.
22 680.527), or retain the goods and recover damages (s.
23 680.528), or in a proper case recover rent (s. 680.529); ~~or~~

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

26 (2) If a lessor does not fully exercise a right or
27 obtain a remedy to which the lessor is entitled under
28 subsection (1), the lessor may recover the loss resulting in
29 the ordinary course of events from the lessee's default as
30 determined in any reasonable manner, together with incidental
31

1 damages, less expenses saved in consequence of the lessee's
2 default.

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

12 (a) If the default substantially impairs the value of
13 the lease contract to the lessor, the lessor may exercise the
14 rights and pursue the remedies provided in subsection (1) or
15 subsection (2); or

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

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

21 680.524 Lessor's right to identify goods to lease
22 contract.--

23 (1) After default by the lessee under the lease
24 contract of the type described in s. 680.523(1) or s.
25 680.523(3)(a) or, if agreed, after other default by the
26 lessee, the lessor ~~A lessor aggrieved under s. 680.523~~ may:

27 (a) Identify to the lease contract conforming goods
28 not already identified if at the time the lessor learned of
29 the default they were in the lessor's or the supplier's
30 possession or control; and

31

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

4 Section 42. Subsections (2) and (3) of section
5 680.525, Florida Statutes, are amended to read:

6 680.525 Lessor's right to possession of goods.--

7 (2) After a ~~The lessor has~~ on default by the lessee
8 under the lease contract of the type described in s.
9 680.523(1) or s. 680.523(3)(a) or, if agreed, after other
10 default by the lessee, the lessor has the right to take
11 possession of the goods. If the lease contract so provides,
12 the lessor may require the lessee to assemble the goods and
13 make them available to the lessor at a place to be designated
14 by the lessor which is reasonably convenient to both parties.
15 Without removal, the lessor may render unusable any goods
16 employed in trade or business and may dispose of goods on the
17 lessee's premises (s. 680.527).

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

21 Section 43. Subsections (1) and (2) of section
22 680.527, Florida Statutes, are amended to read:

23 680.527 Lessor's rights to dispose of goods.--

24 (1) After a default by a lessee under the lease
25 contract of the type described in(s. 680.523(1) or s.
26 680.523(3)(a))~~or~~ after the lessor refuses to deliver or takes
27 possession of goods (s. 680.525 or s. 680.526), or, if agreed,
28 after other default by a lessee, the lessor may dispose of the
29 goods concerned or the undelivered balance thereof by lease,
30 sale, or otherwise.

31

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

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

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

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

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

23 680.528 Lessor's damages for nonacceptance or
24 repudiation.--

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 580.503~~), if a lessor elects to retain
29 the goods or a lessor elects to dispose of the goods and the
30 disposition is by lease agreement that for any reason does not
31 qualify, ~~whether or not the lease agreement qualifies for~~

1 treatment under s. 680.527(2), or is by sale or otherwise, the
2 lessor may recover from the lessee as damages a default of the
3 type described in s. 680.523(1) or s. 680.523(3)(a), or if
4 agreed, for other default of ~~for default by~~ the lessee(~~s.~~
5 ~~680.523~~):

6 (a) Accrued and unpaid rent as of the date of default
7 if the lessee has never taken possession of the goods, or, if
8 the lessee has taken possession of the goods, as of the date
9 the lessor repossesses the goods or an earlier date on which
10 the lessee makes a tender of the goods to the lessor ~~obtained~~
11 ~~possession of the goods or such earlier date as the lessee has~~
12 ~~made an effective tender of possession of the goods back to~~
13 ~~the lessor.~~

14 (b) The present value as of the date determined under
15 paragraph (a) of the ~~difference between the~~ total rent for the
16 then remaining lease term of the original lease agreement
17 minus the present value as of the same date of ~~and~~ the market
18 ~~rent on the date determined under paragraph (a) and at the~~
19 place where the goods were located on that date computed for
20 the same lease term.

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

23 Section 45. Subsections (1), (2), (4), and (5) of
24 section 680.529, Florida Statutes, are amended to read:

25 680.529 Lessor's action for the rent.--

26 (1) After default by the lessee under the lease
27 contract of the type described in(~~s. 680.523(1) or s.~~
28 ~~680.523(3)(a) or, if agreed, after other default by the~~
29 ~~lessee~~), if the lessor complies with subsection (2), the
30 lessor may recover from the lessee as damages:
31

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

5 1. Accrued and unpaid rent as of the date of entry of
6 judgment in favor of the lessor.

7 2. The present value as of the same date ~~determined~~
8 ~~under subparagraph 1.~~of the rent for the then remaining lease
9 term of the lease agreement.

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

12 (b) For goods identified to the lease contract if
13 ~~where the lessor has never delivered the goods or has taken~~
14 ~~possession of them or the lessee has effectively tendered them~~
15 ~~back to the lessor, if the lessor is unable after reasonable~~
16 effort to dispose of them at a reasonable price or the
17 circumstances reasonably indicate that such an effort will be
18 unavailing:

19 1. Accrued and unpaid rent as of the date of entry of
20 judgment in favor of the lessor.

21 2. The present value as of the same date ~~determined~~
22 ~~under subparagraph 1.~~of the rent for the then remaining lease
23 term of the lease agreement.

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

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

30 (4) Payment of the judgment for damages obtained
31 pursuant to subsection (1) entitles the lessee to the use and

1 possession of the goods not then disposed of for the remaining
2 lease term of and in accordance with the lease agreement,
3 provided that the lessee complies with all other terms and
4 conditions of the lease agreement.

5 (5) After a default by the lessee under the lease
6 contract of the type described in s. 680.523(1) or s.
7 680.523(3)(a) or, if agreed, after other default by the lessee
8 ~~has wrongfully rejected or revoked acceptance of goods, has~~
9 ~~failed to pay rent then due, or has repudiated (s. 680.402),~~ a
10 lessor who is held not entitled to rent under this section
11 must nevertheless be awarded damages for nonacceptance under
12 ss. 680.527 and 680.528.

13 Section 46. Section 680.532, Florida Statutes, is
14 amended to read:

15 680.532 Lessor's rights to ~~lessor recovery for loss of~~
16 residual interest.--In addition to any other recovery
17 permitted by this chapter, the lessor may ~~shall be entitled to~~
18 recover from the lessee an amount that will fully compensate
19 the lessor for any loss of or damage to the lessor's residual
20 interest in the goods caused by the default of the lessee.

21 Section 47. This act does not apply to any lease
22 contract entered into before the effective date of this act
23 unless the parties thereto specifically agree in writing that
24 the lease contract as expanded, amended, modified, renewed, or
25 supplemented shall be governed by applicable law as
26 supplemented or amended by this act. Absent such specific
27 agreement, transactions validly entered into before that date
28 and the rights, duties, and interests flowing from them remain
29 valid thereafter and may be terminated, completed,
30 consummated, or enforced as though this act had not taken
31 effect.

1 Section 48. This act shall take effect October 1,
2 1998.

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5 LEGISLATIVE SUMMARY

6 Revises Article 8 of the Uniform Commercial Code enacted
7 as chapter 678, Florida Statutes, relating to investment
8 securities. Revises various sections of the Uniform
Commercial Code enacted as Chapter 680, Florida Statutes,
relating to leases. (See bill for details.)

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