

By Senator Campbell

33-129A-01

1 A bill to be entitled
2 An act relating to the Uniform Commercial Code;
3 revising ch. 679, F.S., relating to secured
4 transactions; creating ss. 679.1011, 679.1021,
5 679.1031, 679.1041, 679.1051, 679.1061,
6 679.1071, 679.1081, 679.1091, 679.1101, F.S.;
7 providing a short title, definitions, and
8 general concepts; creating ss. 679.2011,
9 679.2021, 679.2031, 679.2041, 679.2051,
10 679.2061, 679.2071, 679.2081, 679.209, 679.210,
11 F.S.; providing for the effectiveness and
12 attachment of security agreements; prescribing
13 rights and duties of secured parties; creating
14 ss. 679.3011, 679.3021, 679.3031, 679.3041,
15 679.3051, 679.3061, 679.3071, 679.3081,
16 679.091, 679.3101, 679.3111, 679.3121,
17 679.3131, 679.3141, 679.3151, 679.3161,
18 679.3171, 679.3181, 679.319, 679.320, 679.321,
19 679.322, 679.323, 679.324, 679.325, 679.326,
20 679.327, 679.328, 679.329, 679.330, 679.331,
21 679.332, 679.333, 679.334, 679.335, 679.336,
22 679.337, 679.338, 679.340, 679.341, 679.342,
23 F.S.; providing for perfection and priority of
24 security interests; creating ss. 679.40111,
25 679.4021, 679.4031, 679.4041, 679.4051,
26 679.4061, 679.4071, 679.4081, 679.409, F.S.;
27 prescribing rights of third parties; creating
28 ss. 679.5011, 679.5021, 679.5031, 679.5041,
29 679.5051, 679.5061, 679.5071, 679.508, 679.509,
30 679.510, 679.511, 679.512, 679.513, 679.524,
31 679.515, 679.516, 679.517, 679.518, 679.519,

1 679.520, 679.521, 679.522, 679.523, 679.524,
2 679.525, 679.526, 679.527, F.S.; prescribing
3 filing procedures for perfection of a security
4 interest; providing forms; providing duties and
5 operation of filing office; creating ss.
6 679.601, 679.602, 679.603, 679.604, 679.605,
7 679.606, 679.607, 679.608, 679.609, 679.610,
8 679.611, 679.612, 679.613, 679.614, 679.615,
9 679.616, 679.617, 679.618, 679.619, 679.620,
10 679.621, 679.622, 679.623, 679.624, 679.625,
11 679.626, 679.627, F.S.; prescribing procedures
12 for default and enforcement of security
13 interests; providing for forms; creating ss.
14 679.701, 679.702, 679.703, 679.704, 679.705,
15 679.706, 679.707, 679.708, 679.709, F.S.;
16 providing transitional effective dates and
17 savings clause for perfected and unperfected
18 security interests, specified actions, and
19 financing statements; specifying priority of
20 conflicting claims; amending s. 671.105, F.S.;
21 specifying the precedence of law governing the
22 perfection, the effect of perfection or
23 nonperfection, and the priority of security
24 interests and agricultural liens; amending s.
25 671.201, F.S.; revising definitions used in the
26 Uniform Commercial Code; amending s. 672.103,
27 F.S.; conforming a cross-reference; amending s.
28 672.210, F.S.; providing that the creation,
29 attachment, perfection, or enforcement of a
30 security interest in the seller's interest
31 under a contract is not a transfer that

1 materially affects the buyer unless the
2 enforcement actually results in a delegation of
3 material performance of the seller; amending s.
4 672.326, F.S.; eliminating provisions relating
5 to consignment sales; amending s. 672.502,
6 F.S.; modifying buyers' rights to goods on a
7 seller's repudiation, failure to deliver, or
8 insolvency; amending s. 672.716, F.S.;
9 providing that, for goods bought for personal,
10 family, or household purposes, the buyer's
11 right of replevin vests upon acquisition of a
12 special property; amending s. 674.2101, F.S.;
13 conforming a cross-reference; creating s.
14 675.1181, F.S.; specifying conditions under
15 which an issuer or nominated person has a
16 security interest in a document presented under
17 a letter of credit; amending ss. 677.503,
18 678.1031, F.S.; conforming cross-references;
19 amending s. 678.1061, F.S.; specifying a
20 condition under which a purchaser has control
21 of a security entitlement; amending s.
22 678.1101, F.S.; modifying rules that determine
23 a securities intermediary's jurisdiction;
24 amending s. 678.3011, F.S.; providing for
25 delivery of a certificated security to a
26 purchaser; amending s. 678.3021, F.S.;
27 eliminating a requirement that a purchaser of a
28 certificated or uncertificated security receive
29 delivery prior to acquiring all rights in the
30 security; amending s. 678.5101, F.S.;
31 prescribing rights of a purchaser of a security

1 entitlement from an entitlement holder;
2 amending ss. 680.1031, 680.303, 680.307,
3 680.309, F.S.; conforming cross-references;
4 repealing ss. 679.101, 679.102, 679.103,
5 679.104, 679.105, 679.106, 679.107, 679.108,
6 679.109, 679.110, 679.112, 679.113, 679.114,
7 679.115, 679.116, F.S., relating to the short
8 title, applicability, and definitions of ch.
9 679, F.S.; repealing ss. 679.201, 679.202,
10 679.203, 679.204, 679.205, 679.206, 679.207,
11 679.208, F.S., relating to the validity of
12 security agreements and the rights of parties
13 to such agreements; repealing ss. 679.301,
14 679.302, 679.303, 679.304, 679.305, 679.306,
15 679.307, 679.308, 679.309, 679.310, 679.311,
16 679.312, 679.313, 679.314, 679.315, 679.316,
17 679.317, 679.318, F.S., relating to rights of
18 third parties, perfected and unperfected
19 security interests, and rules of priority;
20 repealing ss. 679.401, 679.4011, 679.402,
21 679.403, 679.404, 679.405, 679.406, 679.407,
22 679.408, F.S., relating to filing of security
23 interests; repealing ss. 679.501, 679.502,
24 679.503, 679.504, 679.505, 679.506, 679.507,
25 F.S., relating to rights of the parties upon
26 default under a security agreement; providing
27 an effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Part I of chapter 679, Florida Statutes,
2 consisting of sections 679.101, 679.102, 679.103, 679.104,
3 679.105, 679.106, 679.107, 679.108, 679.109, 679.110, 679.112,
4 679.113, 679.114, 679.115, and 679.116, Florida Statutes, is
5 repealed and a new part I of that chapter, consisting of
6 sections 679.1011, 679.1021, 679.1031, 679.1041, 679.1051,
7 679.1061, 679.1071, 679.1081, 679.1091, and 679.1101, Florida
8 Statutes, is created to read:

9 PART I

10 GENERAL PROVISIONS

11 679.1011 Short title.--This chapter may be cited as
12 Uniform Commercial Code-Secured Transactions.

13 679.1021 Definitions and index of definitions.--

14 (1) In this chapter, the term:

15 (a) "Accession" means goods that are physically united
16 with other goods in such a manner that the identity of the
17 original goods is not lost.

