SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 386

SPONSOR: Committee on Judiciary and Senator Campbell

SUBJECT: Uniform Commercial Code

DATE: April 11, 2001 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Forgas	Johnson	JU	Favorable/CS
2.			BI	
3.			HC	
4.			AG	
5.			AGG	
6.			AP	

I. Summary:

Article 9 of the Uniform Commercial Code governs the process of establishing and foreclosing liens against personal property. Florida has adopted Article 9 at ch. 679, F.S.

This committee substitute revises Article 9 of the Uniform Commercial Code, as adopted by Florida, to conform to the Revised Article 9 of the Uniform Commercial Code, as prepared by the National Conference of Commissioners on Uniform State Laws, with Florida modifications.

The following sections of Florida Statutes are repealed: 679.101-.116; 679.201-.208; 679.301-.318; 679.401-.408; 679.501-.507.

The following sections of Florida Statutes are created: 679.1011, 679.1021, 679.1031, 679.1041, 679.1051, 679.1061, 679.1071, 679.1081, 679.1091, 679.1101, 679.2011, 679.2021, 679.2031, 679.2041, 679.2051, 679.2061, 679.2071, 679.2081, 679.209, 679.210, 679.3011, 679.3021, 679.3031, 679.3041, 679.3051, 679.3061, 679.3061, 679.3071, 679.3081, 679.3091, 679.3101, 679.3111, 679.3121, 679.3131, 679.3141, 679.3151, 679.3161, 679.3171, 679.3181, 679.319, 679.320, 679.321, 679.322, 679.323, 679.324, 679.325, 679.326, 679.327, 679.328, 679.329, 679.330, 679.331, 679.332, 679.333, 679.334, 679.335, 679.336, 679.337, 679.3381, 679.339, 679.340, 679.341, 679.342, 679.40111, 679.4021, 679.4031, 679.4041, 679.4051, 679.4061, 679.4071, 679.4081, 679.409, 679.5011, 679.5021, 679.5031, 679.5041, 679.5051, 679.5061, 679.5071, 679.508, 679.509, 679.510, 679.511, 679.512, 679.513, 679.514, 679.515, 679.516, 679.517, 679.518, 679.519, 679.520, 679.521, 679.522, 679.523, 679.524, 679.525, 679.526, 679.527, 679.601, 679.602, 679.603, 679.604, 679.605, 679.606, 679.607, 679.608, 679.609, 679.610, 679.611, 679.612, 679.613, 679.614, 679.615, 679.616, 679.617, 679.618, 679.619, 679.620, 679.621, 679.622, 679.623, 679.624, 679.625, 679.626, 679.627, 679.628, 679.701, 679.702, 679.703, 679.704, 679.705, 679.706, 679.707, 679.708, 679.709, and 675.1181.

The following sections of Florida Statutes are amended: 671.105, 671.201, 672.103, 672.210, 672.326, 672.502, 672.716, 674.2101, 677.503, 678.1031, 678.1061, 678.1101, 678.3011, 678.3021, 678.5101, 680.1031, 680.303, 680.307, and 680.309.

II. Present Situation:

Background (by the National Conference of Commissioners on Uniform Laws):

The Uniform Commercial Code has eleven substantive articles. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 involves two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs--a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests easily found in the public record, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

A. The Process of Achieving Uniformity.

The essence of uniform law revision is to obtain a sufficient consensus and balance among the interests of the various participants so that universal and uniform enactment by the various states may be achieved. In part this is accomplished by extensive consultation on and broad circulation of the drafts, from the project's beginning, until approval of the final draft by the American Law

Institute ("ALI") and the National Conference of Commissioners on Uniform State Laws ("NCCUSL").

ALI and NCCUSL appointed a study committee in 1990 to review the provisions of Article 9. The Committee was charged with recommending whether Article 9 and related provisions of the UCC were in need of revision and, if it was determined that a particular concept required alteration, the Committee was charged with recommending the substance of the suggested revisions.

The report, issued in 1992, became the basis for the work of a Drafting Committee appointed by ALI and NCCUSL, which was formed in 1993. Over a period from 1993 through the summer of 1998, the Drafting Committee met on numerous occasions. These meetings were open to the public and were attended by various advisors and observers. The draft was reviewed at various stages by the ALI counsel and membership and by NCCUSL at annual meetings. Task forces were organized to deal with particular issues, all of which worked to provide input to the committee from virtually all effected segments of the economy. The consensus, balance, and quality achieved in this lengthy deliberative process result from the input from various meetings, informal and formal participations, and the deliberative process employed by ALI and NCCUSL.

B. Action on Revision

Revised Article 9 is now complete and is comprised in the 1998 official text of the UCC. The ALI approved Revised Article 9 by acclamation at its annual meeting in May 1998. NCCUSL approved the statute unanimously at its annual meeting in July 1998. The official comments were issued in early 1999. Currently, 29 states have enacted the revised Article 9, and 18 more are considering it this year.

The Bankruptcy/Uniform Commercial Code Committee of the Florida Bar Business Law Section established a subcommittee, the UCC Study Group, to study and review potential revisions to Florida's Uniform Commercial Code. The UCC Study Group has previously successfully proposed revisions to Article 3 on negotiable instruments, Article 4 on bank deposits and collections, Article 2A on personal property leases, Article 5 on letters of credit, and Article 8 on investment securities. The UCC Study Group also successfully proposed the repeal of Article 6 on bulk transfers. Subject to the modifications described herein, the Florida Bar Business Law Section's Executive Council, Howard J. Berlin, Chair, supports the adoption by the State of Florida of Revised Article 9 as proposed by the National Council of Commissioners on Uniform State Laws and by the American Law Institute and American Bar Association. The Section's Bankruptcy/UCC Committee, Mark J. Wolfson, Chair, undertook a review and study of proposed Article 9 and recommended the modifications and proposed "Florida Comments" to explain certain of the differences between the uniform version and the Florida modifications, most of which are clarifications or fine-tuning, or adopted due to particular Florida concerns. This document does not constitute an official position of The Florida Bar pending approval by its Board of Governors.

C. Reason for Revision

Article 9 was last revised in 1972 and has been the law in most states for over 40 years. It was generally conceded that an update of Article 9 was needed. As the Permanent Editorial Board ("PEB") study group for Article 9 noted in its report issued in 1992:

During the two decades since [the last revision of Article 9], the secured credit markets have seen continued growth and unprecedented innovation. In addition, many hundreds of judicial decisions applying Article 9 have been reported and a large volume of commentary on Article 9, both scholarly and practice-oriented, has emerged. Moreover, the enactment by Congress of the Bankruptcy Reform Act of 1978 . . . has had a profound effect on secured transactions. These developments have led to a strong consensus . . . that although Article 9 is fundamentally sound, serious consideration should be given to the revision of some of the Article's provisions.

Revised Article 9 has accomplished several goals. Revised Article 9 brings Article 9 into the age of intangible property and adapts it to modern financing techniques. The effectiveness of Revised Article 9 will:

- Adapt Article 9 to the electronic age,
- Facilitate financing,
- Reduce the cost of financing,
- Bring greater certainty to financing transactions, and
- Provide greater protections to debtors in the foreclosure process.

The following numbered topics highlight Article 9 as revised in 1999. They are not a treatise on Revised Article 9, but are a schematic summary of its relevant changes.

1. The Scope Issue. The 1999 revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9. These are some of the kinds of collateral that are included in Revised Article 9 that are not in original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under it for those purposes.

2. Perfection. Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. "Control" is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased from ten days in old Article 9 to twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the

perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.

3. Choice of Law. In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1999 revisions to Article 9 make two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the collateral is found as the law that governs perfection, effect of perfection, and a creditor's priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9. At the same time, the location of the debtor establishes a more certain place to perfect than the old rule does. Collateral shifts location much easier than the debtors do.

4. The Filing System. Improvements in the filing system in the 1999 revisions to Article 9 include a full commitment to centralized filing--one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Paper filing of financing statements is already disappearing in many states in 1999, as Revised Article 9 becomes available to them. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

5. Consumer Transactions. Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1999 revisions to Article 9 than it was pre-1999. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1999 revisions to Article 9.

6. Default and Enforcement. Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lien holders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

The following states have adopted this revision of Article 9:
Alaska, Arizona, California, Delaware, District of Columbia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming.

This revision of Article 9 has been, or is expected to be, introduced in the 2001 legislative session:
Alabama, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, US Virgin Islands, Wisconsin.

III. Effect of Proposed Changes:

Section 1. -- Creating a new Part I of ch. 679, F.S., regarding general provisions applicable to all of ch. 679, F.S.

Section 679.1011, provides that ch. 679, F.S., may be cited as "Uniform Commercial Code – Secured Transactions."

Section 679.1021, provides definitions applicable to ch. 679, F.S.

1. Source. All terms that are defined in Article 9 and used in more than one section are consolidated in this section. Note that the definition of "security interest" is found in s. 671.201, not in this Article, and has been revised. Many of the definitions in this section are new; many others derive from those in current law.

a. "Debtor"; "Obligor"; "Secondary Obligor." Determining whether a person was a "debtor" under former Section 9-105(1)(d) required a close examination of the context in which the term was used. To reduce the need for this examination, this Article redefines "debtor" and adds new

defined terms, "secondary obligor" and "obligor." In the context of Part 6 (default and enforcement), these definitions distinguish among three classes of persons: (i) those persons who may have a stake in the proper enforcement of a security interest by virtue of their non-lien property interest (typically, an ownership interest) in the collateral, (ii) those persons who may have a stake in the proper enforcement of the security interest because of their obligation to pay the secured debt, and (iii) those persons who have an obligation to pay the secured debt but have no stake in the proper enforcement of the security interest. Persons in the first class are debtors. Persons in the second class are secondary obligors if any portion of the obligation is secondary or if the obligor has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. One must consult the law of suretyship to determine whether an obligation is secondary. The Restatement (3d), Suretyship and Guaranty ' 1 (1996), contains a useful explanation of the concept. Obligors in the third class are neither debtors nor secondary obligors. With one exception (s. 679.616, as it relates to a consumer obligor), the rights and duties provided by Part 6 affect non-debtor obligors only if they are "secondary obligors."

By including in the definition of "debtor" all persons with a property interest (other than a security interest in or other lien on collateral), the definition includes transferees of collateral, whether or not the secured party knows of the transfer or the transferee's identity. Exculpatory provisions in Part 6 protect the secured party in that circumstance. See ss. 679.605 and 679.628. The definition renders unnecessary former s. 679.112, which governed situations in which collateral was not owned by the debtor. The definition also includes a "consignee," as defined in this section, as well as a seller of accounts, chattel paper, payment intangibles, or promissory notes.

Secured parties and other lien holders are excluded from the definition of "debtor" because the interests of those parties normally derive from and encumber a debtor's interest. However, if in a separate secured transaction a secured party grants, as debtor, a security interest in its own interest (i.e., its security interest and any obligation that it secures), the secured party is a debtor in that transaction. This typically occurs when a secured party with a security interest in specific goods assigns chattel paper.

b. "Secured Party." The secured party is the person in whose favor the security interest has been created, as determined by reference to the security agreement. This definition controls, among other things, which person has the duties and potential liability that Part 6 imposes upon a secured party. The definition of "secured party" also includes a "consignor," a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold, and the holder of an agricultural lien.

A "consumer obligor" is defined as an obligor who is an individual in a consumer transaction.

a. "Collateral." As under former s. 679.105, "collateral" is the property subject to a security interest and includes accounts and chattel paper that have been sold. It has been expanded in this Article. The term now explicitly includes proceeds subject to a security interest. It also reflects the broadened scope of the Article. It includes property subject to an agricultural lien as well as payment intangibles and promissory notes that have been sold.

b. "Security Agreement." The definition of "security agreement" is substantially the same as under former s. 679.105 - an agreement that creates or provides for a security interest. However, the term frequently was used colloquially in former Article 9 to refer to the document or writing that contained a debtor's security agreement. This Article eliminates that usage, reserving the term for the more precise meaning specified in the definition.

a. "Goods"; "Consumer Goods"; "Equipment"; "Farm Products"; "Farming Operation"; "Inventory." The definition of "goods" is substantially the same as the definition in former s. 679.105. This Article also retains the four mutually-exclusive "types" of collateral that consist of goods: "consumer goods," "equipment," "farm products," and "inventory." The revisions are primarily for clarification.

The definition of "consumer goods" follows former s. 679.109. The classification turns on whether the debtor uses or bought the goods for use "primarily for personal, family, or household purposes."

Goods are inventory if they are leased by a lessor or held by a person for sale or lease. The revised definition of "inventory" makes clear that the term includes goods leased by the debtor to others as well as goods held for lease. (The same result should have obtained under the former definition.) Goods to be furnished or furnished under a service contract, raw materials, and work in process also are inventory. Implicit in the definition is the criterion that the sales or leases are or will be in the ordinary course of business. For example, machinery used in manufacturing is equipment, not inventory, even though it is the policy of the debtor to sell machinery when it becomes obsolete or worn. Inventory also includes goods that are consumed in a business (e.g., fuel used in operations). In general, goods used in a business are equipment if they are fixed assets or have, as identifiable units, a relatively long period of use, but are inventory, even though not held for sale or lease, if they are used up or consumed in a short period of time in producing a product or providing a service.

Goods are "farm products" if the debtor is engaged in farming operations with respect to the goods. Animals in a herd of livestock are covered whether the debtor acquires them by purchase or as a result of natural increase. Products of crops or livestock remain farm products as long as they have not been subjected to a manufacturing process. The terms "crops" and "livestock" are not defined. The new definition of "farming operations" is for clarification only.

Crops, livestock, and their products cease to be "farm products" when the debtor ceases to be engaged in farming operations with respect to them.

The revised definition of "farm products" clarifies the distinction between crops and standing timber and makes clear that aquatic goods produced in aquacultural operations may be either crops or livestock. Although aquatic goods that are vegetable in nature often would be crops and those that are animal would be livestock, this Article leaves the courts free to classify the goods on a case-by-case basis.

The definitions of "goods" and "software" are also mutually exclusive. Computer programs usually constitute "software," and, as such, are not "goods" as this Article uses the terms. However, under the circumstances specified in the definition of "goods," computer programs embedded in goods are part of the "goods" and are not "software."

b. "Accession"; "Manufactured Home"; "Manufactured-Home Transaction." Other specialized definitions of goods include "accession" (see the special priority and enforcement rules in s. 679.335), and "manufactured home" (see s. 679.515, permitting a financing statement in a "manufactured-home transaction" to be effective for 30 years). The definition of "manufactured home" borrows from the federal Manufactured Housing Act, 42 U.S.C. " 5401 et seq., and is intended to have the same meaning.

c. "As-Extracted Collateral." Under this Article, oil, gas, and other minerals that have not been extracted from the ground are treated as real property, to which this Article does not apply. Upon extraction, minerals become personal property (goods) and eligible to be collateral under this Article. See the definition of "goods," which excludes "oil, gas, and other minerals before extraction." To take account of financing practices reflecting the shift from real to personal property, this Article contains special rules for perfecting security interests in minerals which attach upon extraction and in accounts resulting from the sale of minerals at the wellhead or minehead. See, e.g., Sections 679.301(4) (law governing perfection and priority); 679.501 (place of filing), 679.502 (contents of financing statement), 679.519 (indexing of records). The new term, "as-extracted collateral," refers to the minerals and related accounts to which the special rules apply. The term "at the wellhead" encompasses arrangements based on a sale of the produce at the moment that it issues from the ground and is measured, without technical distinctions as to whether title passes at the "Christmas tree" of a well, the far side of a gathering tank, or at some other point. The term "at . . . the minehead" is comparable.

a. "Account"; "Health-Care-Insurance Receivable"; "As-Extracted Collateral." The definition of "account" has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. Many categories of rights to payment that were classified as general intangibles under former Article 9 are accounts under this Article. Thus, if they are sold, a financing statement must be filed to perfect the buyer's interest in them. Among the types of property that are expressly excluded from the definition is "a right to payment for money or funds advanced or sold." As defined in s. 671.201, "money" is limited essentially to currency. As used in the exclusion from the definition of "account," however, "funds" is a broader concept (although the term is not defined). For example, when a bank-lender credits a borrower's deposit account for the amount of a loan, the bank's advance of funds is not a transaction giving rise to an account.

The definition of "health-care-insurance receivable" is new. It is a subset of the definition of "account." However, the rules generally applicable to account debtors on accounts do not apply to insurers obligated on health-care-insurance receivables. See ss. 679.404(e), 679.405(d), 679.406(i).

b. "Chattel Paper"; "Electronic Chattel Paper"; "Tangible Chattel Paper." "Chattel paper" consists of a monetary obligation together with a security interest in or a lease of specific goods if the obligation and security interest or lease are evidenced by "a record or records." The definition has been expanded from that found in former Article 9 to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, or a lease of specific goods and license of software used in the goods. The expanded definition covers transactions in which the debtor's or lessee's monetary obligation includes amounts owed with respect to software used in the goods. The monetary obligation with respect to the software need not be owed under a license from the secured party or lessor, and the secured party or lessor need not be a party to the license transaction itself. Among the types of monetary obligations that are included in "chattel paper" are amounts that have been advanced by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a license of the software used in the goods. The definition also makes clear that rights to payment arising out of credit-card transactions are not chattel paper. Charters of vessels are expressly excluded from the definition of chattel paper; they are accounts. The term "charter" as used in this section includes bareboat charters, time charters, successive voyage charters, contracts of affreightment, contracts of carriage, and all other arrangements for the use of vessels. Under former Section 9-105, only if the evidence of an obligation consisted of "a writing or writings" could an obligation qualify as chattel paper. In this Article, traditional, written chattel paper is included in the definition of "tangible chattel paper." "Electronic chattel paper" is chattel paper that is stored in an electronic medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include electrical, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies.

The definition of electronic chattel paper does not dictate that it be created in any particular fashion. For example, a record consisting of a tangible writing may be converted to electronic form (e.g., by creating electronic images of a signed writing). Or, records may be initially created and executed in electronic form (e.g., a lessee might authenticate an electronic record of a lease that is then stored in electronic form). In either case the resulting records are electronic chattel paper.

c. "Instrument"; "Promissory Note." The definition of "instrument" includes a negotiable instrument. As under former s. 679.105, it also includes any other right to payment of a monetary obligation that is evidenced by a writing of a type that in ordinary course of business is transferred by delivery (and, if necessary, an endorsement or assignment). Except in the case of chattel paper, the fact that an instrument is secured by a security interest or encumbrance on property does not change the character of the instrument as such or convert the combination of the instrument and collateral into a separate classification of personal property. The definition makes clear that rights to payment arising out of credit-card transactions are not instruments. The definition of "promissory note" is new, necessitated by the inclusion of sales of promissory notes within the scope of Article 9. It explicitly excludes obligations arising out of "orders" to pay (e.g., checks) as opposed to "promises" to pay. See s. 673.104.

d. "General Intangible"; "Payment Intangible." "General intangible" is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a

loan of funds that is not evidenced by chattel paper or an instrument. As used in the definition of "general intangible," "things in action" includes rights that arise under a license of intellectual property, including the right to exploit the intellectual property without liability for infringement. The definition has been revised to exclude commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of collateral.

"Payment intangible" is a subset of the definition of "general intangible." The term "payment intangible," however, embraces only those general intangibles "under which the account debtor's principal obligation is a monetary obligation." (Emphasis added.)

Every "payment intangible" is also a "general intangible." Likewise, "software" is a "general intangible" for purposes of this Article. Accordingly, except as otherwise provided, statutory provisions applicable to general intangibles apply to payment intangibles and software.

e. "Letter-of-Credit Right." The term "letter-of-credit right" embraces the rights to payment and performance under a letter of credit (defined in s. 675.102). However, it does not include a beneficiary's right to demand payment or performance.

f. "Supporting Obligation." This new term covers the most common types of credit enhancements and suretyship obligations (including guarantees) and letter-of-credit rights that support one of the types of collateral specified in the definition.

This Article contains rules explicitly governing attachment, perfection, and priority of security interests in supporting obligations. See ss. 679.203, 679.308, 679.310, and 679.322. These provisions reflect the principle that a supporting obligation is an incident of the collateral it supports.

Collections of or other distributions under a supporting obligation are "proceeds" of the supported collateral as well as "proceeds" of the supporting obligation itself.

g. "Commercial Tort Claim." This term is new. A tort claim may serve as original collateral under this Article only if it is a "commercial tort claim." See s. 679.109(d). Although security interests in commercial tort claims are within its scope, this Article does not override other applicable law restricting the assignability of a tort claim. See s. 679.401. A security interest in a tort claim also may exist under this Article if the claim is proceeds of other collateral.

h. "Account Debtor." An "account debtor" is a person obligated on an account, chattel paper, or general intangible. The definition of "account debtor" excludes obligors on negotiable instruments constituting part of chattel paper. The principal effect of this change from the definition in former Article 9 is that the rules in ss. 679.403, 679.404, 679.405, and 679.406, dealing with the rights of an assignee and duties of an account debtor, do not apply to an assignment of chattel paper in which the obligation to pay is evidenced by a negotiable instrument. (s. 679.406(d), however, does apply to promissory notes, including negotiable promissory notes.) Rather, the assignee's rights are governed by Article 3. Similarly, the duties of an obligor on a nonnegotiable instrument are governed by non-Article 9 law unless the

nonnegotiable instrument is a part of chattel paper, in which case the obligor is an account debtor.

6. Investment-Property-Related Definitions: "Commodity Account"; "Commodity Contract"; "Commodity Customer"; "Commodity Intermediary"; "Investment Property." These definitions are substantially the same as the corresponding definitions in former s. 679.115. "Investment property" includes securities, both certificated and uncertificated, securities accounts, security entitlements, commodity accounts, and commodity contracts. The term investment property includes a "securities account" in order to facilitate transactions in which a debtor wishes to create a security interest in all of the investment positions held through a particular account rather than in particular positions carried in the account.

The terms "commodity account," "commodity contract," "commodity customer," and "commodity intermediary" are defined in this section.

The term "commodity contract" covers those contracts that are traded on or subject to the rules of a designated contract market and foreign commodity contracts that are carried on the books of American commodity intermediaries.

7. Consumer-Related Definitions: "Consumer Debtor"; "Consumer Goods"; "Consumer-goods transaction"; "Consumer Obligor"; "Consumer Transaction." The definition of "consumer goods" (discussed above) is substantially the same as the definition in former s. 679.109. The definitions of "consumer debtor," "consumer obligor," "consumer-goods transaction," and "consumer transaction" have been added in connection with various new (and old) consumer-related provisions and to designate certain provisions that are inapplicable in consumer transactions.

"Consumer-goods transaction" is a subset of "consumer transaction." Under each definition, both the obligation secured and the collateral must have a personal, family, or household purpose. However, "mixed" business and personal transactions also may be characterized as a consumer-goods transaction or consumer transaction. Subparagraph (A) of the definition of consumer-goods transactions and clause (i) of the definition of consumer transaction are primary purposes tests. Under these tests, it is necessary to determine the primary purpose of the obligation or obligations secured. Subparagraph (B) and clause (iii) of these definitions are satisfied if any of the collateral is consumer goods, in the case of a consumer-goods transaction, or "is held or acquired primarily for personal, family, or household purposes," in the case of a consumer transaction. The fact that some of the obligations secured or some of the collateral for the obligation does not satisfy the tests (e.g., some of the collateral is acquired for a business purpose) does not prevent a transaction from being a "consumer transaction" or "consumer-goods transaction."

8. Filing-Related Definitions: "Continuation Statement"; "File Number"; "Filing Office"; "Filing-office Rule"; "Financing Statement"; "Fixture Filing"; "Manufactured-Home Transaction"; "New Debtor"; "Original Debtor"; "Termination Statement"; "Transmitting Utility." These definitions are used exclusively or primarily in the filing-related provisions in Part 5. Most are self-explanatory and are discussed in the Comments to Part 5. A financing

statement filed in a manufactured-home transaction or a public-finance transaction may remain effective for 30 years instead of the 5 years applicable to other financing statements. See s. 679.515(b). The definitions relating to medium neutrality also are significant for the filing provisions.

The definition of "transmitting utility" has been revised to embrace the business of transmitting communications generally to take account of new and future types of communications technology. The term designates a special class of debtors for whom separate filing rules are provided in Part 5, thereby obviating the many local fixture filings that would be necessary under the rules of s. 679.501 for a far-flung public-utility debtor. A transmitting utility will not necessarily be regulated by or operating as such in a jurisdiction where fixtures are located. For example, a utility might own transmission lines in a jurisdiction, although the utility generates no power and has no customers in the jurisdiction.

9. Definitions Relating to Medium Neutrality.

a. "Record." In many, but not all, instances, the term "record" replaces the term "writing" and "written." A "record" includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper).

A "record" need not be permanent or indestructible, but the term does not include any oral or other communication that is not stored or preserved by any means. The information must be stored on paper or in some other medium. Information that has not been retained other than through human memory does not qualify as a record. Examples of current technologies commercially used to communicate or store information include, but are not limited to, magnetic media, optical discs, digital voice messaging systems, electronic mail, audio tapes, and photographic media, as well as paper. "Record" is an inclusive term that includes all of these methods of storing or communicating information. Any "writing" is a record. A record may be authenticated. A record may be created without the knowledge or intent of a particular person.