18 (b) "Account," except as used in "account for," means
19 a right to payment of a monetary obligation, whether or not
20 earned by performance, for property that has been or is to be
21 sold, leased, licensed, assigned, or otherwise disposed of;
22 for services rendered or to be rendered; for a policy of
23 insurance issued or to be issued; for a secondary obligation
24 incurred or to be incurred; for energy provided or to be
25 provided; for the use or hire of a vessel under a charter or
26 other contract; arising out of the use of a credit or charge
27 card or information contained on or for use with the card; or
28 as winnings in a lottery or other game of chance operated or
29 sponsored by a state, governmental unit of a state, or person
30 licensed or authorized to operate the game by a state or
31 governmental unit of a state. The term includes

1 health-care-insurance receivables. The term does not include
2 rights to payment evidenced by chattel paper or an instrument;
3 commercial tort claims; deposit accounts; investment property;
4 letter-of-credit rights or letters of credit; or rights to
5 payment for money or funds advanced or sold, other than rights
6 arising out of the use of a credit or charge card or
7 information contained on or for use with the card.

8 (c) "Account debtor" means a person obligated on an
9 account, chattel paper, or general intangible. The term does
10 not include persons obligated to pay a negotiable instrument,
11 even if the instrument constitutes part of chattel paper.

12 (d) "Accounting," except as used in the term
13 "accounting for," means a record:

- 14 1. Authenticated by a secured party;
15 2. Indicating the aggregate unpaid secured obligations
16 as of a date not more than 35 days earlier or 35 days later
17 than the date of the record; and
18 3. Identifying the components of the obligations in
19 reasonable detail.

20 (e) "Agricultural lien" means an interest, other than
21 a security interest, in farm products:

- 22 1. Which secures payment or performance of an
23 obligation for:
24 a. Goods or services furnished in connection with a
25 debtor's farming operation; or
26 b. Rent on real property leased by a debtor in
27 connection with its farming operation;
28 2. Which is created by statute in favor of a person
29 that:

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1 a. In the ordinary course of its business furnished
2 goods or services to a debtor in connection with a debtor's
3 farming operation; or

4 b. Leased real property to a debtor in connection with
5 the debtor's farming operation; and

6 3. Whose effectiveness does not depend on the person's
7 possession of the personal property.

8 (f) "As-extracted collateral" means:

9 1. Oil, gas, or other minerals that are subject to a
10 security interest that:

11 a. Is created by a debtor having an interest in the
12 minerals before extraction; and

13 b. Attaches to the minerals as extracted; or

14 2. Accounts arising out of the sale at the wellhead or
15 minehead of oil, gas, or other minerals in which the debtor
16 had an interest before extraction.

17 (g) "Authenticate" means:

18 1. To sign; or

19 2. To execute or otherwise adopt a symbol, or encrypt
20 or similarly process a record in whole or in part, with the
21 present intent of the authenticating person to identify the
22 person and adopt or accept a record.

23 (h) "Bank" means an organization that is engaged in
24 the business of banking. The term includes savings banks,
25 savings and loan associations, credit unions, and trust
26 companies.

27 (i) "Cash proceeds" means proceeds that are money,
28 checks, deposit accounts, or the like.

29 (j) "Certificate of title" means a certificate of
30 title with respect to which a statute provides for the
31 security interest in question to be indicated on the

1 certificate as a condition or result of the security
2 interest's obtaining priority over the rights of a lien
3 creditor with respect to the collateral.

4 (k) "Chattel paper" means a record or records that
5 evidence both a monetary obligation and a security interest in
6 specific goods, a security interest in specific goods and
7 software used in the goods, a security interest in specific
8 goods and license of software used in the goods, a lease of
9 specific goods, or a lease of specific goods and license of
10 software used in the goods. In this paragraph, "monetary
11 obligation" means a monetary obligation secured by the goods
12 or owed under a lease of the goods and includes a monetary
13 obligation with respect to software used in the goods. The
14 term does not include charters or other contracts involving
15 the use or hire of a vessel or records that evidence a right
16 to payment arising out of the use of a credit or charge card
17 or information contained on or for use with the card. If a
18 transaction is evidenced by records that include an instrument
19 or series of instruments, the group of records taken together
20 constitutes chattel paper.

21 (l) "Collateral" means the property subject to a
22 security interest or agricultural lien. The term includes:

- 23 1. Proceeds to which a security interest attaches;
24 2. Accounts, chattel paper, payment intangibles, and
25 promissory notes that have been sold; and
26 3. Goods that are the subject of a consignment.

27 (m) "Commercial tort claim" means a claim arising in
28 tort with respect to which:

- 29 1. The claimant is an organization; or
30 2. The claimant is an individual and the claim:

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1 a. Arose in the course of the claimant's business or
2 profession; and

3 b. Does not include damages arising out of personal
4 injury to or the death of an individual.

5 (n) "Commodity account" means an account maintained by
6 a commodity intermediary in which a commodity contract is
7 carried for a commodity customer.

8 (o) "Commodity contract" means a commodity futures
9 contract, an option on a commodity futures contract, a
10 commodity option, or another contract if the contract or
11 option is:

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

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

18 (p) "Commodity customer" means a person for which a
19 commodity intermediary carries a commodity contract on its
20 books.

21 (q) "Commodity intermediary" means a person that:

22 1. Is registered as a futures commission merchant
23 under federal commodities law; or

24 2. In the ordinary course of its business provides
25 clearance or settlement services for a board of trade that has
26 been designated as a contract market pursuant to federal
27 commodities law.

28 (r) "Communicate" means:

29 1. To send a written or other tangible record;

30 2. To transmit a record by any means agreed upon by
31 the persons sending and receiving the record; or

1 3. In the case of transmission of a record to or by a
2 filing office, to transmit a record by any means prescribed by
3 filing-office rule.

4 (s) "Consignee" means a merchant to which goods are
5 delivered in a consignment.

6 (t) "Consignment" means a transaction, regardless of
7 its form, in which a person delivers goods to a merchant for
8 the purpose of sale and:

9 1. The merchant:

10 a. Deals in goods of that kind under a name other than
11 the name of the person making delivery;

12 b. Is not an auctioneer; and

13 c. Is not generally known by its creditors to be
14 substantially engaged in selling the goods of others;

15 2. With respect to each delivery, the aggregate value
16 of the goods is \$1,000 or more at the time of delivery;

17 3. The goods are not consumer goods immediately before
18 delivery; and

19 4. The transaction does not create a security interest
20 that secures an obligation.

21 (u) "Consignor" means a person that delivers goods to
22 a consignee in a consignment.

23 (v) "Consumer debtor" means a debtor in a consumer
24 transaction.

25 (w) "Consumer goods" means goods that are used or
26 bought for use primarily for personal, family, or household
27 purposes.

28 (x) "Consumer-goods transaction" means a consumer
29 transaction in which:

30 1. An individual incurs an obligation primarily for
31 personal, family, or household purposes; and

1 2. A security interest in consumer goods secures the
2 obligation.

3 (y) "Consumer obligor" means an obligor who is an
4 individual and who incurred the obligation as part of a
5 transaction entered into primarily for personal, family, or
6 household purposes.

7 (z) "Consumer transaction" means a transaction in
8 which an individual incurs an obligation primarily for
9 personal, family, or household purposes; a security interest
10 secures the obligation; and, the collateral is held or
11 acquired primarily for personal, family, or household
12 purposes. The term includes consumer-goods transactions.

13 (aa) "Continuation statement" means an amendment of a
14 financing statement which:

15 1. Identifies, by its file number, the initial
16 financing statement to which it relates; and

17 2. Indicates that it is a continuation statement for,
18 or that it is filed to continue the effectiveness of, the
19 identified financing statement.

20 (bb) "Debtor" means:

21 1. A person having an interest, other than a security
22 interest or other lien, in the collateral, whether or not the
23 person is an obligor;

24 2. A seller of accounts, chattel paper, payment
25 intangibles, or promissory notes; or

26 3. A consignee.

27 (cc) "Deposit account" means a demand, time, savings,
28 passbook, or similar account maintained with a bank. The term
29 does not include investment property or accounts evidenced by
30 an instrument.

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1 (dd) "Document" means a document of title or a receipt
2 of the type described in s. 677.201(2).

3 (ee) "Electronic chattel paper" means chattel paper
4 evidenced by a record or records consisting of information
5 stored in an electronic medium.

6 (ff) "Encumbrance" means a right, other than an
7 ownership interest, in real property. The term includes
8 mortgages and other liens on real property.

9 (gg) "Equipment" means goods other than inventory,
10 farm products, or consumer goods.

11 (hh) "Farm products" means goods, other than standing
12 timber, with respect to which the debtor is engaged in a
13 farming operation and which are:

14 1. Crops grown, growing, or to be grown, including:

15 a. Crops produced on trees, vines, and bushes; and

16 b. Aquatic goods produced in aquacultural operations;

17 2. Livestock, born or unborn, including aquatic goods
18 produced in aquacultural operations;

19 3. Supplies used or produced in a farming operation;

20 or

21 4. Products of crops or livestock in their
22 unmanufactured states.

23 (ii) "Farming operation" means raising, cultivating,
24 propagating, fattening, grazing, or any other farming,
25 livestock, or aquacultural operation.

26 (jj) "File number" means the number assigned to an
27 initial financing statement pursuant to s. 679.519(1).

28 (kk) "Filing office" means an office designated in
29 section 679.5011 as the place to file a financing statement.

30 (ll) "Filing-office rule" means a rule adopted
31 pursuant to s. 679.526.

1 (mm) "Financing statement" means a record or records
2 composed of an initial financing statement and any filed
3 record relating to the initial financing statement.

4 (nn) "Fixture filing" means the filing of a financing
5 statement covering goods that are or are to become fixtures
6 and satisfying s. 679.502(1) and (2). The term includes the
7 filing of a financing statement covering goods of a
8 transmitting utility which are or are to become fixtures.

9 (oo) "Fixtures" means goods that have become so
10 related to particular real property that an interest in them
11 arises under real property law.

12 (pp) "General intangible" means any personal property,
13 including things in action, other than accounts, chattel
14 paper, commercial tort claims, deposit accounts, documents,
15 goods, instruments, investment property, letter-of-credit
16 rights, letters of credit, money, and oil, gas, or other
17 minerals before extraction. The term includes payment
18 intangibles and software.

19 (qq) "Good faith" means honesty in fact and the
20 observance of reasonable commercial standards of fair dealing.

21 (rr) "Goods" means all things that are movable when a
22 security interest attaches. The term includes fixtures;
23 standing timber that is to be cut and removed under a
24 conveyance or contract for sale; the unborn young of animals;
25 crops grown, growing, or to be grown, even if the crops are
26 produced on trees, vines, or bushes; and manufactured homes.
27 The term also includes a computer program embedded in goods
28 and any supporting information provided in connection with a
29 transaction relating to the program if the program is
30 associated with the goods in such a manner that it customarily
31 is considered part of the goods, or by becoming the owner of

1 the goods, a person acquires a right to use the program in
2 connection with the goods. The term does not include a
3 computer program embedded in goods that consist solely of the
4 medium in which the program is embedded. The term also does
5 not include accounts, chattel paper, commercial tort claims,
6 deposit accounts, documents, general intangibles, instruments,
7 investment property, letter-of-credit rights, letters of
8 credit, money, or oil, gas, or other minerals before
9 extraction.

10 (ss) "Governmental unit" means a subdivision, agency,
11 department, county, parish, municipality, or other unit of the
12 government of the United States, a state, or a foreign
13 country. The term includes an organization having a separate
14 corporate existence if the organization is eligible to issue
15 debt on which interest is exempt from income taxation under
16 the laws of the United States.

17 (tt) "Health-care-insurance receivable" means an
18 interest in or claim under a policy of insurance which is a
19 right to payment of a monetary obligation for health-care
20 goods or services provided.

21 (uu) "Instrument" means a negotiable instrument or any
22 other writing that evidences a right to the payment of a
23 monetary obligation, is not itself a security agreement or
24 lease, and is of a type that in the ordinary course of
25 business is transferred by delivery with any necessary
26 indorsement or assignment. The term does not include
27 investment property, letters of credit, or writings that
28 evidence a right to payment arising out of the use of a credit
29 or charge card or information contained on or for use with the
30 card.

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1 (vv) "Inventory" means goods, other than farm
2 products, which:

3 1. Are leased by a person as lessor;

4 2. Are held by a person for sale or lease or to be
5 furnished under a contract of service;

6 3. Are furnished by a person under a contract of
7 service; or

8 4. Consist of raw materials, work in process, or
9 materials used or consumed in a business.

10 (ww) "Investment property" means a security, whether
11 certificated or uncertificated, security entitlement,
12 securities account, commodity contract, or commodity account.

13 (xx) "Jurisdiction of organization," with respect to a
14 registered organization, means the jurisdiction under whose
15 law the organization is organized.

16 (yy) "Letter-of-credit right" means a right to payment
17 or performance under a letter of credit, whether or not the
18 beneficiary has demanded or is at the time entitled to demand
19 payment or performance. The term does not include the right
20 of a beneficiary to demand payment or performance under a
21 letter of credit.

22 (zz) "Lien creditor" means:

23 1. A creditor that has acquired a lien on the property
24 involved by attachment, levy, or the like;

25 2. An assignee for benefit of creditors from the time
26 of assignment;

27 3. A trustee in bankruptcy from the date of the filing
28 of the petition; or

29 4. A receiver in equity from the time of appointment.

30 (aaa) "Manufactured home" means a structure,
31 transportable in one or more sections, which, in the traveling

1 mode, is eight body feet or more in width or 40 body feet or
2 more in length, or, when erected on site, is 320 or more
3 square feet, and which is built on a permanent chassis and
4 designed to be used as a dwelling with or without a permanent
5 foundation when connected to the required utilities, and
6 includes the plumbing, heating, air-conditioning, and
7 electrical systems contained therein. The term includes any
8 structure that meets all of the requirements of this paragraph
9 except the size requirements and with respect to which the
10 manufacturer voluntarily files a certification required by the
11 United States Secretary of Housing and Urban Development and
12 complies with the standards established under Title 42 of the
13 United States Code.

14 (bbb) "Manufactured-home transaction" means a secured
15 transaction:

16 1. That creates a purchase-money security interest in
17 a manufactured home, other than a manufactured home held as
18 inventory; or

19 2. In which a manufactured home, other than a
20 manufactured home held as inventory, is the primary
21 collateral.

22 (ccc) "Mortgage" means a consensual interest in real
23 property, including fixtures, which secures payment or
24 performance of an obligation, and any interest as defined in
25 s. 697.01.

26 (ddd) "New debtor" means a person that becomes bound
27 as debtor under s. 679.2031(4) by a security agreement
28 previously entered into by another person.

29 (eee) "New value" means money; money's worth in
30 property, services, or new credit; or release by a transferee
31 of an interest in property previously transferred to the

1 transferee. The term does not include an obligation
2 substituted for another obligation.

3 (fff) "Noncash proceeds" means proceeds other than
4 cash proceeds.

5 (ggg) "Obligor" means a person who, with respect to an
6 obligation secured by a security interest in or an
7 agricultural lien on the collateral, owes payment or other
8 performance of the obligation, has provided property other
9 than the collateral to secure payment or other performance of
10 the obligation, or is otherwise accountable in whole or in
11 part for payment or other performance of the obligation. The
12 term does not include issuers or nominated persons under a
13 letter of credit.