This Article sometimes uses the terms "for record," "of record," "record or legal title," and "record owner." Some of these are terms traditionally used in real-property law. The definition of "record" in this Article now explicitly excepts these usages from the defined term. Also, this Article refers to a record that is filed or recorded in real-property recording systems to record a mortgage as a "record of a mortgage." This usage recognizes that the defined term "mortgage" means an interest in real property; it does not mean the record that evidences, or is filed or recorded with respect to, the mortgage.

b. "Authenticate"; "Communicate"; "Send." The terms "authenticate" and "authenticated" generally replace "sign" and "signed." "Authenticated" replaces and broadens the definition of "signed," in s. 671.201, to encompass authentication of all records, not just writings. (References to authentication of, e.g., an agreement, demand, or notification mean, of course, authentication of a record containing an agreement, demand, or notification.) The terms "communicate" and "send" also contemplate the possibility of communication by nonwritten media. These definitions include the act of transmitting both tangible and intangible records.

a. Expanded Scope of Article: "Agricultural Lien"; "Consignment"; "Payment Intangible"; "Promissory Note." These new definitions reflect the expanded scope of Article 9, as provided in s. 679.1091(1).

b. Reduced Scope of Exclusions: "Governmental Unit"; "Health-Care-Insurance Receivable"; "Commercial Tort Claims." These new definitions reflect the reduced scope of the exclusions, provided in s. 679.1091(3) and (4), of transfers by governmental debtors and assignments of interests in insurance policies and commercial tort claims.

11. Choice-of-Law-Related Definitions: "Certificate of Title"; "Governmental Unit"; "Jurisdiction of Organization"; "Registered Organization"; "State." These new definitions reflect the changes in the law governing perfection and priority of security interests and agricultural liens provided in Part 3, Subpart 1.

Not every organization that may provide information about itself in the public records is a "registered organization." For example, a general partnership is not a "registered organization," even if it files a statement of partnership authority under Section 303 of the Uniform Partnership Act (1994) or an assumed name ("dba") certificate. This is because the State under whose law the partnership is organized is not required to maintain a public record showing that the partnership has been organized. In contrast, corporations, limited liability companies, and limited partnerships are "registered organizations."

12. Deposit-Account-Related Definitions: "Deposit Account"; "Bank." The revised definition of "deposit account" incorporates the definition of "bank," which is new. The definition derives from the definitions of "bank" in ss. 674.105(1) and 4A-105(a)(2), which focus on whether the organization is "engaged in the business of banking."

Deposit accounts evidenced by Article 9 "instruments" are excluded from the term "deposit account." In contrast, former s. 679.105 excluded from the former definition "an account evidenced by a certificate of deposit." The revised definition clarifies the proper treatment of nonnegotiable or uncertificated certificates of deposit. Under the definition, an uncertificated certificate of deposit would be a deposit account (assuming there is no writing evidencing the bank's obligation to pay) whereas a nonnegotiable certificate of deposit would be a deposit account only if it is not an "instrument" as defined in this section (a question that turns on whether the nonnegotiable certificate of deposit is "of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment.")

The term "deposit account" does not include "investment property," such as securities and security entitlements. Thus, the term also does not include shares in a money-market mutual fund, even if the shares are redeemable by check.

13. Proceeds-Related Definitions: "Cash Proceeds"; "Noncash Proceeds"; "Proceeds." The revised definition of "proceeds" expands the definition beyond that contained in former s. 679.306 and resolves ambiguities in the former section.

a. Distributions on Account of Collateral. The phrase "whatever is collected on, or distributed on account of, collateral," in subparagraph (B), is broad enough to cover cash or stock dividends distributed on account of securities or other investment property that is original collateral.

b. Distributions on Account of Supporting Obligations. Under subparagraph (B), collections on and distributions on account of collateral consisting of various credit-support arrangements ("supporting obligations," as defined in s. 679.102) also are proceeds. Consequently, they are afforded treatment identical to proceeds collected from or distributed by the obligor on the underlying (supported) right to payment or other collateral. Proceeds of supporting obligations also are proceeds of the underlying rights to payment or other collateral.

e. Cash Proceeds and Noncash Proceeds. The definition of "cash proceeds" is substantially the same as the corresponding definition in former s. 679.306. The phrase "and the like" covers property that is functionally equivalent to "money, checks, or deposit accounts," such as some money-market accounts that are securities or part of securities entitlements. Proceeds other than cash proceeds are noncash proceeds.

14. Consignment-Related Definitions: "Consignee"; "Consignment"; "Consignor." The definition of "consignment" excludes, in subparagraphs (B) and (C), transactions for which filing would be inappropriate or of insufficient benefit to justify the costs. The definition also excludes, in subparagraph (D), what have been called "consignments intended for security." These "consignments" are not bailments but secured transactions. Accordingly, all of Article 9 applies to them. The "consignor" is the person who delivers goods to the "consignee" in a consignment.

The definition of "consignment" requires that the goods be delivered "to a merchant for the purpose of sale." If the goods are delivered for another purpose as well, such as milling or processing, the transaction is a consignment nonetheless because a purpose of the delivery is "sale." On the other hand, if a merchant-processor-bailee will not be selling the goods itself but will be delivering to buyers to which the owner-bailor agreed to sell the goods, the transaction would not be a consignment.

15. "Accounting." This definition describes the record and information that a debtor is entitled to request under s. 679.210.

16. "Document." The definition of "document" is unchanged in substance from the corresponding definitions in former s. 679.105. See s. 671.201(15).

17. "Encumbrance"; "Mortgage." The definitions of "encumbrance" and "mortgage" are unchanged in substance from the corresponding definitions in former s. 679.105. They are used primarily in the special real-property-related priority and other provisions relating to crops, fixtures, and accessions.

18. "Fixtures." This definition is unchanged in substance from the corresponding definition in former s. 679.313.

19. "Good Faith." This Article expands the definition of "good faith" to include "the observance of reasonable commercial standards of fair dealing." The definition in this section applies when the term is used in this Article, and the same concept applies in the context of this Article for purposes of the obligation of good faith imposed by s. 671.203. See subsection (c).

20. "Lien Creditor" This definition is unchanged in substance from the corresponding definition in former s. 679.301.

21. "New Value." This Article deletes former s. 679.108. Its broad formulation of new value, which embraced the taking of after-acquired collateral for a pre-existing claim, was unnecessary, counterintuitive, and ineffective for its original purpose of sheltering after-acquired collateral from attack as a voidable preference in bankruptcy. The new definition derives from Bankruptcy Code Section 547(a). The term is used with respect to temporary perfection of security interests in instruments, certificated securities, or negotiable documents under s. 679.3121(5) and with respect to chattel paper priority in s. 679.330.

22. "Person Related To." Section 679.615 provides a special method for calculating a deficiency or surplus when "the secured party, a person related to the secured party, or a secondary obligor" acquires the collateral at a foreclosure disposition. Separate definitions of the term are provided with respect to an individual secured party and with respect to a secured party that is an organization. The definitions are patterned on the corresponding definition in Section 1.301(32) of the Uniform Consumer Credit Code (1974).

23. "Proposal." This definition describes a record that is sufficient to propose to retain collateral in full or partial satisfaction of a secured obligation.

24. "Pursuant to Commitment." This definition is unchanged in substance from the corresponding definition in former s. 679.105. It is used in connection with special priority rules applicable to future advances.

25. "Software." The definition of "software" is used in connection with the priority rules applicable to purchase-money security interests. Software, like a payment intangible, is a type of general intangible for purposes of this Article.

26. Terminology: "Assignment" and "Transfer." In numerous provisions, this Article refers to the "assignment" or the "transfer" of property interests. These terms and their derivatives are not defined. This Article generally follows common usage by using the terms "assignment" and "assign" to refer to transfers of rights to payment, claims, and liens and other security interests. It generally uses the term "transfer" to refer to other transfers of interests in property. Depending on the context, each term may refer to the assignment or transfer of an outright ownership interest or to the assignment or transfer of a limited interest, such as a security interest.

Section 679.1031, regarding purchase-money security interest, application of payments, and burden of establishing.

1. Source. Former Section 679.107.

2. Scope of This Section. Under s. 679.3091(1), a purchase-money security interest in consumer goods is perfected when it attaches. Sections 679.3171 and 679.324 provide special priority rules for purchase-money security interests in a variety of contexts. This section explains when a security interest enjoys purchase-money status.

3. "Purchase-Money Collateral"; "Purchase-Money Obligation"; "Purchase-Money Security Interest." Subsection (1) defines "purchase-money collateral" and "purchase-money obligation." These terms are essential to the description of what constitutes a purchase-money security interest under subsection (2). As used in subsection (1)(b), the definition of "purchase-money obligation," the "price" of collateral or the "value given to enable" includes obligations for expenses incurred in connection with acquiring rights in the collateral, sales taxes, duties, finance charges, interest, freight charges, costs of storage in transit, demurrage, administrative charges, expenses of collection and enforcement, attorney's fees, and other similar obligations.

The concept of "purchase-money security interest" requires a close nexus between the acquisition of collateral and the secured obligation. Thus, a security interest does not qualify as a purchase-money security interest if a debtor acquires property on unsecured credit and subsequently creates the security interest to secure the purchase price.

5. Purchase-Money Security Interests in Goods and Software. Subsections (2) and (3) limit purchase-money security interests to security interests in goods, including fixtures, and software.

Subsection (3) describes the limited circumstances under which a security interest in goods may be accompanied by a purchase-money security interest in software. The software must be acquired by the debtor in a transaction integrated with the transaction in which the debtor acquired the goods, and the debtor must acquire the software for the principal purpose of using the software in the goods.

6. Consignments. Under former s. 679.114, the priority of the consignor's interest is similar to that of a purchase-money security interest. Subsection (4) achieves this result more directly, by defining the interest of a "consignor," defined in s. 679.1021, to be a purchase-money security interest in inventory for purposes of this Article. Rather, the priority of the consignor's interest as against the rights of lien creditors of the consignee, competing secured parties, and purchasers of the goods from the consignee can be determined by reference to the priority rules generally applicable to inventory, such as ss. 679.3171, 679.320, 679.322, and 679.324. For other purposes, including the rights and duties of the consignor and consignee as between themselves, the consignor would remain the owner of goods under a bailment arrangement with the consignee.

7. Provisions.

a. "Dual-Status" Rule. This Article approves what some cases have called the "dual-status" rule, under which a security interest may be a purchase-money security interest to some extent and a non-purchase-money security interest to some extent. Some courts have found this rule to be explicit or implicit in the words "to the extent," found in former s 679.107 and continued in subsections (2)(a) and (2)(b). The rule is made explicit in subsection (5). For non-consumer-

goods transactions, this Article rejects the "transformation" rule adopted by some cases, under which any cross-collateralization, refinancing, or the like destroys the purchase-money status entirely.

Subsection (5)(a) expresses the overriding principle, applicable in cases other than consumer-goods transactions, for determining the extent to which a security interest is a purchase-money security interest under these circumstances: freedom of contract, as limited by principle of reasonableness. An unconscionable method of application, for example, is not a reasonable one and so would not be given effect under subsection (5)(a). In the absence of agreement, subsection (5)(b) permits the obligor to determine how payments should be allocated.

After the unsecured debt is paid, payments are to be applied first toward the obligations secured by purchase-money security interests. In the event that there is more than one such obligation, payments first received are to be applied to obligations first incurred. Once these obligations are paid, there are no purchase-money security interests and no additional allocation rules are needed.

Subsection (6) buttresses the dual-status rule by making it clear that (in a transaction other than a consumer-goods transaction) cross-collateralization and renewals, refinancings, and restructurings do not cause a purchase-money security interest to lose its status as such. The statutory terms "renewed," "refinanced," and "restructured" are not defined. Whether the terms encompass a particular transaction depends upon whether, under the particular facts, the purchase-money character of the security interest fairly can be said to survive. Each term contemplates that an identifiable portion of the purchase-money obligation could be traced to the new obligation resulting from a renewal, refinancing, or restructuring.

c. Burden of Proof. As is the case when the extent of a security interest is in issue, under subsection (7) the secured party claiming a purchase-money security interest in a transaction other than a consumer-goods transaction has the burden of establishing whether the security interest retains its purchase-money status. This is so whether the determination is to be made following a renewal, refinancing, or restructuring or otherwise.

Section 679.1041, regarding control of deposit account.

This section explains the concept of "control" of a deposit account. "Control" under this section may serve two functions. First, "control . . . pursuant to the debtor's agreement" may substitute for an authenticated security agreement as an element of attachment. Second, when a deposit account is taken as original collateral, the only method of perfection is obtaining control under this section.

This section derives from s. 678.106 of Revised Article 8, which defines "control" of securities and certain other investment property. Under subsection (1)(a), the bank with which the deposit account is maintained has control. The effect of this provision is to afford the bank automatic perfection. No other form of public notice is necessary; all actual and potential creditors of the debtor are always on notice that the bank with which the debtor's deposit account is maintained may assert a claim against the deposit account.

Under subsection (1)(b), a secured party may obtain control by obtaining the bank's authenticated agreement that it will comply with the secured party's instructions without further consent by the debtor. An agreement to comply with the secured party's instructions suffices for "control" of a deposit account under this section even if the bank's agreement is subject to specified conditions, e.g., that the secured party's instructions are accompanied by a certification that the debtor is in default.

Under subsection (1)(c), a secured party may obtain control by becoming the bank's "customer". As the customer, the secured party would enjoy the right (but not necessarily the exclusive right) to withdraw funds from, or close, the deposit account.

Although the arrangements giving rise to control may themselves prevent, or may enable the secured party at its discretion to prevent, the debtor from reaching the funds on deposit, subsection (2) makes clear that the debtor's ability to reach the funds is not inconsistent with "control."

Section 679.1051.

This section governs how "control" of electronic chattel paper may be obtained. Because electronic chattel paper cannot be transferred, assigned, or possessed in the same manner as tangible chattel paper, a special definition of control is necessary. In descriptive terms, this section provides that control of electronic chattel paper is the functional equivalent of possession of "tangible chattel paper" (a term also defined in s. 679.1021).

One requirement for establishing control is that a particular copy be an "authoritative copy." This may be achieved, for example, through the methods of authentication that are used or by business practices involving the marking of any additional copies. When tangible chattel paper is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel paper is the authoritative copy it may be necessary to show that the tangible chattel paper no longer exists or has been permanently marked to indicate that it is not the authoritative copy.

Achieving control under this section requires more than the agreement of interested persons that the elements of control are satisfied. Subsection (4) contemplates that control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to approach practical impossibility) to add or change an identified assignee without the participation of the secured party (or its authorized representative). Control of electronic chattel paper contemplates systems or procedures such that the secured party must take some action (either directly or through its designated custodian) to effect a change or addition to the authoritative copy. But just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party's interest could be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.

Systems that evolve for control of electronic chattel paper may or may not involve a third party custodian of the relevant records.

Section 679.1061, regarding control of investment property.

1. Source. Former s. 679.115(5).

3. "Control" of Commodity Contracts. This section, as did former s. 679.115(1)(e), contains provisions relating to control of commodity contracts.

Control with respect to a securities account or commodity account is defined in terms of obtaining control over the security entitlements or commodity contracts. An agreement that provides that (without further consent of the debtor) the securities intermediary or commodity intermediary will honor instructions from the secured party concerning a securities account or commodity account described as such is sufficient. Such an agreement necessarily implies that the intermediary will honor instructions concerning all security entitlements or commodity contracts carried in the account and thus affords the secured party control of all the security entitlements or commodity contracts.

Section 679.1071, regarding control of letter-of-credit right.

1. Source. New.

This section provides that a secured party acquires control of a letter-of-credit right by receiving an assignment if the secured party obtains the consent of the issuer or any nominated person, or other applicable law or practice. Because both issuers and nominated persons may give or be obligated to give value under a letter of credit, this section contemplates that a secured party obtains control of a letter-of-credit right with respect to the issuer or a particular nominated person only to the extent that the issuer or that nominated person consents to the assignment.

Section 679.1081, regarding sufficiency of description.

1. Source. Former ss. 679.110, 679.115(3).

2. General Rules. Subsection (1) retains substantially the same formulation as former Section 9-110. Subsection (2) expands upon subsection (1) by indicating a variety of ways in which a description might reasonably identify collateral. Whereas a provision similar to subsection (2) was applicable only to investment property under former s. 679.115(3), subsection (2) applies to all types of collateral, subject to the limitation in subsection (4). Subsection (2) is subject to subsection (3), which follows prevailing case law and adopts the view that an "all assets" or "all personal property" description for purposes of a security agreement is not sufficient.

The purpose of requiring a description of collateral in a security agreement under s. 679.2031 is evidentiary. The test of sufficiency of a description under this section, as under former s. 679.110, is that the description do the job assigned to it: make possible the identification of the collateral described. This section rejects any requirement that a description is insufficient unless it is exact and detailed (the so called "serial number" test).

Subsection (5) requires greater specificity of description in order to prevent debtors from inadvertently encumbering certain property. Subsection (5) requires that a description by defined "type" of collateral alone of a commercial tort claim or, in a consumer transaction, of a security entitlement, securities account, or commodity account, is not sufficient. For example, "all existing and after-acquired investment property" or "all existing and after-acquired security entitlements," without more, would be insufficient in a consumer transaction to describe a security entitlement, securities account, or commodity account. The reference to "only by type" in subsection (5) means that a description is sufficient if it satisfies subsection (1) and contains a descriptive component beyond the "type" alone. Moreover, if the collateral consists of a securities account or commodity account, a description of the account is sufficient to cover all existing and future security entitlements or commodity contracts carried in the account.

Subsection (5) does not require a description to be specific. For example, a description such as "all tort claims arising out of the explosion of debtor's factory" would suffice, even if the exact amount of the claim, the theory on which it may be based, and the identity of the tortfeasor(s) are not described.

Section 679.1091.

Former Sections 679.102, 679.104.

2. Basic Scope Provision. Subsection (1)(a) derives from former s. 679.102(1) and (2). Under subsection (1)(a), all consensual security interests in personal property and fixtures are covered by this Article, except for transactions excluded by subsections (3) and (4). As to which transactions give rise to a "security interest," the definition of that term in s. 671.201 must be consulted. When a security interest is created, this Article applies regardless of the form of the transaction or the name that parties have given to it.

Subsection (1)(b) is new. It expands the scope of this Article to cover agricultural liens, as defined in s. 679.1021.

Under subsection (1)(c), as under former s. 679.102, this Article applies to sales of accounts and chattel paper.

Subsection (1)(c) expands the scope of this Article by including the sale of a "payment intangible" (defined in s. 679.1021 as "a general intangible under which the account debtor's principal obligation is a monetary obligation") and a "promissory note" (also defined in s. 679.1021).

A "sale" of an account, chattel paper, a promissory note, or a payment intangible includes a sale of a right in the receivable, such as a sale of a participation interest. The term also includes the sale of an enforcement right.

Nothing in this section or any other provision of Article 9 prevents the transfer of full and complete ownership of an account, chattel paper, an instrument, or a payment intangible in a transaction of sale.

Subsection (1)(d) is new. This Article applies to every "consignment." The term, defined in s. 679.1021, includes many but not all "true" consignments (i.e., bailments for the purpose of sale). If a transaction is a "sale or return," as defined in revised s. 672.326, it is not a "consignment."

Sometimes parties characterize transactions that secure an obligation (other than the bailee's obligation to returned bailed goods) as "consignments." These transactions are not "consignments".

This Article does not apply to bailments for sale that fall outside the definition of "consignment" in s. 679.1021 and that do not create a security interest that secures an obligation.

7. Security Interest in Obligation Secured by Non-Article 9 Transaction. Subsection (2) is unchanged in substance from former s. 679.102(3).

Former s. 679.104(1) excluded from Article 9 "a security interest subject to any statute of the United States, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property." Subsection (3)(a) recognizes explicitly that this Article defers to federal law only when and to the extent that it must -- i.e., when federal law preempts it.

Former s. 679.104(5) excluded transfers by governmental debtors. It has been revised and replaced by the exclusions in new paragraphs (b) and (e) of subsection (c). These paragraphs reflect the view that Article 9 should apply to security interests created by a State, foreign country, or a "governmental unit" (defined in s. 679.1021) of either except to the extent that another statute governs the issue in question. Under paragraph (b), this Article defers to all statutes of the forum State. (A forum cannot determine whether it should consult the choice-of-law rules in the forum's UCC unless it first determines that its UCC applies to the transaction before it.) Paragraph (c) defers to statutes of another State or a foreign country only to the extent that those statutes contain rules applicable specifically to security interests created by the governmental unit in question.

If a transaction does not bear an appropriate relation to the forum State, then that State's Article 9 will not apply, regardless of whether the transaction would be excluded by paragraph (c).

Following former s. 679.104(2) and (10), paragraphs (a) and (k) of subsection (4) exclude landlord's liens and leases and most other interests in or liens on real property. These exclusions generally reiterate the limitations on coverage (i.e., "by contract," "in personal property and fixtures") made explicit in subsection (1)(a). Similarly, most jurisdictions provide special liens to suppliers of many types of services and materials, either by statute or by common law. As under former s. 679.104(3), subsection (4)(b) excludes these suppliers' liens (other than agricultural liens) from this Article.

As under former s. 679.104(4), subsection (4)(c) excludes assignments of claims for wages and the like from this Article. The Federal Trade Commission has ruled that, with some exceptions,

the taking of an assignment of wages or other earnings is an unfair act or practice under the Federal Trade Commission Act. See 16 C.F.R. Part 444.

12. Certain Sales and Assignments of Receivables; Judgments. In general this Article covers security interests in (including sales of) accounts, chattel paper, payment intangibles, and promissory notes. Paragraphs (d), (e), (f), and (g) of subsection (4) exclude from the Article certain sales and assignments of receivables that, by their nature, do not concern commercial financing transactions. These paragraphs add to the exclusions in former s. 679.104(6) analogous sales and assignments of payment intangibles and promissory notes. For similar reasons, subsection (4)(i) retains the exclusion of assignments of judgments under former s. 679.104(8).

13. Insurance. Subsection (4)(h) narrows somewhat the broad exclusion of interests in insurance policies under former s. 679.104(7). This Article now covers assignments by or to a health-care provider of "health-care-insurance receivables" (defined in s. 679.1021).

14. Set-Off. Subsection (4)(j) adds two exceptions to the general exclusion of set-off rights from Article 9 under former s. 679.104(9). The first takes account of new Section 679.3401, which regulates the effectiveness of a set-off against a deposit account that stands as collateral. The second recognizes Section 679.4041, which affords the obligor on an account, chattel paper, or general intangible the right to raise claims and defenses against an assignee (secured party).

Subsection (4)(l) narrows somewhat the broad exclusion of transfers of tort claims under former s. 679.104(11). This Article now applies to assignments of "commercial tort claims" (defined in s. 679.1021) as well as to security interests in tort claims that constitute proceeds of other collateral (e.g., a right to payment for negligent destruction of the debtor's inventory). Note that once a claim arising in tort has been settled and reduced to a contractual obligation to pay, the right to payment becomes a payment intangible and ceases to be a claim arising in tort.

This Article contains two special rules governing creation of a security interest in tort claims. First, a description of collateral in a security agreement as "all tort claims" is insufficient to meet the requirement for attachment. See Section 679.108(5). Second, no security interest attaches under an after-acquired property clause to a tort claim. See Section 679.2041(2). In addition, this Article does not determine whom the tortfeasor must pay to discharge its obligation. Inasmuch as a tortfeasor is not an "account debtor," the rules governing waiver of defenses and discharge of an obligation by an obligor (ss. 679.4031, 679.4041, 679.4051, and 679.4061) are inapplicable to tort-claim collateral.

Except in consumer transactions, deposit accounts may be taken as original collateral under this Article. Under former s. 679.104(12), deposit accounts were excluded as original collateral, leaving security interests in deposit accounts to be governed by the common law. The common law is nonuniform, often difficult to discover and comprehend, and frequently costly to implement. As a consequence, debtors who wished to use deposit accounts as collateral sometimes were precluded from doing so as a practical matter. By excluding deposit accounts from the Article's scope as original collateral in consumer transactions, subsection (4)(m) leaves those transactions to law other than this Article. However, in both consumer and non-consumer

transactions, sections 679.3151 and 679.322 apply to deposit accounts as proceeds and with respect to priorities in proceeds.

This Article contains several safeguards to protect debtors against inadvertently encumbering deposit accounts and to reduce the likelihood that a secured party will realize a windfall from a debtor's deposit accounts. Rather, a security agreement must reasonably identify the deposit accounts that are the subject of a security interest, e.g., by using the term "deposit accounts." See Section 679.1081. To perfect a security interest in a deposit account as original collateral, a secured party (other than the bank with which the deposit account is maintained) must obtain "control" of the account either by obtaining the bank's authenticated agreement or by becoming the bank's customer with respect to the deposit account. See Sections 679.3121(2)(a), 679.1041. Either of these steps requires the debtor's consent.

Section 679.1101.

1. Former Section 679.113.

2. Background. Former s. 679.113, from which this section derives, referred generally to security interests "arising solely under the Article on Sales (Article 2) or the Article on Leases (Article 2A)." Views differed as to the precise scope of that section. In contrast, Section 679.1101 specifies the security interests to which it applies.

3. Security Interests Under Articles 2 and 2A. Section 672.505 explains how a seller of goods may reserve a security interest in them. Section 672.401 indicates that a reservation of title by the seller of goods, despite delivery to the buyer, is limited to reservation of a security interest. As did former Article 9, this Article governs a security interest arising solely under one of those sections; however, until the buyer obtains possession of the goods, the security interest is enforceable even in the absence of a security agreement, filing is not necessary to perfect the security interest, and the seller-secured party's rights on the buyer's default are governed by Article 2.