14 (hhh) "Original debtor," except as used in s.
15 679.3101(3), means a person that, as debtor, entered into a
16 security agreement to which a new debtor has become bound
17 under s. 679.2031(4).

18 (iii) "Payment intangible" means a general intangible
19 under which the account debtor's principal obligation is a
20 monetary obligation.

21 (jjj) "Person related to," with respect to an
22 individual, means:

- 23 1. The spouse of the individual;
24 2. A brother, brother-in-law, sister, or sister-in-law
25 of the individual;
26 3. An ancestor or lineal descendant of the individual
27 or the individual's spouse; or
28 4. Any other relative, by blood or marriage, of the
29 individual or the individual's spouse who shares the same home
30 with the individual.

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1 (kkk) "Person related to," with respect to an
2 organization, means:

3 1. A person directly or indirectly controlling,
4 controlled by, or under common control with the organization;

5 2. An officer or director of, or a person performing
6 similar functions with respect to, the organization;

7 3. An officer or director of, or a person performing
8 similar functions with respect to, a person described in
9 subparagraph 1.;

10 4. The spouse of an individual described in
11 subparagraph 1., subparagraph 2., or subparagraph 3.; or

12 5. An individual who is related by blood or marriage
13 to an individual described in subparagraph 1., subparagraph
14 2., or subparagraph 3., or subparagraph 4. and shares the same
15 home with the individual.

16 (lll) "Proceeds," except as used in s. 679.609(2),
17 means the following property:

18 1. Whatever is acquired upon the sale, lease, license,
19 exchange, or other disposition of collateral;

20 2. Whatever is collected on, or distributed on account
21 of, collateral;

22 3. Rights arising out of collateral;

23 4. To the extent of the value of collateral, claims
24 arising out of the loss, nonconformity, or interference with
25 the use of, defects or infringement of rights in, or damage
26 to, the collateral; or

27 5. To the extent of the value of collateral and to the
28 extent payable to the debtor or the secured party, insurance
29 payable by reason of the loss or nonconformity of, defects or
30 infringement of rights in, or damage to, the collateral.

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1 (mmm) "Promissory note" means an instrument that
2 evidences a promise to pay a monetary obligation, does not
3 evidence an order to pay, and does not contain an
4 acknowledgment by a bank that the bank has received for
5 deposit a sum of money or funds.

6 (nnn) "Proposal" means a record authenticated by a
7 secured party which includes the terms on which the secured
8 party is willing to accept collateral in full or partial
9 satisfaction of the obligation it secures pursuant to ss.
10 679.620, 679.621, and 679.622.

11 (ooo) "Public-finance transaction" means a secured
12 transaction in connection with which:

- 13 1. Debt securities are issued;
14 2. All or a portion of the securities issued have an
15 initial stated maturity of at least 20 years; and
16 3. The debtor, obligor, secured party, account debtor
17 or other person obligated on collateral, assignor or assignee
18 of a secured obligation, or assignor or assignee of a security
19 interest is a state or a governmental unit of a state.

20 (ppp) "Pursuant to commitment," with respect to an
21 advance made or other value given by a secured party, means
22 pursuant to the secured party's obligation, whether or not a
23 subsequent event of default or other event not within the
24 secured party's control has relieved or may relieve the
25 secured party from its obligation.

26 (qqq) "Record," except as used in the terms "for
27 record," "of record," "record or legal title," and "record
28 owner," means information that is inscribed on a tangible
29 medium or which is stored in an electronic or other medium and
30 is retrievable in perceivable form.

31

1 (rrr) "Registered organization" means an organization
2 organized solely under the law of a single state or the United
3 States and as to which the state or the United States must
4 maintain a public record showing the organization to have been
5 organized.

6 (sss) "Secondary obligor" means an obligor to the
7 extent that:

- 8 1. The obligor's obligation is secondary; or
9 2. The obligor has a right of recourse with respect to
10 an obligation secured by collateral against the debtor,
11 another obligor, or property of either.

12 (ttt) "Secured party" means:

- 13 1. A person in whose favor a security interest is
14 created or provided for under a security agreement, whether or
15 not any obligation to be secured is outstanding;
16 2. A person who holds an agricultural lien;
17 3. A consignor;
18 4. A person to which accounts, chattel paper, payment
19 intangibles, or promissory notes have been sold;
20 5. A trustee, indenture trustee, agent, collateral
21 agent, or other representative in whose favor a security
22 interest or agricultural lien is created or provided for; or
23 6. A person that holds a security interest arising
24 under s. 672.401, s. 672.505, s. 672.711(3), s. 680.508(5), s.
25 674.2101, or s. 675.118.

26 (uuu) "Security agreement" means an agreement that
27 creates or provides for a security interest.

28 (vvv) "Send," in connection with a record or
29 notification, means:

- 30 1. To deposit in the mail, deliver for transmission,
31 or transmit by any other usual means of communication, with

1 postage or cost of transmission provided for, addressed to any
2 address reasonable under the circumstances; or

3 2. To cause the record or notification to be received
4 within the time that it would have been received if properly
5 sent under subparagraph 1.

6 (www) "Software" means a computer program and any
7 supporting information provided in connection with a
8 transaction relating to the program. The term does not include
9 a computer program that is included in the definition of
10 goods.

11 (xxx) "State" means a state of the United States, the
12 District of Columbia, Puerto Rico, the United States Virgin
13 Islands, or any territory or insular possession subject to the
14 jurisdiction of the United States.

15 (yyy) "Supporting obligation" means a letter-of-credit
16 right or secondary obligation that supports the payment or
17 performance of an account, chattel paper, a document, a
18 general intangible, an instrument, or investment property.

19 (zzz) "Tangible chattel paper" means chattel paper
20 evidenced by a record or records consisting of information
21 that is inscribed on a tangible medium.

22 (aaa) "Termination statement" means an amendment of a
23 financing statement which:

24 1. Identifies, by its file number, the initial
25 financing statement to which it relates;

26 2. Indicates either that it is a termination statement
27 or that the identified financing statement is no longer
28 effective; and

29 3. If a fixture filing, specifies the official records
30 book and page number of the initial financing statement.

31

1 **(bbbb) "Transmitting utility" means a person primarily**
2 **engaged in the business of:**

3 **1. Operating a railroad, subway, street railway, or**
4 **trolley bus;**

5 **2. Transmitting communications electrically,**
6 **electromagnetically, or by light;**

7 **3. Transmitting goods by pipeline or sewer; or**

8 **4. Transmitting or producing and transmitting**
9 **electricity, steam, gas, or water.**

10 **(2) The following definitions in other chapters apply**
11 **to this chapter:**

12 **"Applicant" s. 675.103.**

13 **"Beneficiary" s. 675.103.**

14 **"Broker" s. 678.1021.**

15 **"Certificated security" s. 678.1021.**

16 **"Check" s. 673.1041.**

17 **"Clearing corporation" s. 678.1021.**

18 **"Contract for sale" s. 672.106.**

19 **"Customer" s. 674.104.**

20 **"Entitlement holder" s. 678.1021.**

21 **"Financial asset" s. 678.1021.**

22 **"Holder in due course" s. 673.3021.**

23 **"Issuer" (with respect to a letter of credit or**
24 **letter-of-credit right) s. 675.103.**

25 **"Issuer" (with respect to a security) s. 678.2011.**

26 **"Lease" s. 680.1031.**

27 **"Lease agreement" s. 680.1031.**

28 **"Lease contract" s. 680.1031.**

29 **"Leasehold interest" s. 680.1031.**

30 **"Lessee" s. 680.1031.**

31 **"Lessee in ordinary course of business" s. 680.1031.**

1	<u>"Lessor"</u>	s. 680.1031.
2	<u>"Lessor's residual interest"</u>	s. 680.1031.
3	<u>"Letter of credit"</u>	s. 675.103.
4	<u>"Merchant"</u>	s. 672.104.
5	<u>"Negotiable instrument"</u>	s. 673.1041.
6	<u>"Nominated person"</u>	s. 675.103.
7	<u>"Note"</u>	s. 673.1041.
8	<u>"Proceeds of a letter of credit"</u>	s. 675.114.
9	<u>"Prove"</u>	s. 673.1031.
10	<u>"Sale"</u>	s. 672.106.
11	<u>"Securities account"</u>	s. 678.5011.
12	<u>"Securities intermediary"</u>	s. 678.1021.
13	<u>"Security"</u>	s. 678.1021.
14	<u>"Security certificate"</u>	s. 678.1021.
15	<u>"Security entitlement"</u>	s. 678.1021.
16	<u>"Uncertificated security"</u>	s. 678.1021.
17	<u>(3) Chapter 671 contains general definitions and</u>	
18	<u>principles of construction and interpretation applicable</u>	
19	<u>throughout this chapter.</u>	
20	<u>679.1031 Purchase-money security interest; application</u>	
21	<u>of payments; burden of establishing.--</u>	
22	<u>(1) In this section, the term:</u>	
23	<u>(a) "Purchase-money collateral" means goods or</u>	
24	<u>software that secures a purchase-money obligation incurred</u>	
25	<u>with respect to that collateral; and</u>	
26	<u>(b) "Purchase-money obligation" means an obligation of</u>	
27	<u>an obligor incurred as all or part of the price of the</u>	
28	<u>collateral or for value given to enable the debtor to acquire</u>	
29	<u>rights in or the use of the collateral if the value is in fact</u>	
30	<u>so used.</u>	
31		

1 (2) A security interest in goods is a purchase-money
2 security interest:

3 (a) To the extent that the goods are purchase-money
4 collateral with respect to that security interest;

5 (b) If the security interest is in inventory that is
6 or was purchase-money collateral, also to the extent that the
7 security interest secures a purchase-money obligation incurred
8 with respect to other inventory in which the secured party
9 holds or held a purchase-money security interest; and

10 (c) Also to the extent that the security interest
11 secures a purchase-money obligation incurred with respect to
12 software in which the secured party holds or held a
13 purchase-money security interest.

14 (3) A security interest in software is a
15 purchase-money security interest to the extent that the
16 security interest also secures a purchase-money obligation
17 incurred with respect to goods in which the secured party
18 holds or held a purchase-money security interest if:

19 (a) The debtor acquired its interest in the software
20 in an integrated transaction in which it acquired an interest
21 in the goods; and

22 (b) The debtor acquired its interest in the software
23 for the principal purpose of using the software in the goods.

24 (4) The security interest of a consignor in goods that
25 are the subject of a consignment is a purchase-money security
26 interest in inventory.

27 (5) If the extent to which a security interest is a
28 purchase-money security interest depends on the application of
29 a payment to a particular obligation, the payment must be
30 applied:

31

1 (a) In accordance with any reasonable method of
2 application to which the parties agree;

3 (b) In the absence of the parties' agreement to a
4 reasonable method, in accordance with any intention of the
5 obligor manifested at or before the time of payment; or

6 (c) In the absence of an agreement to a reasonable
7 method and a timely manifestation of the obligor's intention,
8 in the following order:

9 1. To obligations that are not secured; and

10 2. If more than one obligation is secured, to
11 obligations secured by purchase-money security interests in
12 the order in which those obligations were incurred.

13 (6) A purchase-money security interest does not lose
14 its status as such, even if:

15 (a) The purchase-money collateral also secures an
16 obligation that is not a purchase-money obligation;

17 (b) Collateral that is not purchase-money collateral
18 also secures the purchase-money obligation; or

19 (c) The purchase-money obligation has been renewed,
20 refinanced, consolidated, or restructured.

21 (7) A secured party claiming a purchase-money security
22 interest has the burden of establishing the extent to which
23 the security interest is a purchase-money security interest.

24 679.1041 Control of deposit account.--

25 (1) A secured party has control of a deposit account
26 if:

27 (a) The secured party is the bank with which the
28 deposit account is maintained;

29 (b) The debtor, secured party, and bank have agreed in
30 an authenticated record that the bank will comply with
31 instructions originated by the secured party directing

1 disposition of the funds in the deposit account without
2 further consent by the debtor; or

3 (c) The secured party becomes the bank's customer with
4 respect to the deposit account.

5 (2) A secured party that has satisfied subsection (1)
6 has control, even if the debtor retains the right to direct
7 the disposition of funds from the deposit account.

8 679.1051 Control of electronic chattel paper.--A
9 secured party has control of electronic chattel paper if the
10 record or records comprising the chattel paper are created,
11 stored, and assigned in such a manner that:

12 (1) A single authoritative copy of the record or
13 records exists which is unique, identifiable and, except as
14 otherwise provided in subsections (4), (5), and (6),
15 unalterable;

16 (2) The authoritative copy identifies the secured
17 party as the assignee of the record or records;

18 (3) The authoritative copy is communicated to and
19 maintained by the secured party or its designated custodian;

20 (4) Copies or revisions that add or change an
21 identified assignee of the authoritative copy can be made only
22 with the participation of the secured party;

23 (5) Each copy of the authoritative copy and any copy
24 of a copy is readily identifiable as a copy that is not the
25 authoritative copy; and

26 (6) Any revision of the authoritative copy is readily
27 identifiable as an authorized or unauthorized revision.

28 679.1061 Control of investment property.--

29 (1) A person has control of a certificated security,
30 uncertificated security, or security entitlement as provided
31 in s. 678.1061.

1 (2) A secured party has control of a commodity
2 contract if:

3 (a) The secured party is the commodity intermediary
4 with which the commodity contract is carried; or

5 (b) The commodity customer, secured party, and
6 commodity intermediary have agreed that the commodity
7 intermediary will apply any value distributed on account of
8 the commodity contract as directed by the secured party
9 without further consent by the commodity customer.

10 (3) A secured party having control of all security
11 entitlements or commodity contracts carried in a securities
12 account or commodity account has control over the securities
13 account or commodity account.

14 679.1071 Control of letter-of-credit right.--A secured
15 party has control of a letter-of-credit right to the extent of
16 any right to payment or performance by the issuer or any
17 nominated person if the issuer or nominated person has
18 consented to an assignment of proceeds of the letter of credit
19 under s. 675.114(3) or otherwise applicable law or practice.

20 679.1081 Sufficiency of description.--

21 (1) Except as otherwise provided in subsections (3),
22 (4), and (5), a description of personal or real property is
23 sufficient, whether or not it is specific, if it reasonably
24 identifies what is described.