Sections 672.711(3) and 680.508(5) create a security interest in favor of a buyer or lessee in possession of goods that were rightfully rejected or as to which acceptance was justifiably revoked. As did former Article 9, this Article governs a security interest arising solely under one of those sections; however, until the seller or lessor obtains possession of the goods, the security interest is enforceable even in the absence of a security agreement, filing is not necessary to perfect the security interest, and the secured party's (buyer's or lessee's) rights on the debtor's (seller's or lessor's) default are governed by ch. 672 or ch. 680, as the case may be.

4. Priority. This section adds to former s. 679.113 a priority rule. Until the debtor obtains possession of the goods, a security interest arising under one of the specified sections of ch. 672 or ch. 680 has priority over conflicting security interests created by the debtor. Thus, a security interest arising under Section 672.401 or 672.505 has priority over a conflicting security interest in the buyer's after-acquired goods, even if the goods in question are inventory. Similarly, a security interest under Section 672.711(3) or 680.508(5) has priority over security interests claimed by the seller's or lessor's secured lender.

In the event that a security interest referred to in this section conflicts with a security interest that is created by a person other than the debtor, Section 679.325 applies.

Section 2. -- Creating a new Part II of ch. 679, F.S., regarding effectiveness of security agreement; attachment of security interest; and rights of parties to security agreement.

Section 679.2011.

Former ss. 679.201, 679.203(4).

Subsection (1) provides that a security agreement is generally effective. With certain exceptions, a security agreement is effective between the debtor and secured party and is likewise effective against third parties. Note that "security agreement" is used here (and elsewhere in this Article) as it is defined in s. 679.1021: "an agreement that creates or provides for a security interest." It follows that subsection (1) does not provide that every term or provision contained in a record that contains a security agreement or that is so labeled is effective. Former s. 679.201 was to the same effect. Exceptions to the general rule of subsection (1) arise where there is an overriding provision in this Article or any other Article of the UCC.

Subsection (2) makes clear that certain transactions, although subject to this Article, also are subject to other applicable laws relating to consumers or specified in that subsection

Section 679.2021, regarding title to collateral.

Former Section 679.202.

2. Title Immaterial. The rights and duties of parties to a secured transaction and affected third parties are provided in this Article without reference to the location of A title" to the collateral.

This section explicitly acknowledges two circumstances in which the effect of certain Article 9 provisions turns on ownership (title). First, in some respects sales of accounts, chattel paper, payment intangibles, and promissory notes receive special treatment. Second, the remedies of a consignor under a true consignment and, for the most part, the remedies of a buyer of accounts, chattel paper, payment intangibles, or promissory notes are determined by other law.

This Article does not determine which line of interpretation (e.g., title theory or lien theory, retained title or conveyed title) should be followed in cases in which the applicability of another rule of law depends upon who has title. Other rules of law or the agreement of the parties determines the location and source of title for those purposes.

Section 679.2031, regarding attachment and enforceability of security interest; proceeds; supporting obligations; and formal requisites.

1. Source. Former Sections 679.203, 679.115(2) & (6).

2. Creation, Attachment, and Enforceability. Subsection (1) states the general rule that a security interest attaches to collateral only when it becomes enforceable against the debtor. Subsection (2) specifies the circumstances under which a security interest becomes enforceable. Subsection (2) states three basic prerequisites to the existence of a security interest: value (paragraph (a)), rights or power to transfer rights in collateral (paragraph (b)), and agreement plus satisfaction of an evidentiary requirement (paragraph (c)). When all of these elements exist, a security interest becomes enforceable between the parties and attaches under subsection (1). Subsection (3) identifies certain exceptions to the general rule of subsection (2).

Section 679.2041, regarding after-acquired property; and future advances.

1. Source. Former Section 679.204.

2. After-Acquired Property; Continuing General Lien. Subsection (1) makes clear that a security interest arising by virtue of an after-acquired property clause is no less valid than a security interest in collateral in which the debtor has rights at the time value is given. A security interest in after-acquired property is not merely an "equitable" interest; no further action by the secured party such as a supplemental agreement covering the new collateral is required. This section adopts the principle of a "continuing general lien" or "floating lien." It validates a security interest in the debtor's existing and (upon acquisition) future assets, even though the debtor has liberty to use or dispose of collateral without being required to account for proceeds or substitute new collateral. Subsection (1), together with subsection (3), also validates "cross-collateral" clauses under which collateral acquired at any time secures advances whenever made.

3. After-Acquired Consumer Goods. Subsection (2)(a) makes ineffective an after-acquired property clause covering consumer goods, except as accessions, acquired more than ten days after the secured party gives value. Subsection (2)(a) is unchanged in substance from the corresponding provision in former s. 679.204(2).

4. Commercial Tort Claims. Subsection (2)(b) provides that an after-acquired property clause in a security agreement does not reach future commercial tort claims.

5. Future Advances; Obligations Secured. Under subsection (3) collateral may secure future as well as past or present advances if the security agreement so provides. This rejects the holdings of cases decided under former Article 9 that applied other tests, such as whether a future advance or other subsequently incurred obligation was of the same or a similar type or class as earlier advances and obligations secured by the collateral.

6. Sales of Receivables. Subsections (1) and (3) expressly validate after-acquired property and future advance clauses not only when the transaction is for security purposes but also when the transaction is the sale of accounts, chattel paper, payment intangibles, or promissory notes.

Section 679.2051, regarding use or disposition of collateral permissible.

1. Source. Former Section 679.205.

This section provides that a security interest is not invalid or fraudulent by reason of the debtor's liberty to dispose of the collateral without being required to account to the secured party for proceeds or substitute new collateral. Nothing in this section prevents the debtor and secured party from agreeing to procedures by which the secured party polices or monitors collateral or to restrictions on the debtor's dominion.

Subsection (2) makes clear that this section does not relax the requirements for perfection by possession under s. 679.3151. If a secured party allows the debtor access to and control over collateral its security interest may be or become unperfected.

Former s. 679.205, F.S., referred to a debtor's "liberty . . to collect or compromise accounts or chattel paper." This section recognizes the broader rights of a debtor to "enforce," as well as to "collect" and "compromise" collateral. This section's reference to collecting, compromising, and enforcing "collateral" instead of "accounts or chattel paper" contemplates the many other types of collateral that a debtor may wish to "collect, compromise, or enforce": e.g., deposit accounts, documents, general intangibles, instruments, investment property, and letter-of-credit rights.

Section 679.2061, regarding security interest arising in purchase or delivery of financial asset.

1. Source. Former Section 679.116.

Depending upon a securities intermediary's arrangements with its entitlement holders, the securities intermediary may treat the entitlement holder as entitled to financial assets before the entitlement holder has actually made payment for them. Subsection (1) provides that, in such circumstances, the securities intermediary has a security interest in the entitlement holder's security entitlement. Under subsection (2) the security interest secures the customer's obligation to pay for the financial asset in question. Subsections (1) and (2) codify and adapt to the indirect holding system the so-called "broker's lien," which has long been recognized.

Subsection (3) creates a security interest in favor of persons who deliver certificated securities or other financial assets in physical form, such as money market instruments, if the agreed payment is not received. Subsection (3) clarifies the rights of persons making deliveries in such circumstances. It provides the person making delivery with a security interest in the securities or other financial assets; under subsection (4), the security interest secures the seller's right to receive payment for the delivery.

Section 679.2071, regarding rights and duties of secured party having possession or control of collateral.

1. Source. Former Section 679.207.

Like former s. 679.207, subsection (1) imposes a duty of care, similar to that imposed on a pledgee at common law, on a secured party in possession of collateral. In many cases a secured party in possession of collateral may satisfy this duty by notifying the debtor of action that should be taken and allowing the debtor to take the action itself. If the secured party itself takes action, its reasonable expenses may be added to the secured obligation.

3. Specific Rules When Secured Party in Possession or Control of Collateral. Subsections (2) and (3) provide rules following common-law precedents which apply unless the parties otherwise agree. The rules in subsection (2) apply to typical issues that may arise while a secured party is in possession of collateral, including expenses, insurance, and taxes, risk of loss or damage, identifiable and fungible collateral, and use or operation of collateral. Subsection (3) contains rules that apply in certain circumstances that may arise when a secured party is in either possession or control of collateral. These circumstances include the secured party's receiving proceeds from the collateral and the secured party's creation of a security interest in the collateral.

This section applies when the secured party has possession of collateral either before or after default.

5. "Repledges" and Right of Redemption. Subsection (3)(c) eliminates the qualification in former s. 679.207 to the effect that the terms of a "repledge" may not "impair" a debtor's "right to redeem" collateral. The change is primarily for clarification.

For the most part this section does not change the law under former s. 679.207, although eliminating the reference to the debtor's right of redemption may alter the secured party's right to repledge in one respect. Former s. 679.207 could have been read to limit the secured party's statutory right to repledge collateral to repledge transactions in which the collateral did not secure a greater obligation than that of the original debtor. Inasmuch as this is a matter normally dealt with by agreement between the debtor and secured party, any change would appear to have little practical effect.

This section has been revised to reflect the fact that a seller of accounts, chattel paper, payment intangibles, or promissory notes retains no interest in the collateral and so is not disadvantaged by the secured party's noncompliance with the requirements of this section. Accordingly, subsection (4) provides that subsection (1) applies only to security interests that secure an obligation and to sales of receivables in which the buyer has recourse against the debtor. The meaning of "recourse" in this respect is limited to recourse arising out of the account debtor's failure to pay or other default.

Subsection (4) makes subsections (2) and (3) inapplicable to buyers of accounts, chattel paper, payment intangibles, or promissory notes and consignors.

Section 679.2081, regarding additional duties of secured party having control of collateral.

1. Source. New.

2. Scope and Purpose. This section imposes duties on a secured party who has control of a deposit account, electronic chattel paper, investment property, or a letter-of-credit right. The duty to terminate the secured party's control is analogous to the duty to file a termination statement, imposed by Section 679.513. Under subsection (1), it applies only when there is no outstanding secured obligation and the secured party is not committed to give value. The requirements of this section can be varied by agreement.

Section 679.209, regarding duties of secured party if account debtor has been notified of assignment.

1. Source. New.

Like Sections 9-208 and 9-513, which require a secured party to relinquish control of collateral and to file or provide a termination statement for a financing statement, this section requires a secured party to free up collateral when there no longer is any outstanding secured obligation or any commitment to give value in the future. This section addresses the case in which account debtors have been notified to pay a secured party to whom the receivables have been assigned. It requires the secured party (assignee) to inform the account debtors that they no longer are obligated to make payment to the secured party. It does not apply to account debtors whose obligations on an account, chattel paper, or payment intangible have been sold.

This provision does not prevent the debtor and secured party from specifying who shall pay for any reasonable expenses associated with sending the release. A secured party and a debtor may agree in an authenticated record as to the payment of reasonable expenses incurred in connection with sending the authenticated record.

Section 679.210, regarding request for accounting; and request regarding list of collateral or statement of account.

1. Source. Former Section 9-208.

2. Scope and Purpose. This section provides a procedure whereby a debtor may obtain from a secured party information about the secured obligation and the collateral in which the secured party may claim a security interest. It clarifies and resolves some of the issues that arose under former Section 9-208 and makes information concerning the secured indebtedness readily available to debtors, both before and after default. It applies to agricultural lien transactions, but generally not to receivables.

The secured party should not be under a duty to disclose any details of the debtor's financial affairs to any casual inquirer or competitor who may inquire. For this reason, this section gives the right to request information to the debtor only. The debtor may submit a request in connection with negotiations with subsequent creditors and purchasers, as well as for the purpose of determining the status of its credit relationship or demonstrating which of its assets are free of a security interest.

Subsection (1) contemplates that a debtor may request three types of information by submitting three types of "requests" to the secured party. First, the debtor may request the secured party to

prepare and send an "accounting" (defined in Section 9-102). Second, the debtor may submit to the secured party a list of collateral for the secured party's approval or correction. Third, the debtor may submit to the secured party for its approval or correction a statement of the aggregate amount of unpaid secured obligations. Inasmuch as a secured party may have numerous transactions and relationships with a debtor, each request must identify the relevant transactions or relationships. Subsections (2) and (3) require the secured party to respond to a request within 14 days following receipt of the request.

Subsections (4) and (5) impose upon recipients of requests under this section the duty to inform the debtor that they claim no interest in the collateral or secured obligation, respectively, and to inform the debtor of the name and mailing address of any known assignee or successor. As under subsections (2) and (3), a response to a request under subsection (4) or (5) is due 14 days following receipt.

The debtor's rights under this section may not be waived or varied. Section 9-625 sets forth the remedies for noncompliance with the requirements of this section.

Under subsection (6), during a six-month period a debtor is entitled to receive from the secured party one free response to a request. The debtor is not entitled to a free response to each type of request (i.e., three free responses) during a six-month period. However, a debtor in a consumer transaction is entitled to one response to a request regarding a list of collateral without charge during any six-month period.

Subsection 9-210(a)(5) has been added to place the burden on the debtor to provide sufficient information to enable the second party to respond timely. The definition of "person" has been clarified in subsection 9-210(a)(6) to make it clear that the obligation is owed under the section by a current or former secured party, not an individual employee of those responsible parties. The Florida version of subsection 9-210(f) treats requests to confirm collateral differently from the other requests and permits the secured party and debtor to agree to the payment of reasonable expenses. The confirmation of collateral is not as simple as determining amounts owed and, in some cases, may require the assistance of counsel. Subsection 9-210(f) includes a limitation on the number of requests in a twelve-month period. For example, if the first request were made on March 15, 2000, then the secured party would be required to respond to no more than eleven subsequent requests up to March 14, 2001.

Section 3. -- Creating a new Part III of ch. 679, F.S., regarding perfection and priority.

Section 679.3011, regarding law governing perfection and priority of security interests.

Former Sections 9-103(1)(a), (b), 9-103(3)(a), (b), 9-103(5), substantially modified.

Subsection (1) contains the general rule that the law governing perfection of security interests in both tangible and intangible collateral, whether perfected by filing or automatically, is the law of the jurisdiction of the debtor's location, as determined under Section 679.307.

Subsection (1) substantially simplifies the choice-of-law rules. Former Section 9-103 contained different choice-of-law rules for different types of collateral. Under Section 9-301(1), the law of a single jurisdiction governs perfection with respect to most types of collateral, both tangible and intangible. Subsection (1) eliminates the need for former Section 9-103(1)(c), which concerned purchase-money security interests in tangible collateral that is intended to move from one jurisdiction to the other. It is likely to reduce the frequency of cases in which the governing law changes after a financing statement is properly filed. (Presumably, debtors change their own location less frequently than they change the location of their collateral.) The approach taken in subsection (1) also eliminates some difficult priority issues and the need to distinguish between "mobile" and "ordinary" goods, and it reduces the number of filing offices in which secured parties must file or search when collateral is located in several jurisdictions.

The general rule is subject to several exceptions. It does not apply to goods covered by a certificate of title, deposit accounts, investment property, or letter-of-credit rights. Nor does it apply to possessory security interests, i.e., security interests that the secured party has perfected by taking possession of the collateral, security interests perfected by filing a fixture filing, security interests in timber to be cut, or security interests in as-extracted collateral.

Subsection (2) applies to possessory security interests and provides that perfection is governed by the local law of the jurisdiction in which the collateral is located. This is the rule of former Section 9-103(1)(b), except paragraph (2) eliminates the "last event" test is eliminated.

Subsection (3)(a) contains a special rule for security interests perfected by a fixture filing; the law of the jurisdiction in which the fixtures are located governs perfection, including the formal requisites of a fixture filing. Under paragraph (3)(c), the same law governs priority.

Subsection (3)(b) provides that: perfection of security interests in timber to be cut is governed by the law of the jurisdiction in which the timber is located.

Subsection (3)(b) applies only to "timber to be cut," not to timber that has been cut. Consequently, once the timber is cut, the general choice-of-law rule in subsection (1) becomes applicable.

Subsection (4) adopts the rule of former Section 9-103(5) with respect to certain security interests in minerals and related accounts. Security interests in minerals that are as-extracted collateral are perfected by filing in the office designated for the filing or recording of a mortgage on the real property. The law governing perfection and priority is the law of the jurisdiction in which the wellhead or minehead is located.

When the debtor changes its location to another jurisdiction, the jurisdiction whose law governs perfection under subsection (1) changes, as well. Similarly, the law governing perfection of a possessory security interest in collateral under subsection (2) changes when the collateral is removed to another jurisdiction.

Under subsection (3)(c), the rights of competing claimants to tangible collateral are resolved by reference to the law of the jurisdiction in which the collateral is located.

Section 679.3021, regarding law governing perfection and priority of agricultural liens.

New.

This section provides choice-of-law rules for agricultural liens on farm products. Perfection, the effect of perfection or nonperfection, and priority all are governed by the law of the jurisdiction in which the farm products are located.

Section 679.3031, regarding law governing perfection and priority of security interests in goods covered by a certificate of title.

1. Source. Former Section 9-103(2)(a), (b), substantially revised.

This section applies to "goods covered by a certificate of title." The new definition of "certificate of title" in Section 9-102 makes clear that this section applies not only to certificate-of-title statutes under which perfection occurs upon notation of the security interest on the certificate but also to those that contemplate notation but provide that perfection is achieved by another method, e.g., delivery of designated documents to an official. Subsection (a), which is new, makes clear that this section applies to certificates of a jurisdiction having no other contacts with the goods or the debtor. This result comports with most of the reported cases on the subject and with contemporary business practices in the trucking industry.

Subsection (3) is the basic choice-of-law rule for goods covered by a certificate of title. Perfection and priority of a security interest are governed by the law of the jurisdiction under whose certificate of title the goods are covered from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

Subsection (2) explains when goods become covered by a certificate of title and when they cease to be covered. Goods may become covered by a certificate of title, even though no certificate of title has issued. Former Section 9-103(2)(b) provided that the law of the jurisdiction issuing the certificate ceases to apply upon "surrender" of the certificate. This new provision eliminates the concept of "surrender."

Section 679.3041, regarding law governing perfection and priority of security interests in deposit accounts.

New; derived from Section 8-110(e) and former Section 9-103(6).

Under this section, the law of the "bank's jurisdiction" governs perfection and priority of a security interest in deposit accounts. Subsection (2) contains rules for determining the "bank's jurisdiction." The substance of these rules is substantially similar to that of the rules determining the "security intermediary's jurisdiction" under former Section 8-110(e), except that subsection (2)(a) permits the parties to choose the law of one jurisdiction to govern perfection and priority of security interests and a different governing law for other purposes. The parties' choice is effective, even if the jurisdiction whose law is chosen bears no relationship to the parties or the transaction.

Section 679.3051, regarding law governing perfection and priority of security interests in investment property.

Former Section 9-103(6).

This section specifies choice-of-law rules for perfection and priority of security interests in investment property. Subsection (1)(a) covers security interests in certificated securities. Subsection (1)(b) covers security interests in uncertificated securities. Subsection (1)(c) covers security interests in security entitlements and securities accounts. Subsection (1)(d) covers security interests in commodity contracts and commodity accounts. For certificated securities, the law of the jurisdiction in which the certificate is located governs. For uncertificated securities, the law of the issuer's jurisdiction governs. For security entitlements and securities accounts, the law of the securities intermediary's jurisdiction governs. For commodity contracts and commodity accounts, the law of the commodity intermediary's jurisdiction governs. Subsection (2) contains rules that specify the commodity intermediary's jurisdiction.

Subsection (3) establishes an exception to the general rules set out in subsection (1). It provides that perfection of a security interest by filing, automatic perfection of a security interest in investment property created by a debtor who is a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account of a debtor who is a commodity intermediary are governed by the law of the jurisdiction in which the debtor is located.

Section 679.3061, regarding law governing perfection and priority of security interests in letter-of-credit rights.

New; derived in part from Section 8-110(e) and former Section 9-103(6).

This section governs the applicable law for perfection and priority of security interests in letter-of-credit rights, other than a security interest perfected only under 679.308(4). The basic rule is that the law of the issuer's or nominated person's (e.g., confirmer's) jurisdiction, derived from the terms of the letter of credit itself, controls perfection and priority, but only if the issuer's or nominated person's jurisdiction is a State, as defined in Section 9-102. If the issuer's or nominated person's jurisdiction is not a State, the baseline rule of Section 9-301 applies -- perfection and priority are governed by the law of the debtor's location, determined under Section 9-307. Export transactions typically involve a foreign issuer and a domestic nominated person, such as a confirmer, located in a State. The principal goal of this section is to reduce the likelihood that perfection and priority would be governed by the law of a foreign jurisdiction in a transaction that is essentially domestic from the standpoint of the debtor-beneficiary, its creditors, and a domestic nominated person.

Subsection (2) defers to the rules established under 675.116 for determination of an issuer's or nominated person's jurisdiction.

Section 679.3071, regarding location of debtor.

1. Source. Former Section 9-103(3)(d), substantially revised.

As a general matter, the location of the debtor determines the jurisdiction whose law governs perfection of a security interest. It also governs priority of a security interest in certain types of intangible collateral, such as accounts, electronic chattel paper, and general intangibles. This section determines the location of the debtor for choice-of-law purposes, but not for other purposes.

Subsection (2) states the general rules: An individual debtor is deemed to be located at the individual's principal residence with respect to both personal and business assets. Any other debtor is deemed to be located at its place of business if it has only one, or at its chief executive office if it has more than one place of business.

As used in this section, a "place of business" means a place where the debtor conducts its affairs. Pursuant to subsection (1). Under subsection (4), a person who ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction determined by subsection (2).

The term "chief executive office" is not defined in this Section or elsewhere in the Uniform Commercial Code. "Chief executive office" means the place from which the debtor manages the main part of its business operations or other affairs. This is the place where persons dealing with the debtor would normally look for credit information, and is the appropriate place for filing.

Similarly, the term "principal residence" is not defined.

Subsection (3) provides that the normal rules for determining the location of a debtor apply only if they yield a location that is "a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral." The phrase "generally requires" is meant to include legal regimes that generally require notice in a filing or recording system as a condition of perfecting nonpossessory security interests, but which permit perfection by another method (e.g., control, automatic perfection, temporary perfection) in limited circumstances. A jurisdiction that has adopted this Article or an earlier version of this Article is such a jurisdiction. If the rules in subsection (2) yield a jurisdiction whose law does not generally require notice in a filing or registration system, the debtor is located in the District of Columbia.

Under subsection (5), a registered organization (e.g., a corporation or limited partnership) organized under the law of a "State" (defined in Section 9-102) is located in its State of organization. Subsection (7) makes clear that events affecting the status of a registered organization, such as the dissolution of a corporation or revocation of its charter, do not affect its location for purposes of subsection (5).

Subsection (6) specifies the location of a debtor that is a registered organization organized under the law of the United States. It defers to law of the United States, to the extent that that law determines, or authorizes the debtor to determine, the debtor's location. Thus, if the law of the United States designates a particular State as the debtor's location, that State is the debtor's location for purposes of this Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered organization to designate its State of location, the State that the registered organization designates is the State in which it is located for purposes of this Article's choice-of-law rules. In other cases, the debtor is located in the District of Columbia.

Subsection (6) also determines the location of branches and agencies of banks that are not organized under the law of the United States or a State. However, if all the branches and agencies of the bank are licensed only in one State, then they are located in that State.

Subsection 8 provides that the United States is located in the District of Columbia for purposes of this Article's choice-of-law rules.

Subsection (10) follows former Section 9-103(3)(d). By providing that a foreign air carrier is located at the designated office of the agent upon whom service of process may be made.

Section 679.3081, regarding when security interest or agricultural lien is perfected; and continuity of perfection.

Former Sections 9-303, 9-115(2).

Subsection (1) explains that the time of perfection of a security interest is when the security interest has attached and any necessary steps for perfection, such as taking possession or filing, have been taken. The "except" clause refers to the perfection-upon-attachment rules appearing in Section 9-309. It also reflects that other subsections of this section, e.g., subsection (4), contain automatic-perfection rules. If the steps for perfection have been taken in advance, as when the secured party files a financing statement before giving value or before the debtor acquires rights in the collateral, then the security interest is perfected when it attaches.

Subsection (2) is new. It describes the elements of perfection of an agricultural lien.

Subsection (4) is new. It provides for automatic perfection of a security interest in a supporting obligation for collateral if the security interest in the collateral is perfected.

Subsection (5) is new. It deals with the situation in which a security interest is created in a right to payment that is secured by a security interest, mortgage, or other lien.

Subsections (6) and (7), which apply to perfection of security interests in securities and commodities accounts, follow former Section 9-115(2).

Section 679.3091, regarding security interest perfected upon attachment.

Derived from former Sections 9-302(1), 9-115(4)(c), (d), 9-116.

This section contains the perfection-upon-attachment rules previously located in former Sections 9-302(1), 9-115(4)(c), (d), and 9-116. Rather than continue to state the rule by indirection, this section explicitly provides for perfection upon attachment.

Former Section 9-302(1)(d) has been revised and appears here as subsection (1). No filing or other step is required to perfect a purchase-money security interest in consumer goods, other than goods, such as automobiles, that are subject to a statute or treaty described in Section 9-311(a). However, filing is required to perfect a non-purchase-money security interest in consumer goods and is necessary to prevent a buyer of consumer goods from taking free of a security interest under Section 9-320(b). A fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9-334.