25 (2) Except as otherwise provided in subsection (4), a
26 description of collateral reasonably identifies the collateral
27 if it identifies the collateral by:

28 (a) Specific listing;

29 (b) Category (e.g., inventory; accounts; equipment);

30 (c) Except as otherwise provided in subsection (5), a
31 type of collateral defined in the Uniform Commercial Code;

1 (d) Quantity;
2 (e) Computational or allocational formula or
3 procedure; or
4 (f) Except as otherwise provided in subsection (3),
5 any other method, if the identity of the collateral is
6 objectively determinable.
7 (3) A description of collateral as "all the debtor's
8 assets" or "all the debtor's personal property" or using words
9 of similar import does not reasonably identify the collateral
10 for purposes of the security agreement.
11 (4) Except as otherwise provided in subsection (5), a
12 description of a security entitlement, securities account, or
13 commodity account is sufficient if it describes:
14 (a) The collateral by those terms or as investment
15 property; or
16 (b) The underlying financial asset or commodity
17 contract.
18 (5) A description only by type of collateral defined
19 in the Uniform Commercial Code is an insufficient description
20 of:
21 (a) A commercial tort claim; or
22 (b) In a consumer transaction, consumer goods, a
23 security entitlement, a securities account, or a commodity
24 account.
25 679.1091 Scope.--
26 (1) Except as otherwise provided in subsections (3)
27 and (4), this chapter applies to:
28 (a) A transaction, regardless of its form, that
29 creates a security interest in personal property or fixtures
30 by contract;
31 (b) An agricultural lien;

1 (c) A sale of accounts, chattel paper, payment
2 intangibles, or promissory notes;

3 (d) A consignment;

4 (e) A security interest arising under s. 672.401, s.
5 672.502, 672.711, or s. 680.508(5), as provided in s.
6 679.1101; and

7 (f) A security interest arising under s. 674.2101 or
8 s. 675.118.

9 (2) The application of this chapter to a security
10 interest in a secured obligation is not affected by the fact
11 that the obligation is itself secured by a transaction or
12 interest to which this chapter does not apply.

13 (3) This chapter does not apply to the extent that:

14 (a) A statute, regulation, or treaty of the United
15 States preempts this chapter;

16 (b) Another statute of this state expressly governs
17 the creation, perfection, priority, or enforcement of a
18 security interest created by this state or a governmental unit
19 of this state;

20 (c) A statute of another state, a foreign country, or
21 a governmental unit of another state or a foreign country,
22 other than a statute generally applicable to security
23 interests, expressly governs creation, perfection, priority,
24 or enforcement of a security interest created by the state,
25 country, or governmental unit; or

26 (d) The rights of a transferee beneficiary or
27 nominated person under a letter of credit are independent and
28 superior under s. 675.114.

29 (4) This chapter does not apply to:

30 (a) A landlord's lien, other than an agricultural
31 lien;

1 (b) A lien, other than an agricultural lien, given by
2 statute or other rule of law for services or materials, but s.
3 679.333 applies with respect to priority of the lien;

4 (c) An assignment of a claim for wages, salary, or
5 other compensation of an employee;

6 (d) A sale of accounts, chattel paper, payment
7 intangibles, or promissory notes as part of a sale of the
8 business out of which they arose;

9 (e) An assignment of accounts, chattel paper, payment
10 intangibles, or promissory notes which is for the purpose of
11 collection only;

12 (f) An assignment of a right to payment under a
13 contract to an assignee that is also obligated to perform
14 under the contract;

15 (g) An assignment of a single account, payment
16 intangible, or promissory note to an assignee in full or
17 partial satisfaction of a preexisting indebtedness;

18 (h) A transfer of an interest in or an assignment of a
19 claim under a policy of insurance, other than an assignment by
20 or to a health-care provider of a health-care-insurance
21 receivable and any subsequent assignment of the right to
22 payment, but ss. 679.3151 and 679.322 apply with respect to
23 proceeds and priorities in proceeds;

24 (i) An assignment of a right represented by a
25 judgment, other than a judgment taken on a right to payment
26 that was collateral;

27 (j) A right of recoupment or set-off, but:

28 1. Section 679.340 applies with respect to the
29 effectiveness of rights of recoupment or set-off against
30 deposit accounts; and

31

1 2. Section 679.4041 applies with respect to defenses
2 or claims of an account debtor;

3 (k) The creation or transfer of an interest in or lien
4 on real property, including a lease or rents thereunder,
5 except to the extent that provision is made for:

6 1. Liens on real property in ss. 679.2031 and
7 679.3081;

8 2. Fixtures in s. 679.334;

9 3. Fixture filings in ss. 679.5011, 679.5021, 679.512,
10 679.516, and 679.519; and

11 4. Security agreements covering personal and real
12 property in s. 679.604;

13 (l) An assignment of a claim arising in tort, other
14 than a commercial tort claim, but ss. 679.3151 and 679.322
15 apply with respect to proceeds and priorities in proceeds;

16 (m) An assignment of a deposit account in a consumer
17 transaction, but ss. 679.3151 and 679.322 apply with respect
18 to proceeds and priorities in proceeds; or

19 (n) Any transfer by a governmental unit.

20 679.1101 Security interests arising under chapter 672
21 or chapter 680.--A security interest arising under s. 672.401,
22 s. 672.505, s. 672.711(3), or s. 680.508(5), is subject to
23 this chapter. However, until the debtor obtains possession of
24 the goods:

25 (1) The security interest is enforceable, even if s.
26 679.2031(2)(c) has not been satisfied;

27 (2) Filing is not required to perfect the security
28 interest;

29 (3) The rights of the secured party after default by
30 the debtor are governed by chapter 672 or chapter 680; and

31

1 (4) The security interest has priority over a
2 conflicting security interest created by the debtor.

3 Section 2. Part II of chapter 679, Florida Statutes,
4 consisting of sections 679.201, 679.202, 679.203, 679.204,
5 679.205, 679.206, 679.207, and 679.208, Florida Statutes, is
6 repealed and a new part II of that chapter, consisting of
7 sections 679.2011, 679.2021, 679.2031, 679.2041, 679.2051,
8 679.2061, 679.2071, 679.2081, 679.209, and 679.210, Florida
9 Statutes, is created to read:

10 PART II

11 EFFECTIVENESS OF SECURITY AGREEMENT;

12 ATTACHMENT OF SECURITY INTEREST;

13 RIGHTS OF PARTIES TO SECURITY AGREEMENT

14 679.2011 General effectiveness of security
15 agreement.--

16 (1) Except as otherwise provided in the Uniform
17 Commercial Code, a security agreement is effective according
18 to its terms between the parties, against purchasers of the
19 collateral, and against creditors.

20 (2) Nothing in this chapter validates any charge or
21 practice illegal under any statute or regulation thereunder
22 governing usury, small loans, retail installment sales, or the
23 like, or extends the application of any such statute or
24 regulation to any transaction not otherwise subject thereto.
25 A transaction, although subject to this chapter, is also
26 subject to chapters 516 and 520, and in the case of conflict
27 between the provisions of this chapter and any such statute,
28 the provisions of such statute shall control. Failure to
29 comply with any applicable statute has only the effect which
30 is specified therein.

1 679.2021 Title to collateral immaterial.--Except as
2 otherwise provided with respect to consignments or sales of
3 accounts, chattel paper, payment intangibles, or promissory
4 notes, the provisions of this chapter with regard to rights
5 and obligations apply whether title to collateral is in the
6 secured party or the debtor.

7 679.2031 Attachment and enforceability of security
8 interest; proceeds; supporting obligations; formal
9 requisites.--

10 (1) A security interest attaches to collateral when it
11 becomes enforceable against the debtor with respect to the
12 collateral, unless an agreement expressly postpones the time
13 of attachment.

14 (2) Except as otherwise provided in subsections (3)
15 through (9), a security interest is enforceable against the
16 debtor and third parties with respect to the collateral only
17 if:

18 (a) Value has been given;

19 (b) The debtor has rights in the collateral or the
20 power to transfer rights in the collateral to a secured party;
21 and

22 (c) One of the following conditions is met:

23 1. The debtor has authenticated a security agreement
24 that provides a description of the collateral and, if the
25 security interest covers timber to be cut, a description of
26 the land concerned;

27 2. The collateral is not a certificated security and
28 is in the possession of the secured party under s. 679.3131
29 pursuant to the debtor's security agreement;

30 3. The collateral is a certificated security in
31 registered form and the security certificate has been

1 delivered to the secured party under S. 678.3011 pursuant to
2 the debtor's security agreement; or

3 4. The collateral is deposit accounts, electronic
4 chattel paper, investment property, or letter-of-credit
5 rights, and the secured party has control under s. 679.1041,
6 s. 679.1051, s. 679.1061, or s. 679.1071 pursuant to the
7 debtor's security agreement.