Subsection (2) expands upon former Section 9-302(1)(e) by affording automatic perfection to certain assignments of payment intangibles as well as accounts.

Subsections (3) and (4), which are new, afford automatic perfection to sales of payment intangibles and promissory notes, respectively.

Subsection (5) extends automatic perfection to assignments of health-care-insurance receivables if the assignment is made to the health-care provider that provided the health-care goods or services. The primary effect is that, when an individual assigns a right to payment under an insurance policy to the person who provided health-care goods or services, the provider has no need to file a financing statement against the individual.

Subsection (9) replaces the last clause of former Section 9-116(2), concerning security interests that arise in the delivery of a financial asset.

Subsections (10) and (11) replace former Section 9-115(4)(c) and (d), concerning secured financing of securities and commodity firms and clearing corporations.

Subsection (12) provides that no filing or other action is required to perfect an assignment for the benefit of creditors.

Subsection (13) provides that no filing or other action is required to perfect an assignment of a beneficial interest in a decedent's estate.

Section 679.3101, regarding when filing required to perfect security interest or agricultural lien; and security interests and agricultural liens to which filing provisions do not apply.

1. Source. Former Section 9-302(1), (2).

Subsection (1) establishes a central Article 9 principle: Filing a financing statement is necessary for perfection of security interests and agricultural liens. However, filing is not necessary to perfect a security interest that is perfected by another permissible method, nor does filing ordinarily perfect a security interest in a deposit account, letter-of-credit right, or money.

Subsection (2) lists the security interests for which filing is not required as a condition of perfection, because they are perfected automatically upon attachment, or upon the occurrence of another event, because they are perfected under the law of another jurisdiction, or because they are perfected by another method, such as by the secured party's taking possession or control.

Subsection (3) concerns assignment of a perfected security interest or agricultural lien. It provides that no filing is necessary in connection with an assignment by a secured party to an assignee in order to maintain perfection as against creditors of and transferees from the original debtor.

Subsection (3) applies not only to an assignment of a security interest perfected by filing but also to an assignment of a security interest perfected by a method other than by filing, such as by control or by possession. Although subsection (3) addresses explicitly only the absence of an additional filing requirement, the same result normally will follow in the case of an assignment of a security interest perfected by a method other than by filing.

Similarly, subsection (c) applies to the assignment of a security interest perfected by compliance with a statute, regulation, or treaty under Section 9-311(b), such as a certificate-of-title statute. Unless the statute expressly provides to the contrary, the security interest will remain perfected against creditors of and transferees from the original debtor, even if the assignee takes no action to cause the certificate of title to reflect the assignment or to cause its name to appear on the certificate of title.

Section 679.3111, regarding perfection of security interests in property subject to certain statutes, regulations, and treaties.

1. Source. Former Section 9-302(3), (4).

2. Federal Statutes, Regulations, and Treaties. Subsection (1)(a) exempts from the filing provisions of this Article transactions as to which a system of filing -- state or federal -- has been established under federal law. Subsection (2) makes clear that when such a system exists, perfection of a relevant security interest can be achieved only through compliance with that system (i.e., filing under this Article is not a permissible alternative).

Subsection (1)(a) provides explicitly that the filing requirement of this Article defers only to federal statutes, regulations, or treaties whose requirements for a security interest's obtaining priority over the rights of a lien creditor preempt Section 9-310(a). The provision eschews reference to the term "perfection," inasmuch as Section 9-308 specifies the meaning of that term and a preemptive rule may use other terminology.

Subsections (1)(b) and (c) exempt from the filing requirements of this Article transactions covered by State certificate-of-title statutes covering motor vehicles and the like.

Some states have enacted central filing statutes with respect to secured transactions in kinds of property that are of special importance in the local economy. Subsection (a)(2) defers to these statutes with respect to filing for that property.

Under subsection (4), perfection of a security interest in the inventory of a person in the business of selling goods of that kind is governed by the normal perfection rules, even if the inventory is subject to a certificate-of-title statute.

Subsection (4), and thus the filing and other perfection provisions of this Article, does not apply to inventory that is subject to a certificate-of-title statute and is of a kind that the debtor is not in the business of selling.

The filing and other perfection provisions of this Article apply to goods covered by a certificate of title only "during any period in which collateral is inventory held for sale or lease or leased." If the debtor takes goods of this kind out of inventory and uses them, say, as equipment, a filed financing statement would not remain effective to perfect a security interest.

Subsection (2) makes clear that compliance with the perfection requirements (i.e., the requirements for obtaining priority over a lien creditor), but not other requirements, of a statute, regulation, or treaty described in subsection (1) is sufficient for perfection under this Article. Perfection of a security interest under such a statute, regulation, or treaty has all the consequences of perfection under this Article.

Under Subsection (2), compliance with the perfection requirements (i.e., the requirements for obtaining priority over a lien creditor) of a statute, regulation, or treaty described in subsection (1) "is equivalent to the filing of a financing statement."

Section 679.3121, regarding perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

Former Section 9-304, with additions and some changes.

Under subsection (1), a security interest in instruments may be perfected by filing. This rule represents an important change from former Article 9, under which the secured party's taking possession of an instrument was the only method of achieving long-term perfection. The rule is likely to be particularly useful in transactions involving a large number of notes that a debtor uses as collateral but continues to collect from the makers.

Subsection (1) further provides that filing is available as a method of perfection for security interests in chattel paper and negotiable documents. Tangible chattel paper is sometimes delivered to the assignee, and sometimes left in the hands of the assignor for collection. Subsection (1) allows the assignee to perfect its security interest by filing in the latter case. Alternatively, the assignee may perfect by taking possession. An assignee of electronic chattel paper may perfect by taking control.

Negotiable documents may be, and usually are, delivered to the secured party. The secured party's taking possession will suffice as a perfection step. However, as is the case with chattel paper, a security interest in a negotiable document may be perfected by filing.

A security interest in investment property, including certificated securities, uncertificated securities, security entitlements, and securities accounts, may be perfected by filing.

Under new subsection (2)(a), the only method of perfecting a security interest in a deposit account as original collateral is by control. Filing is ineffective, except as provided in Section 9-315 with respect to proceeds.

Letter-of-credit rights commonly are "supporting obligations," as defined in Section 9-102. Perfection as to the related account, chattel paper, document, general intangible, instrument, or investment property will perfect as to the letter-of-credit rights. See Section 9-308(d). Subsection (2)(b) provides that, in other cases, a security interest in a letter-of-credit right may be perfected only by control under s.679.3141.

Subsection (3) applies to goods in the possession of a bailee who has issued a negotiable document covering the goods. Subsection (4) applies to goods in the possession of a bailee who has issued a nonnegotiable document of title, including a document of title that is "non-negotiable" under Section 7-104. Section 9-313 governs perfection of a security interest in goods in the possession of a bailee who has not issued a document of title.

Subsection (3) clarifies the perfection and priority rules in former Section 9-304(2). Consistently with the provisions of Article 7, subsection (3) takes the position that, as long as a negotiable document covering goods is outstanding, title to the goods is, so to say, locked up in the document. Accordingly, a security interest in goods covered by a negotiable document may be perfected by perfecting a security interest in the document. The security interest also may be perfected by another method, e.g., by filing. The priority rule in subsection (3) governs only priority between (i) a security interest in goods which is perfected by perfecting in the document and (ii) a security interest in the goods which becomes perfected by another method while the goods are covered by the document.

Subsection (4) takes a different approach to the problem of goods covered by a nonnegotiable document. Here, title to the goods is not looked on as being locked up in the document, and the secured party may perfect its security interest directly in the goods by filing as to them. The subsection provides two other methods of perfection: issuance of the document in the secured party's name (as consignee of a straight bill of lading or the person to whom delivery would be made under a non-negotiable warehouse receipt) and receipt of notification of the secured party's interest by the bailee. Perfection under subsection (4) occurs when the bailee receives notification of the secured party's interest in the goods, regardless of who sends the notification. Receipt of notification is effective to perfect, regardless of whether the bailee responds. Unlike former Section 9-304(3), from which it derives, subsection (4) does not apply to goods in the possession of a bailee who has not issued a document of title.

Subsection (5) follows former Section 9-304(4) in giving perfected status to security interests in certificated securities, instruments, and negotiable documents for a short period, 20 days, although there has been no filing and the collateral is in the debtor's possession. The 20-day temporary perfection runs from the date of attachment.

Subsection (6) affords the possibility of 20-day perfection in negotiable documents and goods in the possession of a bailee but not covered by a negotiable document. Subsection (7) provides for 20-day perfection in certificated securities and instruments. These subsections derive from former Section 9-305(5). However, the period of temporary perfection has been reduced from 21 to 20 days, which is the time period generally applicable in this Article, and "enforcement" has been added in subsection (7) as one of the special and limited purposes for which a secured party can release an instrument or certificated security to the debtor and still remain perfected. The period of temporary perfection runs from the date a secured party who already has a perfected security interest turns over the collateral to the debtor. There is no new value requirement, but the turnover must be for one or more of the purposes stated in subsection (6) or (7). The 20-day period may be extended by perfecting as to the collateral by another method before the period expires. However, if the security interest is not perfected by another method until after the 20-day period expires, there will be a gap during which the security interest is unperfected.

Temporary perfection extends only to the negotiable document or goods under subsection (6) and only to the certificated security or instrument under subsection (7). It does not extend to proceeds. If the collateral is sold, the security interest will continue in the proceeds for the period specified in Section 9-315.

Section 679.3131, regarding when possession by or delivery to secured party perfects security interest without filing.

1. Source. Former Sections 9-305, 9-115(6).

As under the common law of pledge, no filing is required by this Article to perfect a security interest if the secured party takes possession of the collateral.

This section permits a security interest to be perfected by the taking of possession only when the collateral is goods, instruments, negotiable documents, money, or tangible chattel paper. Accounts, commercial tort claims, deposit accounts, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction are excluded.

This section does not define "possession." It adopts the general concept as it developed under former Article 9. As under former Article 9, in determining whether a particular person has possession, the principles of agency apply.

Under subsection (c), acknowledgment of notification by a "lessee . . . in . . . ordinary course of . . . business" does not suffice for possession.

Subsections (5), (6), and (7), which are new, apply to a person in possession of security certificates or holding security certificates for the secured party's benefit under Section 8-301.

For delivery to occur when a person other than a secured party holds possession for the secured party, the person may not be a securities intermediary.

Under subsection (5), a possessory security interest in a certificated security remains perfected until the debtor obtains possession of the security certificate.

Subsection (2) is necessary to effect changes to the choice-of-law rules governing goods covered by a certificate of title. Subsection (2), like subsection (1), does not create a right to take possession. Rather, it indicates the circumstances under which the secured party's taking possession of goods covered by a certificate of title is effective to perfect a security interest in the goods: the goods become covered by a certificate of title issued by this State at a time when the security interest is perfected by any method under the law of another jurisdiction.

Subsections (6) and (7) are new and address matters as to which former Article 9 was silent. They derive in part from Section 8-106(g). Subsection (6) provides that a person in possession of collateral is not required to acknowledge that it holds for a secured party. Subsection (7)(a) provides that an acknowledgment is effective even if wrongful as to the debtor. Subsection (7)(b) makes clear that an acknowledgment does not give rise to any duties or responsibilities under this Article. Arrangements involving the possession of goods are hardly standardized. This Article leaves to the agreement of the parties and to any other applicable law the imposition of duties and responsibilities upon a person who acknowledges under subsection (3).

New subsections (8) and (9) address the practice of mortgage warehouse lenders. Under subsection (8), when a secured party in possession itself delivers the collateral to a third party, instructions to the third party would be sufficient to maintain perfection by possession; an acknowledgment would not be necessary. Under subsection (9), the secured party does not relinquish possession by making a delivery under subsection (8), even if the delivery violates the rights of the debtor. That subsection also makes clear that a person to whom collateral is delivered under subsection (8) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article provides otherwise.

Section 679.3141, regarding perfection by control.

1. Source. Substantially new; derived in part from former Section 9-115(4).

This section provides for perfection by control with respect to investment property, deposit accounts, letter-of-credit rights, and electronic chattel paper. Subsection (2) explains when a security interest is perfected by control and how long a security interest remains perfected by control. Subsection (2) makes no reference to the doctrine of "relation back."

Subsection (3) provides a special rule for investment property. Once a secured party has control, its security interest remains perfected by control until the secured party ceases to have control and the debtor receives possession of collateral that is a certificated security, becomes the registered owner of collateral that is an uncertificated security, or becomes the entitlement holder of collateral that is a security entitlement.

Section 679.3151, regarding to secured party's rights on disposition of collateral and in proceeds.

1. Source. Former Section 9-306.

Subsection (1)(a), which derives from former Section 9-306(2), contains the general rule that a security interest survives disposition of the collateral. In these cases, the secured party may repossess the collateral from the transferee or, in an appropriate case, maintain an action for conversion. The secured party may claim both any proceeds and the original collateral but, of course, may have only one satisfaction.

Under subsection (1)(b), which derives from former Section 9-306(2), a security interest attaches to any identifiable "proceeds," as defined in Section 9-102. Subsection (2) is new. It indicates when proceeds commingled with other property are identifiable proceeds and permits the use of whatever methods of tracing other law permits with respect to the type of property involved.

Under subsection (3), a security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected. This Article extends the period of automatic perfection in proceeds from 10 days to 20 days.

Subsection (4)(a) derives from former Section 9-306(3)(a). It carries forward the basic rule that a security interest in proceeds remains perfected beyond the period of automatic perfection if a filed financing statement covers the original collateral (e.g., inventory) and the proceeds are collateral in which a security interest may be perfected by filing in the office where the financing statement has been filed (e.g., equipment). A different rule applies if the proceeds are acquired with cash proceeds, as is the case if the original collateral (inventory) is sold for cash (cash proceeds) that is used to purchase equipment (proceeds). Under these circumstances, the security interest in the equipment proceeds remains perfected only if the description in the filed financing indicates the type of property constituting the proceeds (e.g., "equipment").

Subsection (5) provides that a security interest in proceeds perfected under subsection (4)(a) ceases to be perfected when the financing statement covering the original collateral lapses or is terminated. If the lapse or termination occurs before the 21st day after the security interest attaches, however, the security interest in the proceeds remains perfected until the 21st day.

Subsection (4)(b) extends the benefits of former Sections 9-306(3)(b) and (3)(c) to identifiable cash proceeds of all types of original collateral in which a security interest is perfected by any method. Under subsection (4)(b), if the security interest in the original collateral was perfected, a security interest in identifiable cash proceeds will remain perfected indefinitely, regardless of whether the security interest in the original collateral remains perfected.

This Article deletes former Section 9-306(4), which dealt with proceeds in insolvency proceedings. Except as otherwise provided by the Bankruptcy Code, the debtor's entering into bankruptcy does not affect a secured party's right to proceeds.

This Article also deletes former Section 9-306(5), which dealt with returned and repossessed goods.

Section 679.3161, regarding continued perfection of security interest following change in governing law.

Former Section 9-103(1)(d), (2)(b), (3)(e), as modified.

This section deals with continued perfection of security interests that have been perfected under the law of another jurisdiction. This section generally provides that a security interest perfected under the law of one jurisdiction remains perfected for a fixed period of time (four months or one year, depending on the circumstances), even though the jurisdiction whose law governs perfection changes. However, cessation of perfection under the law of the original jurisdiction cuts short the fixed period. If a secured party properly reperfects a security interest before it becomes unperfected under subsection (1), then the security interest remains perfected continuously thereafter. Pursuant to subsection (2).

Subsection (1)(c) allows a one-year period in which to reperfect.

This section addresses security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location. This section does not apply to security interests that have not attached before the location changes.

Subsection (2) sets forth the consequences of the failure to reperfect before perfection ceases under subsection (1): the security interest becomes unperfected prospectively and, as against purchasers for value, including buyers and secured parties, but not as against donees or lien creditors, retroactively. The rule applies to agricultural liens, as well.

Subsection (3) deals with continued perfection of possessory security interests. It applies not only to security interests perfected solely by the secured party's having taken possession of the collateral. It also applies to security interests perfected by a method that includes as an element of perfection the secured party's having taken possession, such as perfection by taking delivery of a certificated security in registered form, and perfection by obtaining control over a certificated security.

Subsections (4) and (5) address continued perfection of a security interest in goods covered by a certificate of title.

Subsections (6) and (7) address changes in the jurisdiction of a bank, issuer of an uncertificated security, issuer of or nominated person under a letter of credit, securities intermediary, and commodity intermediary. The provisions are analogous to those of subsections (1) and (2).

This section does not apply to agricultural liens.

Section 679.3171, regarding interests that take priority over or take free of security interest or agricultural lien.

Former Sections 9-301, 2A-307(2).

As did former Section 9-301, this section lists the classes of persons who take priority over, or take free of, an unperfected security interest.

Section 9-322 states general rules for determining priority among conflicting security interests and refers to other sections that state special rules of priority in a variety of situations. The security interests given priority under Section 9-322 and the other sections to which it refers take priority in general even over a perfected security interest. A fortiori they take priority over an unperfected security interest. Subsection (1)(a) of this section so states.

Subsection (1)(b) revises former Section 9-301(1)(b) and, in appropriate cases, treats the first advance the same as subsequent advances. More specifically, a judicial lien that arises after the security agreement condition of Section 9-203(b)(3) is satisfied and a financing statement is filed, but before the security interest attaches and becomes perfected, is subordinate to all advances secured by the security interest, even the first advance, except as otherwise provided in Section 9-323(b). However, if the security interest becomes unperfected (e.g., because the effectiveness of the filed financing statement lapses) before the judicial lien arises, the security interest is subordinate. If a financing statement is filed but a security interest does not attach, then no priority contest arises. The lien creditor has the only enforceable claim to the property.

Subsections (2), (3), and (4) afford priority over an unperfected security interest to certain purchasers (other than secured parties) of collateral. They derive from former Sections 9-301(1)(c), 2A-307(2), and 9-301(d).

Subsection (2) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of the representative piece of paper (tangible chattel paper, documents, instruments, and security certificates). To obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer. Subsection (3) contains a similar rule with respect to lessees of goods.

Normally, there will be no question when a buyer of chattel paper, documents, instruments, or security certificates A receives delivery" of the property. However, sometimes a buyer or lessee of goods, such as complex machinery, takes delivery of the goods in stages and completes assembly at its own location. Under those circumstances, the buyer or lessee "receives delivery" within the meaning of subsections (2) and (3) when, after an inspection of the portion of the goods remaining with the seller or lessor, it would be apparent to a potential lender to the seller or lessor that another person might have an interest in the goods.

The rule of subsection (2) obviously is not appropriate where the collateral consists of intangibles and there is no representative piece of paper whose physical delivery is the only or the customary method of transfer. Therefore, with respect to such intangibles (accounts, electronic chattel paper, general intangibles, and investment property other than certificated securities), subsection (4) gives priority to any buyer who gives value without knowledge, and before perfection, of the security interest.

Subsections (1), (2), and (3) subordinate unperfected agricultural liens in the same manner in which they subordinate unperfected security interests.

Subsection (5) derives from former Section 9-301(2). It provides that, if a purchase-money security interest is perfected by filing no later than 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of buyers, lessees, or lien creditors which arise between the time the security interest attaches and the time of filing. Subsection (5) differs from former Section 9-301(2) in two significant respects. First, subsection (5) protects a purchase-money security interest against all buyers and lessees, not just against transferees in bulk. Second, subsection (5) conditions this protection on filing within 20, as opposed to ten, days after delivery.

Section 679.3181, regarding no interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

1. Source. New.

2. Sellers of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes. Section 1-201(37) defines "security interest" to include the interest of a buyer of accounts, chattel paper, payment intangibles, or promissory notes. See also Section 9-109(a) and Comment 5. Subsection (1) makes explicit what was implicit, but perfectly obvious, under former Article 9: The fact that a sale of an account or chattel paper gives rise to a "security interest" does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has been sold. Subsection (1) also applies to sales of payment intangibles and promissory notes, transactions that were not covered by former Article 9. Neither this Article nor the definition of "security interest" in Section 1-201 provides rules for distinguishing sales transactions from those that create a security interest securing an obligation.

If the buyer's security interest is unperfected, then for purposes of determining the rights of certain third parties, the seller (debtor) is deemed to have all rights and title that the seller sold. The seller is deemed to have these rights even though, as between the parties, it has sold all its rights to the buyer. Subsection (2) makes this explicit. As a consequence of subsection (2), if the buyer's security interest is unperfected, the seller can transfer, and the creditors of the seller can reach, the account or chattel paper as if it had not been sold.

Section 679.319, regarding rights and title of consignee with respect to creditors and purchasers.

1. Source. New.

Section 9-319(a) provides that, for purposes of determining the rights of certain third parties, the consignee is deemed to acquire all rights and title that the consignor had, if the consignor's security interest is unperfected. The consignee acquires these rights even though, as between the parties, it purchases a limited interest in the goods (as would be the case in a true consignment, under which the consignee acquires only the interest of a bailee). As a consequence of this section, creditors of the consignee can acquire judicial liens and security interests in the goods.

Subsection (1) contains a special rule with respect to consignments that are perfected. If application of this Article would result in the consignor having priority over a competing creditor, then other law determines the rights and title of the consignee.

Section 679.320, regarding buyer of goods.

Former Section 9-307.

2. Scope of This Section. This section states when buyers of goods take free of a security interest even though perfected.

3. Buyers in Ordinary Course. Subsection (1) derives from former Section 9-307(1). The definition of "buyer in ordinary course of business" in Section 1-201 restricts its application to buyers "from a person, other than a pawnbroker, in the business of selling goods of that kind." Thus subsection (1) applies primarily to inventory collateral. The subsection further excludes from its operation buyers of "farm products"(defined in Section 9-102) from a person engaged in farming operations. The buyer in ordinary course of business is defined as one who buys goods "in good faith, without knowledge that the sale violates the rights of another person and in the ordinary course." Subsection (1) provides that such a buyer takes free of a security interest, even though perfected, and even though the buyer knows the security interest exists.

As did former Section 9-307(1), subsection (1) applies only to security interests created by the seller of the goods to the buyer in ordinary course.

Subsection (2), which derives from former Section 9-307(2), deals with buyers of collateral that the debtor-seller holds as "consumer goods" (defined in Section 9-102). Under subsection (2) a buyer of consumer goods takes free of a security interest, even though perfected, if the buyer buys (1) without knowledge of the security interest, (2) for value, (3) primarily for the buyer's own personal, family, or household purposes, and (4) before a financing statement is filed.

The rights of a buyer under subsection (2) turn on whether a financing statement has been filed against consumer goods. Occasionally, a debtor changes his or her location after a filing is

made. Subsection (3), which derives from former Section 9-103(1)(d)(iii), deals with the continued effectiveness of the filing under those circumstances.

The limitations that subsections (1) and (2) impose on the persons who may take free of a security interest apply only to unauthorized sales by the debtor.

Under subsection (4), a buyer in ordinary course of business of minerals at the wellhead or minehead or after extraction takes free of a security interest created by the seller. Specifically, it provides that qualified buyers take free not only of Article 9 security interests but also of interests "arising out of an encumbrance." As defined in Section 9-102, the term "encumbrance" means "a right, other than an ownership interest, in real property." Thus, to the extent that a mortgage encumbers minerals not only before but also after extraction, subsection (4) enables a buyer in ordinary course of the minerals to take free of the mortgage. This subsection does not, however, enable these buyers to take free of interests arising out of ownership interests in the real property.

Subsection (5) is new. It rejects the holding of Tanbro Fabrics Corp. v. Deering Milliken, Inc., 350 N.E.2d 590 (N.Y. 1976) and, together with Section 9-317(b), prevents a buyer of goods collateral from taking free of a security interest if the collateral is in the possession of the secured party. "The secured party" referred in subsection (5) is the holder of the security interest referred to in subsection (1) or (2). Section 9-313 determines whether a secured party is in possession for purposes of this section. Under some circumstances, Section 9-313 provides that a secured party is in possession of collateral even if the collateral is in the physical possession of a third party.

Section 679.321, regarding licensee of general intangible and lessee of goods in ordinary course of business.

1. Source. Derived from Sections 2A-103(1)(o), 2A-307(3).

2. Licensee in Ordinary Course. Like the analogous rules in Section 9-320(1) with respect to buyers in ordinary course and subsection (3) with respect to lessees in ordinary course, the new rule in subsection (2) reflects the expectations of the parties and the marketplace: a licensee under a nonexclusive license takes subject to a security interest unless the secured party authorizes the license free of the security interest or other, controlling law such as that of this section (protecting ordinary-course licensees) dictates a contrary result. The definition of "licensee in ordinary course of business" in subsection (1) is modeled upon that of "buyer in ordinary course of business."

Section 679.322, regarding priorities among conflicting security interests in and agricultural liens on same collateral.

1. Source. Former Section 9-312(5), (6).

In a variety of situations, two or more people may claim a security interest in the same collateral. This section states general rules of priority among conflicting security interests. As subsection

(6) provides, the general rules in subsections (1) through (5) are subject to the rule in subsection (7) governing perfected agricultural liens and to the other rules in this Part of this Article.

Subsection (1) contains three general rules. Subsection (1)(a) governs the priority of competing perfected security interests. Subsection (1)(b) governs the priority of competing security interests if one is perfected and the other is not. Subsection (1)(c) governs the priority of competing unperfected security interests. The rules may be regarded as adaptations of the idea, deeply rooted at common law, of a race of diligence among creditors. The first two rules are based on precedence in the time as of which the competing secured parties either filed their financing statements or obtained perfected security interests. Under subsection (1)(a), the first secured party who files or perfects has priority. Under subsection (1)(b), which is new, a perfected security interest has priority over an unperfected one. Under subsection (1)(c), if both security interests are unperfected, the first to attach has priority.

The rule of subsection (1)(a), affording priority to the first to file or perfect, applies to security interests that are perfected by any method, including temporarily or upon attachment, even though there may be no notice to creditors or subsequent purchasers and notwithstanding any common-law rule to the contrary. The form of the claim to priority, i.e., filing or perfection, may shift from time to time, and the rank will be based on the first filing or perfection as long as there is no intervening period without filing or perfection.

Subsection (2)(a) follows former Section 9-312(6). It provides that the baseline rules of subsection (1) apply generally to priority conflicts in proceeds except where otherwise provided.

Subsections (3), (4), and (5), which are new, provide additional priority rules for proceeds of collateral in situations where the temporal (first-in-time) rules of subsection (1)(a) are not appropriate.

Subsection (3)(b) provides a baseline priority rule for proceeds of non-filing collateral which applies if the secured party has taken the steps required for non-temporal priority over a conflicting security interest in non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-credit rights, and investment property). This rule determines priority in proceeds of non-filing collateral whether or not there exists an actual conflicting security interest in the original non-filing collateral. Under subsection (3)(b), the priority in the original collateral continues in proceeds if the security interest in proceeds is perfected and the proceeds are cash proceeds or non-filing proceeds “of the same type” as the original collateral. As used in subsection (3)(b), “type” means a type of collateral defined in the Uniform Commercial Code and should be read broadly. For example, a security is “of the same type” as a security entitlement (i.e., investment property), and a promissory note is “of the same type” as a draft (i.e., an instrument).

Under subsections (4) and (5), if a security interest in non-filing collateral is perfected by a method other than filing (e.g., control or possession), it does not retain its priority over a conflicting security interest in proceeds that are filing collateral. Moreover, it is not entitled to priority in proceeds under the first-to file-or-perfect rule of subsections (1)(a) and (2). Instead, under subsection (4), priority is determined by a new first-to-file rule.

Note that under subsection (5), the first-to-file rule of subsection (4) applies only if the proceeds in question are other than non-filing collateral (i.e., if the proceeds are filing collateral). If the proceeds are non-filing collateral, either the first-to-file-or-perfect rule under subsections (1) and (2) or the non-temporal priority rule in subsection (3) would apply, depending on the facts.

Under subsections (2)(b) and (3)(a), a security interest having priority in collateral also has priority in a supporting obligation for that collateral. However, the rules in these subsections are subject to the special rule in Section 9-329 governing the priority of security interests in a letter-of-credit right. Under Section 9-329, a secured party's failure to obtain control (Section 9-107) of a letter-of-credit right that serves as supporting collateral leaves its security interest exposed to a priming interest of a party who does take control.

Under subsection (1)(c), if conflicting security interests are unperfected, the first to attach has priority. This rule may be of merely theoretical interest, inasmuch as it is hard to imagine a situation where the case would come into litigation without either secured party's having perfected its security interest. If neither security interest had been perfected at the time of the filing of a petition in bankruptcy, ordinarily neither would be good against the trustee in bankruptcy under the Bankruptcy Code.

Statutes other than this Article may purport to grant priority to an agricultural lien as against a conflicting security interest or agricultural lien. Under subsection (7), if another statute grants priority to an agricultural lien, the agricultural lien has priority only if the same statute creates the agricultural lien and the agricultural lien is perfected. Otherwise, subsection (1) applies the same priority rules to an agricultural lien as to a security interest, regardless of whether the agricultural lien conflicts with another agricultural lien or with a security interest.

Inasmuch as no agricultural lien on proceeds arises under this Article, subsections (2) through (5) do not apply to proceeds of agricultural liens. However, if an agricultural lien has priority under subsection (7) and the statute creating the agricultural lien gives the secured party a lien on proceeds of the collateral subject to the lien, a court should apply the principle of subsection (7) and award priority in the proceeds to the holder of the perfected agricultural lien.

Section 679.323, regarding future advances.

1. Source. Former Sections 9-312(7), 9-301(4), 9-307(3), 2A-307(4).

2. Scope of This Section. This section collects all of the special rules dealing with the priority of advances made by a secured party after a third party acquires an interest in the collateral. Subsection (1) applies when the third party is a competing secured party. Subsection (2) deals with lien creditors. Subsections (4) and (5) deal with buyers. Subsections (6) and (7) deal with lessees.

Section 679.324, regarding priority of purchase-money security interests.

Former Section 9-312(3), (4).

This section contains the priority rules applicable to purchase-money security interests, as defined in Section 9-103. It affords a special, non-temporal priority to those purchase-money security interests that satisfy the statutory conditions. In most cases, priority will be over a security interest asserted under an after-acquired property clause.

Subsection (1) states a general rule applicable to all types of goods except inventory and farm-products livestock: the purchase-money interest takes priority if it is perfected when the debtor receives possession of the collateral or within 20 days thereafter. A purchase-money security interest qualifies for priority under subsection (1), even if the purchase-money secured party knows that a conflicting security interest has been created and/or that the holder of the conflicting interest has filed a financing statement covering the collateral.

Subsections (2) and (3) afford a means by which a purchase-money security interest in inventory can achieve priority over an earlier-filed security interest in the same collateral. To achieve priority, the purchase-money security interest must be perfected when the debtor receives possession of the inventory. The 20-day grace period of subsection (1) does not apply.

Subsections (2)(b) through (d) and (3) impose a second condition for the purchase-money security interest's achieving priority: the purchase-money secured party must give notification to the holder of a conflicting security interest who filed against the same item or type of inventory before the purchase-money secured party filed or its security interest became perfected temporarily under s.679.3121(5) or (6).

Under subsection (2)(c), the perfected purchase-money security interest achieves priority over a conflicting security interest only if the holder of the conflicting security interest receives a notification within five years before the debtor receives possession of the purchase-money collateral. If the debtor never receives possession, the five-year period never begins, and the purchase-money security interest has priority, even if notification is not given. However, where the purchase-money inventory financing began by the purchase-money secured party's possession of a negotiable document of title, to retain priority the secured party must give the notification required by subsection (2) at or before the usual time, i.e., when the debtor gets possession of the inventory, even though the security interest remains perfected for 20 days under 679.3121(5) or (6).

Subsections (2) and (3) also determine the priority of a consignor's interest in consigned goods as against a security interest in the goods created by the consignee.

New subsections (4) and (5) provide a purchase-money priority rule for farm-products livestock. They are patterned on the purchase-money priority rule for inventory found in subsections (2) and (3) and include a requirement that the purchase-money secured party notify earlier-filed parties. Two differences between subsections (2) and (4) are noteworthy. First, unlike the purchase-money inventory lender, the purchase-money livestock lender enjoys priority in all proceeds of the collateral. Thus, under subsection (4), the purchase-money secured party takes priority in accounts over an earlier-filed accounts financer. Second, subsection (4) affords priority in certain products of the collateral as well as proceeds.

Subsection (6) governs the priority of purchase-money security interests in software. Under subsection (6), a purchase-money security interest in software has the same priority as the purchase-money security interest in the goods in which the software was acquired for use. This priority is determined under subsections (2) and (3) (for inventory) or (1) (for other goods).

New subsection (7) governs priority among multiple purchase-money security interests in the same collateral. It grants priority to purchase-money security interests securing the price of collateral (i.e., created in favor of the seller) over purchase-money security interests that secure enabling loans.

Section 679.325, regarding priority of security interests in transferred collateral.

1. Source. New.

This section addresses the "double debtor" problem, which arises when a debtor acquires property that is subject to a security interest created by another debtor.

This section applies only if the security interest in the transferred collateral was perfected when the transferee acquired the collateral. Pursuant to subsection (1)(b).

This section applies only if the security interest in the transferred collateral did not become unperfected at any time after the transferee acquired the collateral. Pursuant to subsection (1)(c). If this condition is not met, then the normal priority rules apply.

Section 679.326, regarding priority of security interests created by new debtor.

New.

This section addresses the priority contests that may arise when a new debtor becomes bound by the security agreement of an original debtor and each debtor has a secured creditor.

Subsection (1) subordinates the original debtor's secured party's security interest perfected against the new debtor solely under Section 9-508. The security interest is subordinated to security interests in the same collateral perfected by another method, e.g., by filing against the new debtor.

Subsection (2) addresses the priority among security interests created by the original debtor. By invoking the other priority rules of this subpart, as applicable, subsection (2) preserves the relative priority of security interests created by the original debtor.

The second sentence of subsection (2) effectively limits the applicability of the first sentence to situations in which a new debtor has become bound by more than one security agreement entered into by the same original debtor. When the new debtor has become bound by security agreements entered into by different original debtors, the second sentence provides that priority is based on priority in time of the new debtor's becoming bound.

Section 679.327, regarding priority of security interests in deposit account.

New; derived from former Section 9-115(5).

2. Scope of This Section. This section contains the rules governing the priority of conflicting security interests in deposit accounts. It overrides conflicting priority rules. This section does not apply to accounts evidenced by an instrument (e.g., certain certificates of deposit), which by definition are not "deposit accounts."

Under subsection (1), security interests perfected by control (Sections 9-314, 9-104) take priority over those perfected otherwise, e.g., as identifiable cash proceeds under Section 9-315.

Subsection (2) provides that the security interests rank according to time of obtaining control.

Under subsection (3), the security interest of the bank with which the deposit account is maintained normally takes priority over all other conflicting security interests in the deposit account, regardless of whether the deposit account constitutes the competing secured party's original collateral or its proceeds.

A secured party who takes a security interest in the deposit account as original collateral can protect itself against the results of this rule in one of two ways. It can take control of the deposit account by becoming the bank's customer. Under subsection (4), this arrangement operates to subordinate the bank's security interest. Alternatively, the secured party can obtain a subordination agreement from the bank.

Section 679.328, regarding priority of security interests in investment property.

1. Source. Former Section 9-115(5).

2. Scope of This Section. This section contains the rules governing the priority of conflicting security interests in investment property. Subsection (1) states the most important general rule -- that a secured party who obtains control has priority over a secured party who does not obtain control. Subsections (2) through (4) deal with conflicting security interests each of which is perfected by control. Subsection (5) addresses the priority of a security interest in a certificated security which is perfected by delivery but not control. Subsection (6) deals with the relatively unusual circumstance in which a broker, securities intermediary, or commodity intermediary has created conflicting security interests none of which is perfected by control. Subsection (7) provides that the general priority rules of Sections 9-322 and 9-323 apply to cases not covered by the specific rules in this section. The principal application of this residual rule is that the usual first in time of filing rule applies to conflicting security interests that are perfected only by filing. Because the control priority rule of subsection (1) provides for the ordinary cases in which persons purchase securities on margin credit from their brokers, there is no need for special rules for purchase-money security interests.

Section 679.329, regarding priority of security interests in letter-of-credit right.

New; loosely modeled after former Section 9-115(5).

Subsection (1) awards priority to a secured party who perfects a security interest directly in letter-of-credit rights. This is consistent with international letter-of-credit practice and provides finality to payments made to recognized assignees of letter-of-credit proceeds. If an issuer or nominated person recognizes multiple security interests in a letter-of-credit right, resulting in multiple parties having control, under subsection (2) the security interests rank according to the time of obtaining control.

Section 679.330, regarding priority of purchaser of chattel paper or instrument.

1. Source. Former Section 9-308.

This section enables secured parties and other purchasers of chattel paper (both electronic and tangible) and instruments to obtain priority over earlier-perfected security interests.

Subsections (1) and (2) follow former Section 9-308 in distinguishing between earlier-perfected security interests in chattel paper that is claimed merely as proceeds of inventory subject to a security interest and chattel paper that is claimed other than merely as proceeds.

This section makes explicit the “good faith” requirement and retains the requirements of “the ordinary course of the purchaser’s business” and the giving of “new value” as conditions for priority. Under subsection (5), the holder of a purchase-money security interest in inventory is deemed to give “new value” for chattel paper constituting the proceeds of the inventory. Accordingly, the purchase-money secured party may qualify for priority in the chattel paper

under subsection (1) or (2), whichever is applicable, even if it does not make an additional advance against the chattel paper.

Subsection (1) provides that a purchaser who meets the possession or control, ordinary course, and new value requirements takes priority over a competing security interest unless the chattel paper itself indicates that it has been assigned to an identified assignee other than the purchaser. Thus subsection (1) recognizes the common practice of placing a "legend" on chattel paper to indicate that it has been assigned.

Subsection (2) eliminates the requirement that the purchaser take without knowledge that the "specific paper" is subject to the security interest and substitutes for it the requirement that the purchaser take "without knowledge that the purchase violates the rights of the secured party."

A purchaser of chattel paper under this section is not required as a matter of good faith to make a search in order to determine the existence of prior security interests. Likewise, under new subsection (6), if the chattel paper itself indicates that it had been assigned to an identified secured party other than the purchaser, the purchaser would have wrongful knowledge for purposes of subsection (2), thereby preventing the purchaser from qualifying for priority under that subsection, even if the purchaser did not have actual knowledge. In the case of tangible chattel paper, the indication normally would consist of a written legend on the chattel paper. In the case of electronic chattel paper, this Article leaves to developing market and technological practices the manner in which the chattel paper would indicate an assignment.

Subsection (4) contains a special priority rule for instruments. Under this subsection, a purchaser of an instrument has priority over a security interest perfected by a method other than possession, if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

\Subsection (3) sets forth the two circumstances under which the priority afforded to a purchaser of chattel paper under subsection (1) or (2) extends also to proceeds of the chattel paper. The first is if the purchaser would have priority under the normal priority rules applicable to proceeds. The second, is if the proceeds consist of the specific goods covered by the chattel paper.

Section 679.331, regarding priority of rights of purchasers of instruments, documents, and securities under other articles, priority; priority of interests in financial assets and security entitlements under Article 8.

Former Section 9-309.

Whether a holder or purchaser referred to in this section takes free or is senior to a security interest depends on whether the purchaser is a buyer of the collateral or takes a security interest in it.

The rights to which this section refers are set forth in Sections 3-305 and 3-306 (holder in due course), 7-502 (holder to whom a negotiable document of title has been duly negotiated), and 8-

303 (protected purchaser). The holders and purchasers referred to in this section do not always take priority over a security interest. Accordingly, this section adds the clause, "to the extent provided in Chapters 673, 677 and 678.

New subsection (2) provides explicit protection for those who deal with financial assets and security entitlements and who are immunized from liability under Chapter 678. The new subsection does not change the law.

Section 679.332, regarding transfer of money; transfer of funds from deposit account.

New.

This section affords broad protection to transferees who take funds from a deposit account and to those who take money. The term "transferee" is not defined; however, the debtor itself is not a transferee. Thus this section does not cover the case in which a debtor withdraws money (currency) from its deposit account or the case in which a bank debits an encumbered account and credits another account it maintains for the debtor.

A transfer of funds from a deposit account, to which subsection (2) applies, normally will be made by check, by funds transfer, or by debiting the debtor's deposit account and crediting another depositor's account.

Subsection (2) applies to transfers of funds from a deposit account; it does not apply to transfers of the deposit account itself or of an interest therein.

This section sets forth the circumstances under which certain transferees of money or funds take free of security interests. It does not determine the rights of a transferee who does not take free of a security interest.

Section 679.333, regarding priority of certain liens arising by operation of law.

Former Section 9-310.

This section governs the relative priority of security interests arising under this Chapter and "possessory liens," i.e., common-law and statutory liens whose effectiveness depends on the lienor's possession of goods with respect to which the lienor provided services or furnished materials in the ordinary course of its business. As under former Section 679.310, the possessory lien has priority over a security interest unless the possessory lien is created by a statute that expressly provides otherwise. If the statute creating the possessory lien is silent as to its priority relative to a security interest, this section provides a rule of interpretation that the possessory lien takes priority, even if the statute has been construed judicially to make the possessory lien subordinate.

Section 679.334, regarding priority of security interests in fixtures and crops.

Former Section 9-313.

This section contains rules governing the priority of security interests in fixtures and crops as against persons who claim an interest in real property.

Certain goods that are the subject of personal-property (chattel) financing become so affixed or otherwise so related to real property that they become part of the real property. These goods are called "fixtures." Some fixtures retain their personal-property nature: a security interest under this Chapter may be created in fixtures and may continue in goods that become fixtures. However, if the goods are ordinary building materials incorporated into an improvement on land, no security interest in them exists. Rather, the priority of claims to the building materials are determined by the law governing claims to real property.

Thus, this section recognizes three categories of goods: (1) those that retain their chattel character entirely and are not part of the real property; (2) ordinary building materials that have become an integral part of the real property and cannot retain their chattel character for purposes of finance; and (3) an intermediate class that has become real property for certain purposes, but as to which chattel financing may be preserved.

To achieve priority under certain provisions of this section, a security interest must be perfected by making a "fixture filing" in the real-property records.

In considering priority problems under this section, one must first determine whether real-property claimants per se have an interest in the crops or fixtures as part of real property. If not, it is immaterial, so far as concerns real property parties as such, whether a security interest arising under this Article is perfected or unperfected. In no event does a real-property claimant (e.g., owner or mortgagee) acquire an interest in a "pure" chattel just because a security interest therein is unperfected. If on the other hand real-property law gives real-property parties an interest in the goods, a conflict arises and this section states the priorities.

Subsection (3) states that a security interest in goods which are or become fixtures is invalid against any person with an interest in the real property at the time the security interest in the goods is perfected or at the time the goods are affixed to the real property, whichever occurs later, unless such person has consented to the security interest or disclaimed an interest in the goods as fixtures.

Subsection (4) provides that a security interest in goods which are or become fixtures takes priority as to the goods over the claims of all persons acquiring an interest in the real property subsequent to the perfection of such security interest or the affixing of the goods to the real property, whichever occurs later.

A manufactured home may become a fixture. New subsection (5) contains a special rule granting priority to certain security interests created in a "manufactured home" as part of a "manufactured-home transaction" (both defined in Section 9-102). Under this rule, a security interest in a manufactured home that becomes a fixture has priority over a conflicting interest of an encumbrancer or owner of the real property if the security interest is perfected under a

certificate-of-title statute. Subsection (5) is only one of the priority rules applicable to security interests in a manufactured home that becomes a fixture. Thus, a security interest in a manufactured home which does not qualify for priority under this subsection may qualify under another.

Growing crops are "goods" in which a security interest may be created and perfected under this Article. In some jurisdictions, a mortgage of real property may cover crops, as well. In the event that crops are encumbered by both a mortgage and an Article 9 security interest, subsection (6) provides that the security interest has priority. Subsection (7) provides an override clause that provides that subsection (6) prevails over any inconsistent statute.

Section 679.335, regarding accessions.

Former Section 9-314.

This section applies to an "accession," as defined in Section 9-102, regardless of the cost or difficulty of removing the accession from the other goods, and regardless of whether the original goods have come to form an integral part of the other goods. This section does not apply to goods whose identity has been lost. Goods of that kind are "commingled goods" governed by Section 9-336.

This section governs only a few issues concerning accessions. Subsection (1) contains rules governing continuation of a security interest in an accession. Subsection (2) contains a rule governing continued perfection of a security interest in goods that become an accession. Subsection (4) contains a special priority rule governing accessions that become part of a whole covered by a certificate of title. Subsections (5) and (6) govern enforcement of a security interest in an accession.

With one exception, concerning goods covered by a certificate of title under subsection (9), the other provisions of this Part, including the rules governing purchase-money security interests, determine the priority of most security interests in an accession, including the relative priority of a security interest in an accession and a security interest in the whole. Pursuant to subsection (9).

This section does govern the priority of a security interest in an accession that is or becomes part of a whole that is subject to a security interest perfected by compliance with a certificate-of-title statute. Subsection (4) provides that a security interest in the whole, perfected by compliance with a certificate-of-title statute, takes priority over a security interest in the accession.

Section 679.336, regarding commingled goods.

Former Section 9-315.

Subsection (1) defines "commingled goods." It is meant to include not only goods whose identity is lost through manufacturing or production (e.g., flour that has become part of baked goods) but also goods whose identity is lost by commingling with other goods from which they cannot be distinguished (e.g., ball bearings).

By definition, the identity of the original collateral cannot be determined once the original collateral becomes commingled goods. Consequently, pursuant to subsection (3), the security interest in the specific original collateral alone is lost once the collateral becomes commingled goods, and no security interest in the original collateral can be created thereafter except as a part of the resulting product or mass.

Once collateral becomes commingled goods, the secured party's security interest is transferred from the original collateral to the product or mass. Under subsection (3). If the security interest in the original collateral was perfected, the security interest in the product or mass is a perfected security interest. Pursuant to subsection (4). This perfection continues until lapse.

This section governs the priority of competing security interests in a product or mass only when both security interests arise under this section. In that case, if both security interests are perfected by operation of this section, then subsection (6)(b) provides that the security interests rank equally, in proportion to the value of the collateral at the time it became commingled goods.

If a security interest in original collateral is unperfected at the time the collateral becomes commingled goods, subsection (6)(a) applies.

Example 4: SP-1 has a perfected security interest in the debtor's eggs, and SP-2 has an unperfected security interest in the debtor's flour. Debtor uses the flour and eggs to make cakes. Under subsection (c), both security interests attach to the cakes. But since SP-1's security interest was perfected at the time of commingling and SP-2's was not, only SP-1's security interest in the cakes is perfected. See subsection (d). Under subsection (f)(1) and Section 9-322(a)(2), SP-1's perfected security interest has priority over SP-2's unperfected security interest.

If both security interests are unperfected, the rule of Section 9-322(1)(c) would apply.

On occasion, a single input may be encumbered by more than one security interest. In those cases, the multiple secured parties should be treated like a single secured party for purposes of determining their collective share under subsection (6)(b). The normal priority rules would determine how that share would be allocated between them.

Under subsection (5), the normal priority rules determine the priority of a security interest that attaches to the product or mass other than by operation of this section.

Section 679.337, regarding priority of security interests in goods covered by certificate of title.

Derived from former Section 9-103(2)(d).

This section affords protection to certain good-faith purchasers for value who are likely to have relied on a "clean" certificate of title, i.e., one that neither shows that the goods are subject to a particular security interest nor contains a statement that they may be subject to security interests not shown on the certificate. Under this section, a buyer can take free of, and the holder of a conflicting security interest can acquire priority over, a security interest that is perfected by any method under the law of another jurisdiction. The fact that the security interest has been

reperfected by possession under s.679.31111(2) does not of itself disqualify the holder of a conflicting security interest from protection under subsection (2).

Section 679.338, regarding priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

New.

This section subordinates a security interest or agricultural lien perfected by an effective, but flawed, financing statement to the rights of a buyer or holder of a perfected security interest to the extent that, in reasonable reliance on the incorrect information, the purchaser gives value and, in the case of tangible collateral, receives delivery of the collateral. A purchaser who has not made itself aware of the information in the filing office with respect to the debtor cannot act in "reasonable reliance" upon incorrect information.

Section 679.339, regarding priority subject to subordination.

Former Section 9-316.

This section makes it entirely clear that a person entitled to priority may effectively agree to subordinate its claim. Only the person entitled to priority may make such an agreement: a person's rights cannot be adversely affected by an agreement to which the person is not a party.

Section 679.340, regarding effectiveness of right of recoupment or set-off against deposit account.

New.

This section resolves the conflict between a security interest in a deposit account and the bank's rights of recoupment and set-off.

Subsection (1) states the general rule and provides that the bank may effectively exercise rights of recoupment and set-off against the secured party. Subsection (3) contains an exception: if the secured party has control under Section 9-104(1)(c) (i.e., if it has become the bank's customer), then any set-off exercised by the bank against a debt owed by the debtor (as opposed to a debt owed to the bank by the secured party) is ineffective. The bank may, however, exercise its recoupment rights effectively.

This section deals with rights of set-off and recoupment that a bank may have under other law. It does not create a right of set-off or recoupment, nor is it intended to override any limitations or restrictions that other law imposes on the exercise of those rights.

Subsection (2) makes clear that a bank may hold both a right of set-off against, and an Article 9 security interest in, the same deposit account. By holding a security interest in a deposit account, a bank does not impair any right of set-off it would otherwise enjoy. This subsection does not pertain to accounts evidenced by an instrument (e.g., certain certificates of deposit), which are excluded from the definition of "deposit accounts."

Section 699.341, regarding bank's rights and duties with respect to deposit account.

New.

This section is designed to prevent security interests in deposit accounts from impeding the free flow of funds through the payment system. Subject to two exceptions, it leaves the bank's rights and duties with respect to the deposit account and the funds on deposit unaffected by the creation or perfection of a security interest or by the bank's knowledge of the security interest. In addition, the section permits the bank to ignore the instructions of the secured party unless it had agreed to honor them or unless other law provides to the contrary. A secured party who wishes to deprive the debtor of access to funds on deposit or to appropriate those funds for itself needs to obtain the agreement of the bank, utilize the judicial process, or comply with procedures set forth in other law.