8 (3) Subsection (2) is subject to s. 674.2101 on the
9 security interest of a collecting bank, s. 675.118 on the
10 security interest of a letter-of-credit issuer or nominated
11 person, s. 679.1101 on a security interest arising under
12 chapter 672 or chapter 680, and s. 679.2061 on security
13 interests in investment property.

14 (4) A person becomes bound as debtor by a security
15 agreement entered into by another person if, by operation of
16 law other than this chapter or by contract:

17 (a) The security agreement becomes effective to create
18 a security interest in the person's property; or

19 (b) The person becomes generally obligated for the
20 obligations of the other person, including the obligation
21 secured under the security agreement, and acquires or succeeds
22 to all or substantially all of the assets of the other person.

23 (5) If a new debtor becomes bound as debtor by a
24 security agreement entered into by another person:

25 (a) The agreement satisfies subsection (2)(c) with
26 respect to existing or after-acquired property of the new
27 debtor to the extent the property is described in the
28 agreement; and

29 (b) Another agreement is not necessary to make a
30 security interest in the property enforceable.

31

1 (6) The attachment of a security interest in
2 collateral gives the secured party the rights to proceeds
3 provided by s. 679.3151 and is also attachment of a security
4 interest in a supporting obligation for the collateral.

5 (7) The attachment of a security interest in a right
6 to payment or performance secured by a security interest or
7 other lien on personal or real property is also attachment of
8 a security interest in the security interest, mortgage, or
9 other lien.

10 (8) The attachment of a security interest in a
11 securities account is also attachment of a security interest
12 in the security entitlements carried in the securities
13 account.

14 (9) The attachment of a security interest in a
15 commodity account is also attachment of a security interest in
16 the commodity contracts carried in the commodity account.

17 679.2041 After-acquired property; future advances.--

18 (1) Except as otherwise provided in subsection (2), a
19 security agreement may create or provide for a security
20 interest in after-acquired collateral.

21 (2) A security interest does not attach under a term
22 constituting an after-acquired property clause to:

23 (a) Consumer goods, other than an accession when given
24 as additional security, unless the debtor acquires rights in
25 them within 10 days after the secured party gives value; or

26 (b) A commercial tort claim.

27 (3) A security agreement may provide that collateral
28 secures, or that accounts, chattel paper, payment intangibles,
29 or promissory notes are sold in connection with, future
30 advances or other value, whether or not the advances or value
31 are given pursuant to commitment.

1 679.2051 Use or disposition of collateral
2 permissible.--
3 (1) A security interest is not invalid or fraudulent
4 against creditors solely because:
5 (a) The debtor has the right or ability to:
6 1. Use, commingle, or dispose of all or part of the
7 collateral, including returned or repossessed goods;
8 2. Collect, compromise, enforce, or otherwise deal
9 with collateral;
10 3. Accept the return of collateral or make
11 repossessions; or
12 4. Use, commingle, or dispose of proceeds; or
13 (b) The secured party fails to require the debtor to
14 account for proceeds or replace collateral.
15 (2) This section does not relax the requirements of
16 possession if attachment, perfection, or enforcement of a
17 security interest depends upon possession of the collateral by
18 the secured party.
19 679.2061 Security interest arising in purchase or
20 delivery of financial asset.--
21 (1) A security interest in favor of a securities
22 intermediary attaches to a person's security entitlement if:
23 (a) The person buys a financial asset through the
24 securities intermediary in a transaction in which the person
25 is obligated to pay the purchase price to the securities
26 intermediary at the time of the purchase; and
27 (b) The securities intermediary credits the financial
28 asset to the buyer's securities account before the buyer pays
29 the securities intermediary.
30
31

1 (2) The security interest described in subsection (1)
2 secures the person's obligation to pay for the financial
3 asset.

4 (3) A security interest in favor of a person that
5 delivers a certificated security or other financial asset
6 represented by a writing attaches to the security or other
7 financial asset if:

8 (a) The security or other financial asset:

9 1. In the ordinary course of business is transferred
10 by delivery with any necessary indorsement or assignment; and

11 2. Is delivered under an agreement between persons in
12 the business of dealing with such securities or financial
13 assets; and

14 (b) The agreement calls for delivery against payment.

15 (4) The security interest described in subsection (3)
16 secures the obligation to make payment for the delivery.

17 679.2071 Rights and duties of secured party having
18 possession or control of collateral.--

19 (1) Except as otherwise provided in subsection (4), a
20 secured party shall use reasonable care in the custody and
21 preservation of collateral in the secured party's possession.
22 In the case of chattel paper or an instrument, reasonable care
23 includes taking necessary steps to preserve rights against
24 prior parties unless otherwise agreed.

25 (2) Except as otherwise provided in subsection (4), if
26 a secured party has possession of collateral:

27 (a) Reasonable expenses, including the cost of
28 insurance and payment of taxes or other charges, incurred in
29 the custody, preservation, use, or operation of the collateral
30 are chargeable to the debtor and are secured by the
31 collateral;

1 (b) The risk of accidental loss or damage is on the
2 debtor to the extent of a deficiency in any effective
3 insurance coverage;

4 (c) The secured party shall keep the collateral
5 identifiable, but fungible collateral may be commingled; and

6 (d) The secured party may use or operate the
7 collateral:

8 1. For the purpose of preserving the collateral or its
9 value;

10 2. As permitted by an order of a court having
11 competent jurisdiction; or

12 3. Except in the case of consumer goods, in the manner
13 and to the extent agreed by the debtor.

14 (3) Except as otherwise provided in subsection (4), a
15 secured party having possession of collateral or control of
16 collateral under s. 679.1041, s. 679.1051, s. 679.1061, or s.
17 679.1071:

18 (a) May hold as additional security any proceeds,
19 except money or funds, received from the collateral;

20 (b) Shall apply money or funds received from the
21 collateral to reduce the secured obligation, unless remitted
22 to the debtor; and

23 (c) May create a security interest in the collateral.

24 (4) If the secured party is a buyer of accounts,
25 chattel paper, payment intangibles, or promissory notes or a
26 consignor:

27 (a) Subsection (1) does not apply unless the secured
28 party is entitled under an agreement:

29 1. To charge back uncollected collateral; or

30 2. Otherwise to full or limited recourse against the
31 debtor or a secondary obligor based on the nonpayment or other

1 default of an account debtor or other obligor on the
2 collateral; and

3 (b) Subsections (2) and (3) do not apply.

4 679.2081 Additional duties of secured party having
5 control of collateral.--

6 (1) This section applies to cases in which there is no
7 outstanding secured obligation and the secured party is not
8 committed to make advances, incur obligations, or otherwise
9 give value.