The general rule of this section is subject to Section 9-340(3), under which a bank's right of set-off may not be exercised against a deposit account in the secured party's name if the right is based on a claim against the debtor. The more important function of this section, which is not impaired by Section 9-340, is the bank's right to follow the debtor's (customer's) instructions (e.g., by honoring checks, permitting withdrawals, etc.) until such time as the depository institution is served with judicial process or receives instructions with respect to the funds on deposit from a secured party who has control over the deposit account.

Section 679.342, regarding bank's right to refuse to enter into or disclosure existence of control agreement.

New.

\This section protects banks from the need to enter into agreements against their will and from the need to respond to inquiries from persons other than their customers.

Section 4. -- Creating a new Part IV of ch. 679, F.S., regarding rights of third parties.

Section 679.40111, regarding alienability of debtor's rights.

Former Section 9-311.

This Part deals with several issues affecting third parties (i.e., parties other than the debtor and the secured party). This Part primarily addresses the rights and duties of account debtors and other persons obligated on collateral who are not, themselves, parties to a secured transaction.

Subsection (1) addresses the question whether property necessarily is transferable by virtue of its inclusion (i.e., its eligibility as collateral) within the scope of Article 9. It gives a negative

answer, subject to the identified exceptions. The substance of subsection (1) was implicit under former Article 9.

Subsection (2) is an exception to the general rule in subsection (1). It makes clear that in secured transactions under this Article the debtor has rights in collateral (whether legal title or equitable) which it can transfer and which its creditors can reach.

Section 679.4021, regarding secured party not obligated on contract of debtor or in tort.

Former Section 9-317.

This section, like former Section 9-317, rejects theories on which a secured party might be held liable on a debtor's contracts or in tort merely because a security interest exists or because the debtor is entitled to dispose of or use collateral. This section expands former Section 9-317 to cover agricultural liens.

Section 679.4031, regarding agreement not to assert defenses against assignee.

Former Section 9-206.

Subsection (2), like former Section 9-206, generally validates an agreement between an account debtor and an assignor that the account debtor will not assert against an assignee claims and defenses that it may have against the assignor. However, this section expands former Section 9-206 to apply to all account debtors; it is not limited to account debtors that have bought or leased goods. This section applies only to the obligations of an "account debtor," as defined in Section 9-102.

Subsection (2) validates an account debtor's agreement only if the assignee takes an assignment for value, in good faith, and without notice of conflicting claims to the property assigned or of certain claims or defenses of the assignor. However, former Section 9-206 left open certain issues, e.g., whether the section incorporated the special Article 3 definition of "value" in Section 3-303 or the generally applicable definition in Section 1-201(44). Subsection (1) addresses this question; it provides that "value" has the meaning specified in s.673.3031(1). Similarly, subsection (3) provides that subsection (2) does not validate an agreement with respect to defenses that could be asserted against a holder in due course under Section 673.3031(2) (the so-called "real" defenses).

Subsection (4) is new. It applies to rights evidenced by a record that is required to contain, but does not contain, the notice set forth in Federal Trade Commission Rule 433, 16 C.F.R. Part 433 (the "Holder-in-Due-Course Regulations"). Under this subsection, an assignee of such a record takes subject to the consumer account debtor's claims and defenses to the same extent as it would have if the writing had contained the required notice. Thus, subsection (4) effectively renders waiver-of-defense clauses ineffective in the transactions with consumers to which it applies.

This section takes no position on the enforceability of waivers of claims and defenses by consumer account debtors, leaving that question to other law. However, the reference to "law other than this article" in subsection (5) encompasses administrative rules and regulations.

Subsection (6) provides that this section does not displace other law that gives effect to a non-consumer account debtor's agreement not to assert defenses against an assignee, even if the agreement would not qualify under subsection (2). It validates, but does not invalidate, agreements made by a non-consumer account debtor. This section also does not displace other law to the extent that the other law permits an assignee, who takes an assignment with notice of a claim of a property or possessory right, a defense, or a claim in recoupment, to enforce an account debtor's agreement not to assert claims and defenses against the assignor. It also does not displace an assignee's right to assert that an account debtor is estopped from asserting a claim or defense. Nor does this section displace other law with respect to waivers of potential future claims and defenses that are the subject of an agreement between the account debtor and the assignee. Finally, it does not displace s.671.107, concerning waiver of a breach that allegedly already has occurred.

Section 679.4041, regarding rights acquired by assignee; claims and defenses against assignee.

Former Section 9-318(1).

Subsection (1), provides that an assignee generally takes an assignment subject to defenses and claims of an account debtor. Under subsection (1)(a), if the account debtor's defenses on an assigned claim arise from the transaction that gave rise to the contract with the assignor, it makes no difference whether the defense or claim accrues before or after the account debtor is notified of the assignment. Under subsection (1)(b), the assignee takes subject to other defenses or claims only if they accrue before the account debtor has been notified of the assignment.

Subsection (2) is new. It limits the claim that the account debtor may assert against an assignee. Subsection (2) generally does not afford the account debtor the right to an affirmative recovery from an assignee.

Subsections (3) and (4) also are new. Subsection (3) makes clear that the rules of this section are subject to other law establishing special rules for consumer account debtors. An "account debtor who is an individual" as used in subsection (3) includes individuals who are jointly or jointly and severally obligated. Subsection (4) applies to rights evidenced by a record that is required to contain, but does not contain, the notice set forth in Federal Trade Commission Rule 433, 16 C.F.R. Part 433 (the "Holder-in-Due-Course Regulations"). Under subsection (4), a consumer account debtor has the same right to an affirmative recovery from an assignee of such a record as the consumer would have had against the assignee had the record contained the required notice.

Section 679.4051, regarding modification of assigned contract.

Former Section 9-318(2).

Subsections (1) and (2) provide that good-faith modifications of assigned contracts are binding against an assignee to the extent that (i) the right to payment has not been fully earned or (ii) the right to payment has been earned and notification of the assignment has not been given to the account debtor. Subsection (1) protects the interests of assignees by (i) limiting the effectiveness of modifications to those made in good faith, (ii) affording the assignee with corresponding rights under the contract as modified, and (iii) recognizing that the modification may be a breach of the assignor's agreement with the assignee.

Subsection (3) is new. It makes clear that the rules of this section are subject to other law establishing special rules for consumer account debtors.

Subsection (4) also is new. It provides that this section does not apply to an assignment of a heath-care-insurance receivable.

Section 679.4061, regarding discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

Former Section 9-318(3), (4).

Subsection (1) provides the general rule concerning an account debtor's right to pay the assignor until the account debtor receives appropriate notification. The revision makes clear that once the account debtor receives the notification, the account debtor cannot discharge its obligation by paying the assignor. It also makes explicit that payment to the assignor before notification, or payment to the assignee after notification, discharges the obligation.

An effective notification under subsection (1) must be authenticated.

Subsection (1) applies only to account debtors on accounts, chattel paper, and payment intangibles.

Subsection (2) contains some special rules concerning the effectiveness of a notification under subsection (1).

Subsection (2)(a) tracks former Section 9-318(3) by making ineffective a notification that does not reasonably identify the rights assigned. A reasonable identification need not identify the right to payment with specificity, but what is reasonable also is not left to the arbitrary decision of the account debtor.

Subsection (2)(b), which is new, applies only to sales of payment intangibles. It makes a notification ineffective to the extent that other law gives effect to an agreement between an account debtor and a seller of a payment intangible that limits the account debtor's duty to pay a person other than the seller.

Under subsection (2)(c), an account debtor that is notified to pay an assignee less than the full amount of any installment or other periodic payment has the option to treat the notification as

ineffective, ignore the notice, and discharge the assigned obligation by paying the assignor. By making the notification ineffective at the account debtor's option, subsection (2)(c) permits an account debtor to pay the assignee in accordance with the notice and thereby to satisfy its obligation pro tanto. Under subsection (6), the rights and duties created by subsection (2)(c) cannot be waived or varied.

Subsection (3) links payment with discharge, as in subsection (1). It follows former Section 9-318(3) in referring to the right of the account debtor to pay the assignor if the requested proof of assignment is not seasonably forthcoming.

Subsection (4) essentially follows former Section 9-318(4), but expands the rule of free assignability to chattel paper and promissory notes and explicitly overrides both restrictions and prohibitions of assignment.

Former Section 9-318(4) did not apply to a sale of a payment intangible (as described in the former provision, "a general intangible for money due or to become due") but did apply to an assignment of a payment intangible for security. Subsection (5) continues this approach and also makes subsection (4) inapplicable to sales of promissory notes.

Like former Section 9-318(4), subsection (4) provides that anti-assignment clauses are "ineffective." The quoted term means that the clause is of no effect whatsoever; the clause does not prevent the assignment from taking effect between the parties and the prohibited assignment does not constitute a default under the agreement between the account debtor and assignor. However, subsection (4) does not override terms that do not directly prohibit, restrict, or require consent to an assignment but which might, nonetheless, present a practical impairment of the assignment.

Former Section 9-318(4), like subsection (4) of this section, addressed only contractual restrictions on assignment. The former section was grounded on the reality that legal, as opposed to contractual, restrictions on assignments of rights to payment had largely disappeared. New subsection (6) codifies this principle of free assignability for accounts and chattel paper.

Subsection (8) is new. It makes clear that the rules of this section are subject to other law establishing special rules for consumer account debtors.

Subsection (9) also is new. The obligation of an insurer with respect to a health-care-insurance receivable is governed by other law.

Section 679.4071, regarding restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.:

Section s.680.303.

Under subsection (1), a term in a lease agreement which prohibits or restricts the creation of a security interest generally is ineffective.

Subsection (2) provides exceptions to the general ineffectiveness of restrictions under subsection (1). A term that otherwise is ineffective under subsection (1)(b) is effective to the extent that a lessee transfers its right to possession and use of goods or if either party delegates material performance of the lease contract in violation of the term. However, under subsection (3), a lessor's creation of a security interest in its interest in a lease contract or its residual interest in the leased goods is not a material impairment under Section 680.303(4), absent an actual delegation of the lessor's material performance. The terms of the lease contract determine whether the lessor, in fact, has any remaining obligations to perform. If it does, it is then necessary to determine whether there has been an actual delegation of "material performance."

Section 679.4081, regarding restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

New.

This section makes ineffective any attempt to restrict the assignment of a general intangible, health-care-insurance receivable, or promissory note, whether the restriction appears in the terms of a promissory note or the agreement between an account debtor and a debtor (subsection (1)) or in a rule of law, including a statute or governmental rule or regulation (subsection (3)). Subsection (4) protects the other party -- the "account debtor" on a general intangible or the person obligated on a promissory note -- from adverse effects arising from the security interest. It leaves the account debtor's or obligated person's rights and obligations unaffected in all material respects if a restriction rendered ineffective by subsection (1) or (3) would be effective under law other than Article 9.

Subsection (1) applies to a security interest in payment intangibles only if the security interest arises out of sale of the payment intangibles. Subsection (1) also deals with sales of promissory notes which also create security interests. Subsection (3) deals with all security interests in payment intangibles or promissory notes, whether or not arising out of a sale.

Subsection (1) does not render ineffective any term, and subsection (3) does not render ineffective any law, statute or regulation, that restricts outright sales of general intangibles other than payment intangibles. They deal only with restrictions on security interests.

Subsections (1) and (3) affect two classes of persons. These subsections affect account debtors on general intangibles and health-care-insurance receivables and persons obligated on promissory notes. Subsection (3) also affects governmental entities that enact or determine rules of law. However, subsection (4) ensures that these affected persons are not affected adversely. That provision removes any burdens or adverse effects on these persons for which any rational basis could exist to restrict the effectiveness of an assignment or to exercise any remedies.

Subsection (1) does not override terms that do not directly prohibit, restrict, or require consent to an assignment but which might, nonetheless, present a practical impairment of the assignment.

Section 679.409, regarding restrictions on assignment of letter-of-credit rights ineffective.

New.

This section limits the effectiveness of attempts to restrict the creation, attachment, or perfection of a security interest in letter-of-credit rights, whether the restriction appears in the letter of credit or a rule of law, custom, or practice applicable to the letter of credit. It protects the creation, attachment, and perfection of a security interest while preventing these events from giving rise to a default or breach by the assignor or from triggering a remedy or defense of the issuer or other person obligated on a letter of credit.

Although restrictions on an assignment of a letter of credit are ineffective to prevent creation, attachment, and perfection of a security interest, subsection (2) protects the issuer and other parties from any adverse effects of the security interest by preserving letter-of-credit law and practice that limits the right of a beneficiary to transfer its right to draw or otherwise demand performance and limits the obligation of an issuer or nominated person to recognize a beneficiary's assignment of letter-of-credit proceeds. Thus, this section's treatment of letter-of-credit rights differs from this Article's treatment of instruments and investment property.

Section 5. -- Creating a new Part V of ch. 679, F.S., regarding filing.

Section 679.5011, regarding filing office.

Derived from former Section 9-401.

Subsection (1) indicates where in a given State a financing statement is to be filed.

Under subsection (1)(a), a filing in the office of the clerk of the circuit court, where a record of a mortgage on the related real property would be filed will perfect a security interest in as-extracted collateral or timber to be cut.

There are two ways in which a secured party may file a financing statement to perfect a security interest in goods that are or are to become fixtures. It may file in the Secretary of State's office, as with most other goods. See subsection (1)(b). Or it may file the financing statement as a "fixture filing," defined in Section 9-102, in the office in which a record of a mortgage on the related real property would be filed. See subsection (1)(a)(2).

Section 679.5021, regarding contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

Former Section 9-402(1), (5), (6).

This section adopts the system of "notice filing." What is required to be filed is not, as under pre-UCC chattel mortgage and conditional sales acts, the security agreement itself, but only a simple record providing a limited amount of information (financing statement). The financing statement may be filed before the security interest attaches or thereafter.

Subsection (1) sets forth the simple formal requirements for an effective financing statement. These requirements are: (1) the debtor's name; (2) the name of a secured party or representative of the secured party; and (3) an indication of the collateral.

There is no signature requirement. The elimination of the signature requirement facilitates paperless filing.

Subsection (1) deletes other provisions of former Section 9-402(1) because they seems unwise (real-property description for financing statements covering crops), unnecessary (adequacy of copies of financing statements), or both (copy of security agreement as financing statement). In addition, the filing office must reject a financing statement lacking certain other information formerly required as a condition of perfection (e.g., an address for the debtor or secured party). However, if the filing office accepts the record, it is effective nevertheless.

Subsection (2) contains the requirements for financing statements filed as fixture filings and financing statements covering timber to be cut or minerals and minerals-related accounts constituting as-extracted collateral. A description of the related real property must be sufficient to reasonably identify it. The proper test is that a description of real property must be sufficient so that the financing statement will fit into the real-property search system and be found by a real-property searcher. Under the optional language in subsection (2)(c), the test of adequacy of the description is whether it would be adequate in a record of a mortgage of the real property. The optional language in subsection (2)(c) satisfies the requirement under Florida law respecting legal descriptions and may obviate the need to include the entire legal description.

If the debtor does not have an interest of record in the real property, a real-property-related financing statement must show the name of a record owner.

Subsection (3) explains when a record of a mortgage is effective as a financing statement filed as a fixture filing or to cover timber to be cut or as-extracted collateral. Use of the term "record of a mortgage" recognizes that in some systems the record actually filed is not the record pursuant to which a mortgage is created. Moreover, "mortgage" is defined in s.679-1021 as an "interest in real property," not as the record that creates or evidences the mortgage or the record that is filed in the public recording systems. A record creating a mortgage may also create a security interest with respect to fixtures (or other goods) in conformity with this Article. Under subsection (3), the recording of the record evidencing a mortgage (if it satisfies the requirements for a financing statement) constitutes the filing of a financing statement as to the fixtures.

Section 679.5031, regarding name of debtor and secured party.

Subsection (1) explains what the debtor's name is for purposes of a financing statement. If the debtor is a "registered organization" (defined in s.679.1021 so as to ordinarily include corporations, limited partnerships, and limited liability companies), then the debtor's name is the name shown on the public records of the debtor's "jurisdiction of organization". Subsections (1)(b) and (1)(c) contain special rules for decedent's estates and common-law trusts. (Subsection (1)(a) applies to business trusts that are registered organizations.)

Subsection (1)(d)(1) essentially follows the first sentence of former Section 9-402(7). The term organization includes corporations, partnerships of all kinds, business trusts, limited liability companies, unincorporated associations, personal trusts, governments, and estates. If the organization has a name, that name is the correct name to put on a financing statement. If the

organization does not have a name, then the financing statement should name the individuals or other entities who comprise the organization.

Together with subsections (2) and (3), subsection (1) reflects the view prevailing under former Article 9 that the actual individual or organizational name of the debtor on a financing statement is both necessary and sufficient, whether or not the financing statement provides trade or other names of the debtor and, if the debtor has a name, whether or not the financing statement provides the names of the partners, members, or associates who comprise the debtor.

New subsection (4) makes clear that when the secured party is a representative, a financing statement is sufficient if it names the secured party, whether or not it indicates any representative capacity. Similarly, a financing statement that names a representative of the secured party is sufficient, even if it does not indicate the representative capacity.

Subsection (5) makes explicit what is implicit under former Article 9: a financing statement may provide the name of more than one debtor and secured party.

Section 679.5041, regarding indication of collateral.

Subsection (1) provides that a "description" of the collateral (as the term is explained in s.679.1081) suffices as an indication for purposes of the sufficiency of a financing statement.

Subsection (2) expands the class of sufficient collateral references to embrace "an indication that the financing statement covers all assets or all personal property." If the property in question belongs to the debtor and is personal property, any searcher will know that the property is covered by the financing statement. Of course, regardless of its breadth, a financing statement has no effect with respect to property indicated but to which a security interest has not attached. Note that a broad statement of this kind (e.g., "all debtor's personal property") would not be a sufficient "description" for purposes of a security agreement. It follows that a somewhat narrower description than "all assets," e.g., "all assets other than automobiles," is sufficient for purposes of this section, even if it does not suffice for purposes of a security agreement, provided that the security agreement grants a security interest in all of the debtor's personal property.

Section 679.5051, regarding filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

This section expands the rule of former 679.408 to embrace more generally other bailments and transactions, as well as sales transactions, primarily sales of payment intangibles and promissory notes. It provides the same benefits for compliance with a statute or treaty described in 679.3111(1) that former Section 9-408 provided for filing, in connection with the use of terms such as "lessor," consignor," etc. The references to "owner" and "registered owner" are intended to address, for example, the situation where a putative lessor is the registered owner of an automobile covered by a certificate of title and the transaction is determined to create a security interest.

Former Article 9 referred to transactions, including leases and consignments, "intended as security." This Article deletes the phrase wherever it appears. Subsection (2) expresses the principle more precisely by referring to a security interest that "secures an obligation."

This Article subsumes most true consignments under the rubric of "security interest." Nevertheless, it maintains the distinction between a (true) "consignment," as to which only certain aspects of Article 9 apply, and a so-called consignment that actually "secures an obligation," to which Article 9 applies in full. The revisions to this section reflect the change in terminology.

Section 679.5061, regarding effect of errors or omissions.

Like former 679.402(8), subsection (1) is in line with the policy of this Article to simplify formal requisites and filing requirements. Subsection (1) provides the standard applicable to indications of collateral. Subsections (2) and (3), which are new, concern the effectiveness of financing statements in which the debtor's name is incorrect. Subsection (2) contains the general rule: a financing statement that fails sufficiently to provide the debtor's name in accordance with 679.503(1) is seriously misleading as a matter of law. Subsection (3) provides an exception: If the financing statement nevertheless would be discovered in a search under the debtor's correct name, using the filing office's standard search logic, if any, then as a matter of law the incorrect name does not make the financing statement seriously misleading. A financing statement that is seriously misleading under this section is ineffective even if it is disclosed by (i) using a search logic other than that of the filing office to search the official records, or (ii) using the filing office's standard search logic to search a data base other than that of the filing office.

Subsection (4) provides that, in determining the extent to which a financing statement naming an original debtor is effective against a new debtor, the sufficiency of the financing statement should be tested against the name of the new debtor.

Section 679.5071, regarding effect of certain events on effectiveness of financing statement.

This section deals with situations in which the information in a proper financing statement becomes inaccurate after the financing statement is filed.

Under subsection (1), a financing statement remains effective even if the collateral is sold or otherwise disposed of. This subsection provides that a financing statement remains effective following the disposition of collateral only when the security interest or agricultural lien continues in that collateral.

As a consequence of the disposition, the collateral may be owned by a person other than the debtor against whom the financing statement was filed. Under subsection (1), the secured party remains perfected even if it does not correct the public record. For this reason, any person seeking to determine whether a debtor owns collateral free of security interests must inquire as to the debtor's source of title and, if circumstances seem to require it, search in the name of a former owner. Subsection (1) addresses only the sufficiency of the information contained in the financing statement.

Subsection (2) provides that, as a general matter, post-filing changes that render a financing statement inaccurate and seriously misleading have no effect on a financing statement. The financing statement remains effective. It is subject to two exceptions: 679.508 and subsection (3). Section 679.508 addresses the effectiveness of a financing statement filed against an original debtor when a new debtor becomes bound by the original debtor's security agreement. subsection (c) addresses a "pure" change of the debtor's name, i.e., a change that does not implicate a new debtor. If a name change renders a filed financing statement seriously misleading, the financing statement is not effective as to collateral acquired more than four months after the change, unless before the expiration of the four months an amendment is filed that specifies the debtor's new correct name (or provides an incorrect name that renders the financing statement not seriously misleading under 679.5061). The original financing statement would continue to be effective with respect to collateral acquired before the name change as well as collateral acquired within the four-month period.

Section 679.508, regarding effectiveness of financing statement if new debtor becomes bound by security agreement.

This section deals with situations where one party (the "new debtor") becomes bound as debtor by a security agreement entered into by another person (the "original debtor"). These situations often arise as a consequence of changes in business structure. For example, the original debtor may be an individual debtor who operates a business as a sole proprietorship and then incorporates it. Or, the original debtor may be a corporation that is merged into another corporation. Under this Article, collateral that is transferred in the course of the incorporation or merger normally would remain subject to a perfected security interest.

Subsection (1) provides that a filing against the original debtor generally is effective to perfect a security interest in collateral that a new debtor has at the time it becomes bound by the original debtor's security agreement and collateral that it acquires after the new debtor becomes bound. Under subsection (2), however, if the filing against the original debtor is seriously misleading as to the new debtor's name, the filing is effective as to collateral acquired by the new debtor more than four months after the new debtor becomes bound only if a person files during the four-month period an initial financing statement providing the name of the new debtor. Moreover, if the original debtor and the new debtor are located in different jurisdictions, a filing against the original debtor would not be effective to perfect a security interest in collateral that the new debtor acquires or has acquired from a person other than the original debtor.

This section does not apply to collateral transferred by the original debtor to a new debtor. Subsection (3) provides that under s.679.5071(1).

Section 679.509, regarding persons entitled to file a record.

Records filed in the filing office do not require signatures for their effectiveness. Subsection (1)(a) substitutes for the debtor's signature on a financing statement the requirement that the debtor authorize in an authenticated record the filing of an initial financing statement or an

amendment that adds collateral. Also, under subsection (1)(a), if an amendment adds a debtor, the debtor who is added must authorize the amendment. Of course, a filed financing statement is ineffective to perfect a security interest if the filing is not authorized.

Under subsection (2), the authentication of a security agreement ipso facto constitutes the debtor's authorization of the filing of a financing statement covering the collateral described in the security agreement. The secured party need not obtain a separate authorization. Similarly, a new debtor's becoming bound by a security agreement ipso facto constitutes the new debtor's authorization of the filing of a financing statement covering the collateral described in the security agreement by which the new debtor has become bound.

Under subsection (1)(b), the holder of an agricultural lien may file a financing statement covering collateral subject to the lien without obtaining the debtor's authorization.

Under subsection (3)(a) most amendments may not be filed unless the secured party of record authorizes the filing. However, under subsection (3)(b), the authorization of the secured party of record is not required for the filing of a termination statement if the secured party of record failed to send or file a termination statement as required by 679.5131, the debtor authorizes it to be filed, and the termination statement so indicates.

Subsection (4) deals with multiple secured parties of record. It permits each secured party of record to authorize the filing of amendments.

Subsection (5) provides that, by acquiring collateral in which a security interest or agricultural lien continues under s. 679.315(1), a debtor authorizes the filing of an initial financing, and an amendment, covering the collateral and property that become collateral under s. 679.315(1)(b).

Section 679.510, regarding effectiveness of filed record.

Subsection (1) provides that a filed financing statement is effective only to the extent it was filed by a person entitled to file it.

Subsection (2) of this section prevents a filing authorized by one secured party of record from affecting the rights and powers of another secured party of record without the latter's consent.

Subsection (4) provides that a continuation statement may be filed only within the six months immediately before lapse. See 679.514(1). The filing office is obligated to reject a continuation statement that is filed outside the six-month period.

Section 679.511, regarding secured party of record.

Section 679.512, regarding amendment of financing statement.

This section addresses changes to financing statements, including addition and deletion of collateral.

An amendment under this Article may identify only the information contained in a financing statement that is to be changed; alternatively, it may take the form of an amended and restated financing statement.

This section permits secured parties of record to make changes in the public record without the need to obtain the debtor's signature. However, the filing of an amendment that adds collateral or adds a debtor must be authorized by the debtor or it will not be effective.

With respect to the added debtor, for purposes of determining the priority of the security interest, subsection (4) provides that the time of filing is the time of the filing of the amendment, not the time of the filing of the initial financing statement. However, subsection (2) provides that the effectiveness of the financing statement lapses with respect to added debtor at the time it lapses with respect to the original debtor.

Subsection (5) assures that there will be a debtor and secured party of record for every financing statement.

Section 679.513, regarding termination statement.

This section specifies when a secured party must cause the secured party of record to file or send to the debtor a termination statement for a financing statement.

Subsections (1) and (2) apply to a financing statement covering consumer goods. Subsection (3) applies to other financing statements. Subsection (1) and (3) each makes explicit what was implicit under former Article 9: If the debtor did not authorize the filing of a financing statement in the first place, the secured party of record should file or send a termination statement. The liability imposed upon a secured party that fails to comply with subsection (1) or (3) is identical to that imposed for the filing of an unauthorized financing statement or amendment. See Section 9-625(e).

Subsection (4) states the effect of filing a termination statement: the related financing statement ceases to be effective. If one of several secured parties of record files a termination statement, subsection (4) applies only with respect to the rights of the person who authorized the filing of the termination statement. The financing statement remains effective with respect to the rights of the others.

Section 679.514, regarding assignment of powers of secured party of secured party of record.

This section provides a permissive device whereby a secured party of record may effectuate an assignment of its power to affect a financing statement. It may also be useful for a secured party who has assigned all or part of its security interest or agricultural lien and wishes to have the fact noted of record, so that inquiries concerning the transaction would be addressed to the assignee.

As a general matter, this section preserves the opportunity given by former 679.405 to assign a security interest of record in one of two different ways. Under subsection (1), a secured party may assign all of its power to affect a financing statement by naming an assignee in the initial financing statement. The secured party of record may accomplish the same result under subsection (2) by making a subsequent filing. Subsection (2) also may be used for an assignment of only some of the secured party of record's power to affect a financing statement, e.g., the power to affect the financing statement as it relates to particular items of collateral or as it relates to an undivided interest in a security interest in all the collateral. An initial financing statement may not be used to change the secured party of record under these circumstances. However, an amendment adding the assignee as a secured party of record may be used.

Section 679.515, regarding duration and effectiveness of financing statement; effect of lapsed financing statement.

Subsection (1) states the general rule that a financing statement is effective for a five-year period unless its effectiveness is continued under this section. Subsection (2) provides that if the financing statement relates to a public-finance transaction or a manufactured-home transaction and so indicates, the financing statement is effective for 30 years. Under subsection (6), a financing statement filed against a transmitting utility remains effective indefinitely, until a termination statement is filed. Likewise, under subsection (7), a mortgage effective as a fixture filing remains effective until its effectiveness terminates under real-property law.

Subsection (3) provides that when the period of effectiveness under subsection (1) or (2) expires, the effectiveness of the financing statement lapses.

Subsection (4) explains when a continuation statement may be filed. Subsection (5) specifies the effect of a continuation statement and provides for successive continuation statements.

Section 679.516, regarding what constitutes filing; effectiveness of filing.

Subsection (1) deals generically with what constitutes filing of a record, including an initial financing statement and amendments of all kinds (e.g., assignments, termination statements, and continuation statements). It follows former s.679.403(1), under which either acceptance of a record by the filing office or presentation of the record and tender of the filing fee constitutes filing.

Subsection (2) provides an exclusive list of grounds upon which the filing office may reject a record.

Subsection (4) deals with the filing office's unjustified refusal to accept a record.

Under subsection (3)(a), if the filing office cannot read or decipher information, the information is not provided by a record for purposes of subsection (2).

8. Classification of Records. For purposes of subsection (b), a record that does not indicate it is an amendment or identify an initial financing statement to which it relates is deemed to be an initial financing statement. See subsection (c)(2).

Subsections (5) and (6) provide the filing officer the ability to conditionally accept and then reject financing statements for specific reasons, but it also protects the secured party if the filing officer makes a mistake. The wrong filing office, failure to attach an exhibit, and prior termination grounds have been moved from being the basis for an absolute rejection to a conditional filing to provide lenders the comfort that they will get a filing date which will be effective in the event the conditionally filed statement is later determined to be valid.

Section 679.517, regarding effect of indexing errors.

This section provides that the filing office's error in mis-indexing a record does not render ineffective an otherwise effective record.

Section 679.518, regarding claim concerning inaccurate or wrongfully filed record.

Subsection (1) affords the debtor the right to file a correction statement. Among other requirements, subsection (2) provides that the correction statement must provide the basis for the debtor's belief that the public record should be corrected. These provisions, which resemble the analogous remedy in the Fair Credit Reporting Act, 15 U.S.C. § 1681i, afford an aggrieved person the opportunity to state its position on the public record. They do not permit an aggrieved person to change the legal effect of the public record. Thus, although a filed correction statement becomes part of the "financing statement," pursuant to subsection (3), the filing does not affect the effectiveness of the initial financing statement or any other filed record.

Section 679.519, regarding numbering, maintaining, and indexing records; communicating information provided in records.

Subsections (1) through (5) set forth the duties of the filing office with respect to filed records. Subsection (8), which is new, imposes a minimum standard of performance for those duties. Subsection (6) requires the filing office to maintain appropriate storage and retrieval facilities, and subsection (7) contains minimum requirements for the retention of records.

Section 679.520, regarding acceptance and refusal to accept record.

Subsection (1) both prescribes and limits the bases upon which the filing office must and may reject records by reference to the reasons set forth in 679.516(2). For the most part, the bases for rejection are limited to those that prevent the filing office from dealing with a record that it receives -- because some of the requisite information (e.g., the debtor's name) is missing or cannot be deciphered, because the record is not communicated by a method (e.g., it is MIME- rather than UU-encoded) or medium (e.g., it is written rather than electronic) that the filing office accepts, or because the filer fails to tender an amount equal to or greater than the filing fee.

Subsection (3) provides that, if the filing office accepts a financing statement that does not give this information at all, the filing is fully effective.

Subsection (2) requires the filing office to communicate the fact of rejection and the reason therefore within a fixed period of time.

Under subsection (4), the provisions of this Part apply to each debtor separately. Thus, a filing office may reject an initial financing statement or other record as to one named debtor but accept it as to the other.

Section 679.521, regarding uniform form of written financing statement and amendment.

This section provides that the Secretary of State shall develop or approve mandatory forms for use in filing under this chapter.

Section 679.522, regarding maintenance and destruction of records.

Subsection (1) requires the filing office to maintain a record of the information in a financing statement for at least one year after lapse.

Subsection (2) permits the filing office immediately to destroy written records evidencing a financing statement, provided that the filing office maintains another record of the information contained in the financing statement as required by subsection (1).

Section 679.523, regarding information from filing office; sale or license of records.

Subsections (1) and (2) require the filing office to acknowledge the filing of a record. Under subsection (1), the filing office is required to acknowledge the filing of a written record only upon request of the filer. Subsection (2) requires the filing office to acknowledge the filing of a non-written record even in the absence of a request from the filer.

Subsection (3) permits the filing office to respond by communicating "in any medium."

Some searchers find it necessary to introduce the results of their search into evidence. Because official written certificates might be introduced into evidence more easily than official communications in another medium, subsection (3) affords States the option of requiring the filing office to issue written certificates upon request. Subsection (3) recognizes that some States may prefer to permit the filing office to respond in another medium, as long as the response can be admitted into evidence in the courts of that State without extrinsic evidence of its authenticity.

Subsection (4) requires that the filing office respond to a request for information no later than two business days after it receives the request.

Section 679.524, Provides that a delay by the filing office beyond a prescribed time period is excused under certain circumstances.

Section 679.525, regarding fees.

This section contains all fee requirements for filing, indexing, and responding to requests for information.

Section 679.526, regarding filing-office rules.

This section requires the adoption of rules to carry out the provisions of Article 9. The filing-office rules must be consistent with the provisions of the statute and adopted in accordance with local procedures. The publication requirement informs secured parties about filing-office practices, aids secured parties in evaluating filing-related risks and costs, and promotes regularity of application within the filing office.

Section 679.527, regarding authority to delegate.

This section allows the Secretary of State to delegate the filing office and officer duties to a private vendor under a contract, subject to the Secretary retaining certain oversight rights and duties, including those regarding the rejection of financing statements tendered for filing. Certain protections are provided to the state in the event the private filing agency ceases operations, becomes insolvent, or files for bankruptcy.

Section 6. -- Creating a new Part VI of ch. 679, F.S., regarding default.

Section 679.601, regarding rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Under subsection (1) the secured party's rights arise "[a]fter default." As did former s.679.501, this Article leaves to the agreement of the parties the circumstances giving rise to a default.

Under subsection (2) of this section, 679.207 applies not only to possession before default but also to possession after default. Subsection (2) also has been conformed to 679.207, which, unlike former 679.207, applies to secured parties having control of collateral.

Subsection (3) permits the simultaneous exercise of remedies.

Under subsection (1) a secured party may reduce its claim to judgment or foreclose its interest by any available procedure outside this Article under applicable law. Subsection (5) makes clear that any judicial lien that the secured party may acquire against the collateral effectively is a continuation of the original security interest (if perfected) and not the acquisition of a new interest or a transfer of property on account of a preexisting obligation. Subsection (5), however, provides that the lien relates back to the earlier of the date of filing or the date of perfection.

Under subsection (5), the statute creating an agricultural lien would govern whether and the date to which an execution lien relates back.

Subsection (6) makes clear that an execution sale is an appropriate method of foreclosure contemplated by this Part.

Subsection (7) provides that, except as provided in 679.607(3), the duties imposed on secured parties do not apply to buyers of accounts, chattel paper, payment intangibles, or promissory notes.

Subsection (3) does not expressly include a good faith requirement and Florida law does not impose that requirement. See generally Flagship National Bank v. Gray Distribution Systems, Inc., 485 So.2d 1336 (Fla. 3rd DCA 1986), rev. den. 497 So.2d 1217 (Fla. 1986). Quest v. Barnett Bank of Pensacola, 397 So.2d 1020 (Fla. 1st DCA 1981). Gottschamer v. August, Thompson, Sherr, Clark & Shafer, P.A., 438 So.2d 408 (Fla. 2d DCA 1983).

Section 679.602, regarding waiver and variance of rights and duties.

The specified rights of the debtor and duties of the secured party may not be waived or varied except as stated.

This section revises former 679.501(3) by restricting the ability to waive or modify additional specified rights and duties: (i) duties under 679.207(2)(d)(3), which deals with the use and operation of consumer goods, (ii) the right to a response to a request for an accounting, concerning a list of collateral, or concerning a statement of account (679.210), (iii) the duty to collect collateral in a commercially reasonable manner (679.607), (iv) the implicit duty to refrain from a breach of the peace in taking possession of collateral, (v) the duty to apply noncash proceeds of collection or disposition in a commercially reasonable manner, (vi) the right to a special method of calculating a surplus or deficiency in certain dispositions to a secured party, a person related to secured party, or a secondary obligor, (vii) the duty to give an explanation of the calculation of a surplus or deficiency, (viii) the right to limitations on the effectiveness of certain waivers, and (ix) the right to hold a secured party liable for failure to comply with this Article.

Section 679.603, regarding agreement on standards concerning rights and duties.

Subsection (1), like former 679.501(3), permits the parties to set standards for compliance with the rights and duties under this Part if the standards are not "manifestly unreasonable." Under subsection (2), the parties are not permitted to set standards measuring fulfillment of the secured party's duty to take collateral without breaching the peace.

Section 679.604, regarding procedure if security agreement covers real property or fixtures

Subsection (1), like former 679.501(4), permits (but does not require) the secured party to proceed as to both real and personal property in accordance with its rights and remedies with respect to the real property. Subsection (1) also makes clear that a secured party who exercises rights under Part 6 with respect to personal property does not prejudice any rights under real-property law.

Subsection (2) is new. It makes clear that, subject to subsection (3), a security interest in fixtures may be enforced either under real-property law or under any of the applicable provisions of Part 6, including sale or other disposition either before or after removal of the fixtures.

Subsection (3) generally follows former 679.313(8). It gives the secured party the right to remove fixtures under certain circumstances. A secured party whose security interest in fixtures has priority over owners and encumbrancers of the real property may remove, upon advanced notice, the collateral from the real property. However, subsection (4) requires the secured party to reimburse any owner (other than the debtor) or encumbrancer for the cost of repairing any physical injury caused by the removal.

Section 679.605, regarding unknown debtor or secondary obligor.

This section relieves a secured party from duties owed to a debtor or obligor, if the secured party does not know about the debtor or obligor. Similarly, it relieves a secured party from duties owed to a secured party or lienholder who has filed a financing statement against the debtor, if the secured party does not know about the debtor.

Section 679.606, regarding time of default for agricultural lien.

This section explains when "default" occurs in the agricultural-lien context. It requires one to consult the enabling statute to determine when the lienholder is entitled to enforce the lien.

Section 679.607, regarding collection and enforcement by secured party.

This section allows the assignee to liquidate collateral by collecting whatever may become due on the collateral, whether or not the method of collection contemplated by the security arrangement before default was direct (i.e., payment by the account debtor to the assignee, "notification" financing) or indirect (i.e., payment by the account debtor to the assignor, "nonnotification" financing).

It explicitly provides for the secured party's enforcement of the debtor's rights in respect of the account debtor's (and other third parties') obligations and for the secured party's enforcement of supporting obligations with respect to those obligations. The rights of a secured party under subsection (1) include the right to enforce claims that the debtor may enjoy against others.

This section deals with the rights and duties of secured parties following default. However, as did former 679.502 with respect to collection rights, this section also applies to the collection and enforcement rights of secured parties even if a default has not occurred, as long as the debtor has so agreed.

A secured party who holds a security interest in a right to payment may exercise the right to collect and enforce under this section, even if the security interest is subordinate to a conflicting security interest in the same right to payment.

This section permits a secured party to collect and enforce obligations included in collateral in its capacity as a secured party. It is not necessary for a secured party first to become the owner of

the collateral pursuant to a disposition or acceptance. However, the secured party's rights, as between it and the debtor, to collect from and enforce collateral against account debtors and others obligated on collateral under subsection (1). This section does not regulate the duties of an account debtor or other person obligated on collateral. Subsection (5) makes this explicit.

Subsections (1)(d) and (e) set forth the self-help remedy for a secured party whose collateral is a deposit account.

If a security interest of a third party is perfected by control (679.1041(1)(b) or (1)(c)), then after default, and otherwise if so agreed, the secured party may instruct the bank to pay out the funds in the account. If the third party has control under 679.104(1)(c), the depositary institution is obliged to obey the instruction because the secured party is its customer. If the third party has control under 679.104(1)(b), the control agreement determines the depositary institution's obligation to obey.

Subsection (2) addresses the situation in which the collateral consists of a mortgage note (or other obligation secured by a mortgage on real property).

Subsection (3) provides that the secured party's collection and enforcement rights under subsection (1) must be exercised in a commercially reasonable manner. These rights include the right to settle and compromise claims against the account debtor.

The phrase "reasonable attorney's fees and legal expenses," which appears in subsection (4), includes only those fees and expenses incurred in proceeding against account debtors or other third parties. The secured party's right to recover these expenses from the collections arises automatically under this section. The secured party also may incur other attorney's fees and legal expenses in proceeding against the debtor or obligor.

Subsection (6) provides that nothing in subsection (2) is intended to create a right of nonjudicial foreclosure in this state.

Section 679.608, regarding application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

Subsections (1) and (2) modify former 679.502(2) by explicitly providing for the application of proceeds recovered by the secured party in substantially the same manner as provided in 679.615(1) and (5) for dispositions of collateral.

Subsections (1)(d) and (2) omit, as unnecessary, the references contained in former 679.502(2) to agreements varying the baseline rules on surplus and deficiency.

Subsection (1)(c) addresses the situation in which an enforcing secured party receives noncash proceeds.

Under subsection (1)(c), the secured party is under no duty to apply the note or its value to the outstanding obligation unless its failure to do so would be commercially unreasonable. If the secured party does apply the note to the outstanding obligation, however, it must do so in a

commercially reasonable manner. The parties may provide for the method of application of noncash proceeds by agreement, if the method is not manifestly unreasonable.

The inclusion in subsection (1)(a)(3) of "other lien" imposes a new duty upon the secured party to determine and pay proceeds to additional persons or entities.

Subsection (3) provides procedures regarding interpleader between competing creditors. The debtor is not responsible for attorney's fees incurred in such interpleader unless the debtor intentionally intervenes in the case.

Section 679.609, regarding secured party's right to take possession after default.

This section follows former 679.503 and earlier uniform legislation. It provides that the secured party is entitled to take possession of collateral after default.

More than one secured party may be entitled to take possession of collateral under this section. Conflicting rights to possession among secured parties are resolved by the priority rules of this Article. Thus, a senior secured party is entitled to possession as against a junior claimant. Non-UCC law governs whether a junior secured party in possession of collateral is liable to the senior in conversion. Normally, a junior who refuses to relinquish possession of collateral upon the demand of a secured party having a superior possessory right to the collateral would be liable in conversion.

In the case of some collateral, such as heavy equipment, the physical removal from the debtor's plant and the storage of the collateral pending disposition may be impractical or unduly expensive. This section follows former 679.503 by providing that, in lieu of removal, the secured party may render equipment unusable or may dispose of collateral on the debtor's premises. Unlike former 679.503, however, this section explicitly conditions these rights on the debtor's default.

This section follows former 679.503 also by validating a debtor's agreement to assemble collateral and make it available to a secured party at a place that the secured party designates.

Section 679.610, regarding disposition of collateral after default.

Subsection (1) follows former 679.504 by permitting a secured party to dispose of collateral in a commercially reasonable manner following a default. Although subsection (2) permits both public and private dispositions, "every aspect of a disposition . . . must be commercially reasonable." Subsection (1) does not restrict dispositions to sales; collateral may be sold, leased, licensed, or otherwise disposed.

Under subsection (2) every aspect of a disposition of collateral must be commercially reasonable. This requirement explicitly includes the "method, manner, time, place and other terms."

Former 679.504(1) appeared to give the secured party the choice of disposing of collateral either "in its then condition or following any commercially reasonable preparation or processing." Subsection (1) retains the substance of the quoted language. Subsection (1) does not grant the

secured party the right to dispose of the collateral "in its then condition" under all circumstances. A secured party may not dispose of collateral "in its then condition" when, taking into account the costs and probable benefits of preparation or processing and the fact that the secured party would be advancing the costs at its risk, it would be commercially unreasonable to dispose of the collateral in that condition.

Disposition rights under subsection (1) are not limited to first-priority security interests. Rather, any secured party as to whom there has been a default enjoys the right to dispose of collateral under this subsection.

A "recognized market," as used in subsection (3) is one in which the items sold are fungible and prices are not subject to individual negotiation.

Subsection (4) affords the transferee in a disposition under this section the benefit of any title, possession, quiet enjoyment, and similar warranties that would have accompanied the disposition by operation of non-Article 9 law had the disposition been conducted under other circumstances.

Subsection (5) explicitly provides that these warranties can be disclaimed either under other applicable law or by communicating a record containing an express disclaimer. The record need not be written, but an oral communication would not be sufficient. Subsection (6) provides a sample of wording that will effectively exclude the warranties in a disposition under this section, whether or not the exclusion would be effective under non-Article 9 law.

Section 679.611, regarding notification before disposition of collateral.

This section requires a secured party who wishes to dispose of collateral under 679.610 to send "a reasonable authenticated notification of disposition" to specified interested persons, subject to certain exceptions. The notification must be reasonable as to the manner in which it is sent, its timeliness (i.e., a reasonable time before the disposition is to take place), and its content.

This section imposes a duty to send notification of a disposition not only to the debtor but also to any secondary obligor. Subsections (2) and (3) provide that secondary obligors (sureties) are entitled to receive notification of an intended disposition of collateral, regardless of who created the security interest in the collateral. If the surety created the security interest, it would be the debtor. If it did not, it would be a secondary obligor.
Under subsection (2), the principal obligor (borrower) is not always entitled to notification of disposition.

Many of the problems arising from dispositions of collateral encumbered by multiple security interests can be ameliorated or solved by informing all secured parties of an intended disposition and affording them the opportunity to work with one another. To this end, subsection (3)(c)(2) expands the duties of the foreclosing secured party to include the duty to notify (and the corresponding burden of searching the files to discover) certain competing secured parties.

To determine who is entitled to notification, the foreclosing secured party must determine the proper office for filing a financing statement as of a particular date, measured by reference to the "notification date," as defined in subsection (1). The secured party must ascertain whether any

financing statements covering the collateral and indexed under the debtor's name, as the name existed as of that date, in fact were filed in that office.
Under subsection (3)(c)(3), the secured party also must notify a secured party who has perfected a security interest by complying with a statute or treaty described in Section 9-311(a), such as a certificate-of-title statute.

Subsection (5) provides a "safe harbor" that takes into account the delays that may be attendant to receiving information from the public filing offices. It provides, generally, that the secured party will be deemed to have satisfied its notification duty under subsection (3)(c)(2) if it requests a search from the proper office at least 20 but not more than 30 days before sending notification to the debtor and if it also sends a notification to all secured parties (and other lienholders) reflected on the search report. The secured party's duty under subsection (c)(3)(B) also will be satisfied if the secured party requests but does not receive a search report before the notification is sent to the debtor.

5. Authentication Requirement. Subsections (2) and (3) explicitly provide that a notification of disposition must be "authenticated."

Subsection (6) which provides where the notices are to be sent.

New subsection (6) makes it clear that there is no obligation to give notification of a disposition in the case of perishable collateral or collateral customarily sold on a recognized market (e.g., marketable securities).

Section 679.612, regarding timeliness of notification before disposition of collateral.

Subsection (1) provides that, subject to subsection (2), whether notification is reasonably timely is a question of fact. This generally means that the notification must be sent at a reasonable time in advance of the date of a public disposition or the date after which a private disposition is to be made.

The 10-day notice period in subsection (2) is intended to be a "safe harbor" and not a minimum requirement. To qualify for the "safe harbor" the notification must be sent after default. A notification also must be sent in a commercially reasonable manner.

Section 679.613, regarding contents and form of notification before disposition of collateral.

Subsection (1) provides a list of items that if contained in the notification of disposition, will be sufficient as a matter of law, unless the parties agree otherwise. Although a secured party may choose to include additional information concerning the transaction or the debtor's rights and obligations, no additional information is required unless the parties agree otherwise. A notification that lacks some of the information set forth in subsection (1) nevertheless may be sufficient if found to be reasonable by the trier of fact, under subsection (2). A properly completed sample form of notification in subsection (5) or in 679.614(3) is an example of a notification that would contain the information set forth in subsection (1). Under subsection (4), however, no particular phrasing of the notification is required.

Section 679.614, regarding contents and form of notification before disposition of collateral ; consumer-goods transaction.

Subsection (1) sets forth the information required for a reasonable notification in a consumer-goods transaction. A notification that lacks any of the information set forth in subsection (1) is insufficient as a matter of law.

Although subsection (2) provides that a particular phrasing of a notification is not required, subsection (3) specifies a safe-harbor form that, when properly completed, satisfies subsection (1). Subsections (4), (5), and (6) contain special rules applicable to erroneous and additional information. Under subsection (4), a notification in the safe-harbor form specified in subsection (3) is not rendered insufficient if it contains additional information at the end of the form. Subsection (5) provides that non-misleading errors in information contained in a notification are permitted if the safe-harbor form is used and if the errors are in information not required by subsection (1). Finally, if a notification is in a form other than the subsection (3) safe-harbor form, other law determines the effect of including in the notification information other than that required by subsection (1).

Section 679.615, regarding application of proceeds of disposition; liability for deficiency and right to surplus.

This section contains the rules governing application of proceeds and the debtor's liability for a deficiency following a disposition of collateral. Subsection (1) sets forth the basic order of application. The proceeds are applied first to the expenses of disposition, second to the obligation secured by the security interest that is being enforced, and third, in the specified circumstances, to interests that are subordinate to that security interest.

Subsections (1) and (4) also address the right of a consignor to receive proceeds of a disposition by a secured party whose interest is senior to that of the consignor. Subsection (1) requires the enforcing secured party to pay excess proceeds first to subordinate secured parties or lienholders whose interests are senior to that of a consignor and, finally, to a consignor. Inasmuch as a consignor is the owner of the collateral, secured parties and lienholders whose interests are junior to the consignor's interest will not be entitled to any proceeds. In like fashion, under subsection (4)(a) the debtor is not entitled to a surplus when the enforcing secured party is required to pay over proceeds to a consignor.

Subsection (3) addresses the application of noncash proceeds of a disposition, such as a note or lease.

Under subsection (3), the secured party is under no duty to apply the noncash proceeds (here, the chattel paper) or their value to the secured obligation unless its failure to do so would be commercially unreasonable.

4. Surplus and Deficiency. Subsection (4) deals with surplus and deficiency. It revises former 679.504(2) by imposing an explicit requirement that the secured party "pay" the debtor for any surplus, while retaining the secured party's duty to "account." Inasmuch as the debtor may not be an obligor, subsection (4) provides that the obligor (not the debtor) is liable for the deficiency.

The special rule governing surplus and deficiency when receivables have been sold likewise takes into account the distinction between a debtor and an obligor. Subsection (4) also addresses the situation in which a consignor has an interest that is subordinate to the security interest being enforced.

Subsection (6) provides a special method for calculating a deficiency or surplus when the secured party, a person related to the secured party, or a secondary obligor acquires the collateral at a foreclosure disposition.

Subsection (8) provides the secured party with a right to interplead with respect to the remaining proceeds and to require indemnity.

Section 679.616, regarding explanation of calculation of surplus or deficiency.

This section reflects the view that, in every consumer-goods transaction, the debtor or obligor is entitled to know the amount of a surplus or deficiency and the basis upon which the surplus or deficiency was calculated. Under subsection (2)(a), a secured party is obligated to provide this information (an "explanation," defined in subsection (1)(a)) no later than the time that it accounts for and pays a surplus or the time of its first written attempt to collect the deficiency. The obligor need not make a request for an accounting in order to receive an explanation. A secured party who does not attempt to collect a deficiency in writing or account for and pay a surplus has no obligation to send an explanation under subsection (2)(a) and, consequently, cannot be liable for noncompliance.

A debtor or secondary obligor need not wait until the secured party commences written collection efforts in order to receive an explanation of how a deficiency or surplus was calculated. Subsection (2)(b) obliges the secured party to send an explanation within 14 days after it receives a "request" (defined in subsection (1)(b)).

Subsection (3) contains the requirements for how a calculation of a surplus or deficiency must be explained in order to satisfy subsection (1)(a)(2). It gives a secured party some discretion concerning rebates of interest or credit service charges. The secured party may include these rebates in the aggregate amount of obligations secured, under subsection (3)(a), or may include them with other types of rebates and credits under subsection (3)(e). Rebates of interest or credit service charges are the only types of rebates for which this discretion is provided. If the secured party provides an explanation that includes rebates of pre-computed interest, its explanation must so indicate. The expenses and attorney's fees to be described pursuant to subsection (3)(d) are those relating to the most recent disposition, not those that may have been incurred in connection with earlier enforcement efforts and which have been resolved by the parties.

A secured party who fails to comply with subsection (2)(b) is liable for any loss caused plus $500. A secured party who fails to send an explanation under subsection (2)(a) is liable for any loss caused plus, if the noncompliance was "part of a pattern, or consistent with a practice of noncompliance," $500.

Section 679.617, regarding rights of transferee of collateral.

Subsection (1) sets forth the rights acquired by persons who qualify under subsection (2) transferees who act in good faith. Subsection (1) makes clear that the ownership interest of a person who bought the collateral subject to the security interest is terminated by a subsequent disposition under this Part.

Subsection (2) now contains a unitary standard that applies to transferees in both private and public dispositions--acting in good faith.

Subsection (3) specifies the consequences for a transferee who does not qualify for protection under subsections (1) and (2) (i.e., a transferee who does not act in good faith). The transferee takes subject to the rights of the debtor, the enforcing secured party, and other security interests or other liens.

Section 679.618, regarding rights and duties of certain secondary obligors.

This section, like former 679.504(5), does not constitute a general and comprehensive rule for allocating rights and duties upon assignment of a secured obligation. Rather, it applies only in situations involving a secondary obligor described in subsection (1).

Subsection (1)(a) applies when there has been an assignment of an obligation that is secured at the time it is assigned. Similarly, subsection (1)(c) applies only when the secondary obligor is subrogated to the secured party's rights with respect to collateral. Similarly, if the secured party disposes of some of the collateral and the secondary obligor thereafter discharges the remaining obligation, subsection (1) applies only with respect to rights and duties concerning the remaining collateral, and, under subsection (2), the subrogation is not a disposition of the remaining collateral.

Under subsection (1), a recourse party acquires rights and incurs obligations only "after" one of the specified circumstances occurs. This makes clear that when a successor assignee, transferee, or subrogee becomes obligated it does not assume any liability for earlier actions or inactions of the secured party whom it has succeeded unless it agrees to do so. Once the successor becomes obligated, however, it is responsible for complying with the secured party's duties thereafter.

Under subsection (b), the same event (assignment, transfer, or subrogation) that gives rise to rights to, and imposes obligations on, a successor relieves its predecessor of any further duties under this Article.

Section 679.619, regarding transfer of record or legal title.

Subsection (1) provides a list of conditions which dictate when a secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor.

Subsection (2) provides a simple mechanism for obtaining record or legal title, for use primarily when other law does not provide one. Subsection (2) contemplates a transfer of record or legal title to a third party, following a secured party's exercise of its disposition or acceptance remedies under this Part, as well as a transfer by a debtor to a secured party prior to the secured

party's exercise of those remedies. Under subsection (3), a transfer of record or legal title (under subsection (2) or under other law) to a secured party prior to the exercise of those remedies merely puts the secured party in a position to pass legal or record title to a transferee at foreclosure. A secured party who has obtained record or legal title retains its duties with respect to enforcement of its security interest, and the debtor retains its rights as well.

Section 679.620, regarding acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

Subsection (1) sets forth the conditions necessary to an effective acceptance of collateral in full or partial satisfaction of the secured obligation.

Subsection (1)(a) requires the debtor's consent. Under subsections (3)(a) and (3)(b), the debtor may consent by agreeing to the acceptance in writing after default. Subsection (c)(2) contains an alternative method by which to satisfy the debtor's-consent condition in subsection (1)(a). It follows the proposal-and-objection model found in former 679.505: The debtor consents if the secured party sends a proposal to the debtor and does not receive an objection within 30 days. Under subsection (3)(a), however, that silence is not deemed to be consent with respect to acceptances in partial satisfaction.

Subsection (1)(b) contains the second condition to the effectiveness of an acceptance under this section-the absence of a timely objection from a person holding a junior interest in the collateral or from a secondary obligor.

Subsections (1)(c) and (1)(d) contain special rules for transactions in which consumers are involved.

To ensure that the debtor cannot unilaterally cause an acceptance of collateral, subsection (2) provides that compliance with the conditions of subsection (1) is necessary but not sufficient to cause an acceptance of collateral. Rather, under subsection (2), acceptance does not occur unless, in addition, the secured party consents to the acceptance in an authenticated record or sends to the debtor a proposal.

This section does not impose any formalities or identify any steps that a secured party must take in order to accept collateral once the conditions of subsections (1) and (2) have been met.

Subsection (4) explains when an objection is timely and thus prevents an acceptance of collateral from taking effect.

Subsection (5) imposes an obligation on the secured party to dispose of consumer goods under certain circumstances. Subsection (6) explains when a disposition that is required under subsection (5) is timely. An effective acceptance of collateral cannot occur if subsection (5) requires a disposition unless the debtor waives this requirement pursuant to 679.624(2). Moreover, a secured party who takes possession of collateral and unreasonably delays disposition violates subsection (5), if applicable, and may also violate 679.610 or other provisions of this Part. Subsection (e) eliminates as superfluous the express statutory reference

to “conversion” found in former 679.505. Remedies available under other law, including conversion, remain available under this Article in appropriate cases.

Subsection (7) prohibits the secured party in consumer transactions from accepting collateral in partial satisfaction of the obligation it secures.

Section 679.621, regarding notification of proposal to accept collateral.

Subsection (1) specifies three classes of competing claimants to whom the secured party must send notification of its proposal: (i) those who notify the secured party that they claim an interest in the collateral, (ii) holders of certain security interests and liens who have filed against the debtor, and (iii) holders of certain security interests who have perfected by compliance with a statute (including a certificate-of-title statute), regulation, or treaty described in 679.3111(1). Subsection (2) also requires notification to any secondary obligor if the proposal is for acceptance in partial satisfaction.

Subsection (3) has been added to be consistent with s.679.611(6).

Section 679.622, regarding effect of acceptance of collateral.

Subsection (1) specifies the effect of an acceptance of collateral in full or partial satisfaction of the secured obligation.

Subsection (2) makes clear that subordinate interests are discharged under subsection (1) regardless of whether the secured party complies with this Article.

Section 679.623, regarding right to redeem collateral.

Under this section, as under former 679.506, the debtor or another secured party may redeem collateral as long as the secured party has not collected (679.607), disposed of or contracted for the disposition of (679.610), or accepted (679.620) the collateral. It extends the right of redemption to holders of nonconsensual liens.

Section 679.624, regarding waiver.

This section is a limited exception to 679.602, which generally prohibits waiver by debtors and obligors. It makes no provision for waiver of the rule prohibiting a secured party from buying at its own private disposition.

Section 679.625, regarding remedies for failure to comply with article.

Subsections (1) and (2) provide the basic remedies afforded to those aggrieved by a secured party’s failure to comply with this Article. Like all provisions that create liability, they are subject to 679.628, which should be read in conjunction with 679.605. Under subsection (1) an

aggrieved person may seek injunctive relief, and under subsection (2) the person may recover damages for losses caused by noncompliance.

3. Damages for Noncompliance with This Article. Subsection (2) sets forth the basic remedy for ;failure to comply with the requirements of this Article: a damage recovery in the amount of loss caused by the noncompliance. Subsection (3) identifies who may recover under subsection (2).

4. Minimum Damages in Consumer-Goods Transactions. Subsection (3)(b) provides a minimum, statutory, damage recovery for a debtor and secondary obligor in a consumer-goods transaction.

5. Supplemental Damages. Subsections (5) and (6) provide damages that supplement the recovery, if any, under subsection (2). Subsection (5) imposes an additional $500 liability upon a person who fails to comply with the provisions specified in that subsection, and subsection (6) imposes like damages on a person who, without reasonable excuse, fails to comply with a request for an accounting or a request regarding a list of collateral or statement of account under 679.210. However, under subsection (6), a person has a reasonable excuse for the failure if the person never claimed an interest in the collateral or obligations that were the subject of the request.

Subsection (7) limits the extent to which a secured party who fails to comply with a request regarding a list of collateral or statement of account may claim a security interest.

Section 679.626, regarding action in which deficiency or surplus is in issue.

The basic damage remedy under 679.625(2) is subject to the special rules in this section for transactions other than consumer transactions. This section addresses situations in which the amount of a deficiency or surplus is in issue, i.e., situations in which the secured party has collected, enforced, disposed of, or accepted the collateral. It contains special rules applicable to a determination of the amount of a deficiency or surplus.

Section 679.627, regarding determination of whether conduct was commercially reasonable.

This section, which provides for determining whether conduct was commercially reasonable, contains rules that assist in that determination and provides for advance approval in appropriate situations. However, none of the specific methods of disposition specified in subsection (2) is required or exclusive.

Section 679.628, regarding nonliability and limitation on liability of secured party; liability of secondary obligor.

2. Exculpatory Provisions. Subsections (1), (2), and (3) contain provisions providing for nonliability and a limitation or liability for secured parties. Without this group of provisions, a secured party could incur liability to unknown persons and under circumstances that would not allow the secured party to protect itself.

Subsection (4) excludes noncompliance with 679.616 entirely from the scope of statutory damage liability under 679625(3)(b).

Subsection (5) ensures that a secured party will incur statutory damages only once in connection with any one secured obligation.

Section 7. -- Creating a new Part VII of ch. 679, F.S., regarding transition rules for changes to ch. 679, F.S.

Section 679.701, establishes an effective date of July 1, 2001.

Section 679.702, regarding savings clause.

Subsection (1) contains the general rule that this Article applies to transactions, security interests, and other liens within its scope, even if the transaction or lien was entered into or created before the effective date. Thus, secured transactions entered into under former Article 9 must be terminated, completed, consummated, and enforced under this Article. Subsection (2) is an exception to the general rule. It applies to valid, pre-effective-date transactions and liens that were not governed by former Article 9 but would be governed by this Article if they had been entered into or created after this Article takes effect. Under subsection (2), these valid transactions, such as the creation of agricultural liens and security interests in commercial tort claims, retain their validity under this Article and may be terminated, completed, consummated, and enforced under this Article. However, these transactions also may be terminated, completed, consummated, and enforced by the law that otherwise would apply had this Article not taken effect.

Subsection (3) provides that this Article does not affect litigation pending on the effective date.

Section 679.703, regarding security interest perfected before effective date.

This section deals with security interests that are perfected under former Article 9 or other applicable law immediately before this Article takes effect. Subsection (1) provides that if the security interest would be a perfected security interest under this Article no further action need be taken for the security interest to be a perfected security interest.

Subsection (2) deals with security interests that are enforceable and perfected under former Article 9 or other applicable law immediately before this Article takes effect but do not satisfy the requirements for enforceability or perfection under this Article. Except as otherwise provided in 679.705, these security interests are perfected security interests for one year after the effective date. If the security interest satisfies the requirements for attachment and perfection within that period, the security interest remains perfected thereafter. If the security interest satisfies only the requirements for attachment within that period, the security interest becomes unperfected at the end of the one-year period.

Section 679.704, regarding security interest unperfected before effective date.

This section deals with security interests that are enforceable but unperfected under former Article 9 or other applicable law immediately before this Article takes effect. These security interests remain enforceable for one year after the effective date, and thereafter if the appropriate steps for attachment under this Article are taken before the one-year period expires. The security interest becomes a perfected security interest on the effective date if, at that time, the security interest satisfies the requirements for perfection under this Article. If the security interest does not satisfy the requirements for perfection until sometime thereafter, it becomes a perfected security interest at that later time.

Section 679.705, regarding effectiveness of action taken before effective date.

This section addresses primarily the situation in which the perfection step is taken under former Article 9 or other applicable law before the effective date of this Article, but the security interest does not attach until after that date.

Subsection (1) applies when the perfection step is a step other than the filing of a financing statement. If the step that would be a valid perfection step under former Article 9 or other law is taken before this Article takes effect, and if a security interest attaches within one year after this Article takes effect, then the security interest becomes a perfected security interest upon attachment. However, the security interest becomes unperfected one year after the effective date unless the requirements for attachment and perfection under this Article are satisfied within that period.

Subsection (2) deals with financing statements that were filed under former Article 9 and which would not have perfected a security interest under the former Article, but which would perfect a security interest under this Article. Under subsection (2), such a financing statement is effective to perfect a security interest to the extent it complies with this Article. Subsection (2) applies regardless of the reason for the filing.

Subsection (3) provides that a financing statement filed in the proper jurisdiction under former 679.103 remains effective for all purposes, despite the fact that this Article would require filing of a financing statement in a different jurisdiction or in a different office in the same jurisdiction. Subsection (3) provides that a financing statement filed in the jurisdiction determined by former Section 9-103 becomes ineffective at the earlier of the time it would become ineffective under the law of that jurisdiction or June 30, 2006.

A financing statement filed before the effective date of this Article may be continued only by filing in the State and office designated by this Article. This result is accomplished in the following manner: Subsection (4) indicates that, as a general matter, a continuation statement filed after the effective date of this Article does not continue the effectiveness of a financing statement filed under the law designated by former 679.103. Instead, an initial financing statement must be filed under 679.706. The second sentence of subsection (4) contains an exception to the general rule. It provides that a continuation statement is effective to continue the effectiveness of a financing statement filed before this Article takes effect if this Article prescribes not only the same jurisdiction but also the same filing office.

In some cases, this Article reclassifies collateral covered by a financing statement filed under former Article 9. For example, collateral consisting of the right to payment for real property sold would be a "general intangible" under the former Article but an "account" under this Article. To continue perfection under those circumstances, a continuation statement must comply with the normal requirements for a continuation statement. See 679.515. In addition, the pre-effective-date financing statement and continuation statement, taken together, must satisfy the requirements of this Article concerning the sufficiency of the debtor's name, secured party's name, and indication of collateral.

Section 679.706, regarding when initial financing statement suffices to continue effectiveness of financing statement.

This section deals with continuing the effectiveness of financing statements that are filed in the proper State and office under former Article 9, but which would be filed in the wrong State or in the wrong office of the proper State under this Article. This section provides the means by which the effectiveness of such a financing statement can be continued if this Article governs perfection under the applicable choice-of-law rule: filing an initial financing statement in the office specified by 679.501.

Section 679.707, regarding amendment or pre-effective date financing statement.

This section addresses post-effective-date amendments to pre-effective-date financing statements.

Determining how to amend a pre-effective-date financing statement requires one first to determine the jurisdiction whose law applies. Subsection (2) provides that, as a general matter, post-effective-date amendments to pre-effective-date financing statements are effective only if they are accomplished in accordance with the substantive (or local) law of the jurisdiction governing perfection under Part 3 of this Article. However, under certain circumstances, the effectiveness of a financing statement may be terminated in accordance with the substantive law of the jurisdiction in which the financing statement is filed.

Subsection (3) provides three methods of effectuating a post-effective-date amendment to a pre-effective-date financing statement.

Subsection (4) refers to the two methods by which a secured party may continue the effectiveness of a pre-effective-date financing statement under this Part.

Section 679.708, regarding persons entitled to file initial financing statement or continuation statement.

This section permits a secured party to file an initial financing statement or continuation statement necessary under this Part to continue the effectiveness of a financing statement filed

before this Article takes effect or to perfect or otherwise continue the perfection of a security interest. Because a filing described in this section typically operates to continue the effectiveness of a financing statement whose filing the debtor already has authorized, this section does not require authorization from the debtor.

Section 679.709, regarding priority.

Subsection (1) provides that, ordinarily, this Article determines the priority of conflicting claims to collateral. However, when the relative priorities of the claims were established before this Article takes effect, former Article 9 governs.

If this Article determines priority, subsection (2) may apply. It deals with the case in which a filing that occurs before the effective date of this Article would be ineffective to perfect a security interest under former Article 9 but effective under this Article. 679.322(1), the priority of a security interest that attaches after this Article takes effect and is perfected in this manner dates from the time this Article takes effect.

Subsection (2) does not apply to conflicting security interests each of which is perfected by a pre-effective-date filing that was not effective under former Article 9 but is effective under this Article.

Section 8. -- Amending s. 671.105, F.S., regarding territorial application of the uniform commercial code.

Sections 679.301 through 679.307 should be consulted as to the rules for perfection of security interests and agricultural liens, the effect of perfection and non-perfection, and priority.

Section 9. -- Amending s. 671.201, F.S., to provide conforming definitions applicable to all of the uniform commercial code.

Section 10. – Amending s.672.103, F.S., changing a cross-reference to correspond to changes made by this bill.

Section 11. -- Amending s. 672.210, F.S., regarding delegation of performance and assignment of rights.

Section 672.210 concerns delegation of performance and the assignment of rights.

Subsection (2) is subject to 679.4161, which makes rights to payments for goods sold, whether or not earned, freely alienable notwithstanding a contrary agreement or rule of law.

A new subsection (3)provides:

The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment perfection, and enforcement of the security interest remain effective, but the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer. A court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

Section 12. -- Amending s. 672.326, F.S., regarding sale on approval and rights of creditors.

672.326 concerns sale on approval and sale or return; as well as the rights of creditors. Mirror changes are made to 2-326 and s. 672.326.

Both a 'sale on approval' and a 'sale or return' should be distinguished from other types of transactions with which they have frequently been confused. A 'sale on approval' deals with a contract under which the seller undertakes a risk in order to satisfy its prospective buyer with the appearance or performance of the goods that are sold. The goods are delivered, but they remain the property of the seller until the buyer accepts them. A 'sale or return' on the other hand, typically is a sale to a merchant whose unwillingness to but is overcome only by the seller's engagement to take back the goods in lieu of payment if they remain unsold. A sale or return is a present sale of goods which may be undone at the buyer's option. Accordingly, subsection (2) provides that goods delivered on approval are not subject to the prospective buyer's creditors until acceptance, and goods delivered in a sale or return are subject to the buyer's creditors while in the buyer's possession.

Section 13. -- Amending s. 672.502, F.S., regarding buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.

This section governs additional rights to the buyer as a result of identification of the goods to the contract in the manner provided in 672.501. The buyer is given a right to recover the goods conditioned upon making and keeping a good tender of any unpaid portion of the price, in two limited circumstances: (1) the buyer may recover for personal and similar items if the seller repudiates the contract or fails to deliver the goods; (2) the buyer may recover the goods if the seller becomes insolvent within 10 days after the seller receives the first installment on their price. The buyer's right to recover the goods under this section is an exception to the usual rule.

Under subsection (2), the buyer's right to recover consumer goods under subsection (1)(a) vests upon acquisition of a special property, which occurs upon identification of the goods to the contract.

Section 14. -- Amending s. 672.716, F.S., regarding buyer's right to specific performance or replevin.

Subsection (3) is amended to provide that, in the case if goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

Section 15. -- Amending s. 674.2101, F.S., changing a cross-reference to correspond to changes made by this bill.

Section 16. -- Creating s. 675.1181, regarding security interest of issuer of nominated person.

This section gives the issuer of a letter of credit or a nominated person there under an automatic perfected security interest in a "document". The security interest only arises of the document is presented to the issuer or nominated person under the letter of credit and only to the extent of the value that is given. Subsection (2) contains special rules governing the security interest arising under this Section. In all other respects, a security interest arising under this section is subject to Article 9.

Subsection (2)(a) makes a security agreement unnecessary to the creation of a security interest under this section. Under subsection (2)(b), a security interest arising under this section is perfected if the document is presented in a medium other than a written or tangible one.

Under subsection (2)(c), if the document (i) is in a written or tangible medium, (ii) is not a certified security, and (iii) is not in the debtor's possession, the security interest is perfected and had priority over a conflicting security interest.

Section 17. -- Amending s. 677.503, F.S., changing a cross-reference to correspond to changes made by this bill.

Section 18. -- Amending s. 678.1031, F.S., changing a cross-reference to correspond to changes made by this bill.

Section 19. -- Amending s. 678.1061, F.S., regarding control.

Subsection (4) is the definition of "control" and a third type of control is acknowledged: (c) Another person has control of the security entitlement on behalf of the purchaser, or, having previously acquired control of the security entitlement, acknowledges that the person had control on behalf of the purchaser.

Subsection (6) contains corrected cross-references.

Section 20. -- Amending s. 678.1101, F.S., regarding applicability and choice of law.

Section 678.1101 (5), F.S., address the applicability of and choice of laws. The portion of the section dealing with "securities intermediary's jurisdiction" has been revised in both documents with substantially similar language. This subsection (5) sets out a sequential series of tests to facilitate identification of the proper body of law. This section permits specification of the securities intermediary's jurisdiction by agreement. In the absence of such a specification, the

law chosen by the parties to govern the securities account determines the securities intermediary's jurisdiction. Remaining paragraphs contain additional default rules for determining the securities intermediary's jurisdiction.

Section 21. -- Amending s. 678.3011, F.S., regarding delivery.

Section 678.3011 concern delivery of a security to a purchaser. Delivery occurs when: (1) the purchaser acquires possession of a security certificate; (2) another person, other than the securities intermediary, either acquires possession on behalf of the purchaser or acknowledges that it holds for the purchaser; or (3) the securities intermediary acquires possession on behalf of the purchaser if the certificate is in registered form. New language provides that delivery in (3) only occurs if the certificate is in registered form and is registered in the name of the purchaser, payable to the order of the purchaser, or specially indorsed to the purchaser by an effective endorsement and has not been endorsed to the securities intermediary or in blank.

With this change, delivery is a method of perfecting a security interest in a certificated security.

Section 22. -- Amending s. 678.3021, F.S., regarding rights of purchaser.

The amending language provides that a purchaser of a certificated of uncertificated security acquires all rights that the transferor had or had power to transfer. Although this section provides that a purchaser acquires a property interest in a certificated or uncertificated security, it does not state that a person can acquire an interest in a security only by purchase. Article 8 also is not a comprehensive codification of all of the law governing the creation or transfer of interests in securities by purchase. While a grant of a security interest is a transfer of a property interest, the formal steps necessary to effectuate such a transfer are governed by Article 9, not by Article 8. Under the Article 9 rules, a security interest in a certificated or uncertificated security can be created by execution of a security agreement under 679.2031 and can be perfected by filing.

Section 23. -- Amending s. 678.5101, F.S., regarding rights of purchaser of security entitlement.

This section addresses the rights of purchasers of security entitlement from entitlement holder in cases not otherwise governed by the priority rules in Article 9. Subsection 3 specifies a priority rule for cases where an entitlement holder transfers conflicting interests in the same security of different purchasers. It follows the same principle as the Article 9 priority rule for investment property, that is, control trumps non-control. The section is intended primarily for disputes over conflicting claims arising out of repurchase agreement transactions that are not covered by the other rules set out in Articles 8 and 9.

Section 24. -- Amending s. 680.1031, F.S., changing cross-references to correspond to changes made by this bill.

Section 25. -- Amending s. 680.303, F.S., regarding lease contracts.

Section 680.303, F.S. makes certain conforming references and deletes a number of provisions which related to prohibited lease agreements.

Section 26. -- Amending s. 680.307, F.S., regarding priority of liens.

Section 680.307, F.S. is entitled "Priority of liens arising by attachment or levy on, security interests in, and other claims to goods." Current language is struck in part to provide the general rule that a lessee takes a leasehold interest subject to a security interest held by a creditor or lessor.

Section 27. -- Amending s. 680.309, F.S., regarding lessor and lessee rights in fixtures.

Section 680.309's definition of a "fixture filing" is amended to change the conforming requirements from s. 679.402 (5) to s. 679.5021 (1) and (2).

Section 28. -- Provides that this bill takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill should have an impact on private entities that use Article 9 as the changes contained in the bill allow for the technological advances that have occurred since Article 9 was last revised 29 years ago in 1972. Additionally, this revised version of Article 9 has been adopted by over 29 states and is currently set to be adopted by 18 others this year. This bill will allow Florida users of Article 9 the same uniformity enjoyed by others.

C. Government Sector Impact:

The Florida Secretary of State estimates that this bill will have minimal fiscal impact. There is no apparent fiscal impact to local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.