10 (2) Within 10 days after receiving an authenticated
11 demand by the debtor:

12 (a) A secured party having control of a deposit
13 account under s. 679.1041(1)(b) shall send to the bank with
14 which the deposit account is maintained an authenticated
15 statement that releases the bank from any further obligation
16 to comply with instructions originated by the secured party;

17 (b) A secured party having control of a deposit
18 account under s. 679.1041(1)(c) shall:

19 1. Pay the debtor the balance on deposit in the
20 deposit account; or

21 2. Transfer the balance on deposit into a deposit
22 account in the debtor's name;

23 (c) A secured party, other than a buyer, having
24 control of electronic chattel paper under s. 679.1051 shall:

25 1. Communicate the authoritative copy of the
26 electronic chattel paper to the debtor or its designated
27 custodian;

28 2. If the debtor designates a custodian that is the
29 designated custodian with which the authoritative copy of the
30 electronic chattel paper is maintained for the secured party,
31 communicate to the custodian an authenticated record releasing

1 the designated custodian from any further obligation to comply
2 with instructions originated by the secured party and
3 instructing the custodian to comply with instructions
4 originated by the debtor; and

5 3. Take appropriate action to enable the debtor or its
6 designated custodian to make copies of or revisions to the
7 authoritative copy which add or change an identified assignee
8 of the authoritative copy without the consent of the secured
9 party;

10 (d) A secured party having control of investment
11 property under s. 678.1061(4)(b) or s. 679.1061(2) shall send
12 to the securities intermediary or commodity intermediary with
13 which the security entitlement or commodity contract is
14 maintained an authenticated record that releases the
15 securities intermediary or commodity intermediary from any
16 further obligation to comply with entitlement orders or
17 directions originated by the secured party; and

18 (e) A secured party having control of a
19 letter-of-credit right under s. 679.1071 shall send to each
20 person having an unfulfilled obligation to pay or deliver
21 proceeds of the letter of credit to the secured party an
22 authenticated release from any further obligation to pay or
23 deliver proceeds of the letter of credit to the secured party.

24 679.209 Duties of secured party if account debtor has
25 been notified of assignment.--

26 (1) Except as otherwise provided in subsection (3),
27 this section applies if:

28 (a) There is no outstanding secured obligation; and

29 (b) The secured party is not committed to make
30 advances, incur obligations, or otherwise give value.

31

1 (2) Within 10 days after receiving an authenticated
2 demand by the debtor, a secured party shall send to an account
3 debtor that has received notification of an assignment to the
4 secured party as assignee under s. 679.4061(1) an
5 authenticated record that releases the account debtor from any
6 further obligation to the secured party.

7 (3) This section does not apply to an assignment
8 constituting the sale of an account, chattel paper, or payment
9 intangible.

10 679.210 Request for accounting; request regarding list
11 of collateral or statement of account.--

12 (1) In this section, the term:

13 (a) "Request" means a record of a type described in
14 paragraph (b), paragraph (c), or paragraph (d).

15 (b) "Request for an accounting" means a record
16 authenticated by a debtor requesting that the recipient
17 provide an accounting of the unpaid obligations secured by
18 collateral and reasonably identifying the transaction or
19 relationship that is the subject of the request.

20 (c) "Request regarding a list of collateral" means a
21 record authenticated by a debtor requesting that the recipient
22 approve or correct a list of what the debtor believes to be
23 the collateral securing an obligation and reasonably
24 identifying the transaction or relationship that is the
25 subject of the request.

26 (d) "Request regarding a statement of account" means a
27 record authenticated by a debtor requesting that the recipient
28 approve or correct a statement indicating what the debtor
29 believes to be the aggregate amount of unpaid obligations
30 secured by collateral as of a specified date and reasonably
31

1 identifying the transaction or relationship that is the
2 subject of the request.

3 (e) "Reasonably identifying the transaction or
4 relationship" means at a minimum the debtor's first and last
5 name, the debtor's social security number or employer tax
6 identification number if assigned by the Federal Government,
7 and, if assigned by the secured party and known by the debtor,
8 the customer, loan or account number for the transaction or
9 relationship.

10 (f) "Person" means a person or entity that is or was a
11 secured party.

12 (2) Subject to subsections (3), (4), (5), and (6), a
13 secured party, other than a buyer of accounts, chattel paper,
14 payment intangibles, or promissory notes or a consignor, shall
15 comply with a request within 14 days after receipt:

16 (a) In the case of a request for an accounting, by
17 authenticating and sending to the debtor an accounting; and

18 (b) In the case of a request regarding a list of
19 collateral or a request regarding a statement of account, by
20 authenticating and sending to the debtor an approval or
21 correction.

22 (3) A secured party that claims a security interest in
23 all of a particular type of collateral owned by the debtor may
24 comply with a request regarding a list of collateral by
25 sending to the debtor an authenticated record including a
26 statement to that effect within 14 days after receipt.

27 (4) A person that receives a request regarding a list
28 of collateral, claims no interest in the collateral when it
29 receives the request, and claimed an interest in the
30 collateral at an earlier time shall comply with the request
31

1 within 14 days after receipt by sending to the debtor an
2 authenticated record:
3 (a) Disclaiming any interest in the collateral; and
4 (b) If known to the recipient, providing the name and
5 mailing address of any assignee of or successor to the
6 recipient's interest in the collateral.
7 (5) A person that receives a request for an accounting
8 or a request regarding a statement of account, claims no
9 interest in the obligations when it receives the request, and
10 claimed an interest in the obligations at an earlier time
11 shall comply with the request within 14 days after receipt by
12 sending to the debtor an authenticated record:
13 (a) Disclaiming any interest in the obligations; and
14 (b) If known to the recipient, providing the name and
15 mailing address of any assignee of or successor to the
16 recipient's interest in the obligations.
17 (6) A debtor is entitled under this section without
18 charge to one response to a request for an accounting or a
19 request regarding a statement of account for each secured
20 obligation during any 6-month period. The secured party may
21 require payment of a charge not exceeding \$25 for each
22 additional response to a request for an accounting or a
23 request regarding a statement of account. To the extent
24 provided in an authenticated record, the secured party may
25 require the payment of reasonable expenses, including
26 attorney's fees, reasonably incurred in providing a response
27 to a request regarding a list of collateral under this
28 section; otherwise, the secured party may not charge more than
29 \$25 for each request regarding a list of collateral.
30 Excluding a request related to a proposed satisfaction of the
31 secured obligation, a secured party is not required to respond

1 to more than 12 of each of the permitted requests in any
2 12-month period.

3 Section 3. Part III of chapter 679, Florida Statutes,
4 consisting of sections 679.301, 679.302, 679.303, 679.304,
5 690.305, 679.306, 679.307, 679.308, 679.309, 679.310, 679.311,
6 679.312, 679.313, 679.314, 679.315, 679.316, 679.317, and
7 679.318, , Florida Statutes, is repealed and a new part III of
8 that chapter, consisting of sections 679.3011, 679.3021,
9 679.3031, 679.3041, 690.3051, 679.3061, 679.3071, 679.3081,
10 679.3091, 679.3101, 679.3111, 679.3121, 679.3131, 679.3141,
11 679.3151, 679.3161, 679.3171, 679.3181, 679.319, 679.320,
12 679.321, 679.322, 679.323, 679.324, 679.325, 679.326, 679.327,
13 679.328, 679.329, 679.330, 679.331, 679.332, 679.333, 679.334,
14 679.335, 679.336, 679.337, 679.3381, 679.339, 679.340,
15 679.341, and 679.342, F.S., is created to read:

16 PART III

17 PERFECTION AND PRIORITY

18 679.3011 Law governing perfection and priority of
19 security interests.--Except as otherwise provided in ss.
20 679.1091, 679.3031, 679.3041, 679.3051, and 679.3061, the
21 following rules determine the law governing perfection, the
22 effect of perfection or nonperfection, and the priority of a
23 security interest in collateral:

24 (1) Except as otherwise provided in this section,
25 while a debtor is located in a jurisdiction, the local law of
26 that jurisdiction governs perfection, the effect of perfection
27 or nonperfection, and the priority of a security interest in
28 collateral.

29 (2) While collateral is located in a jurisdiction, the
30 local law of that jurisdiction governs perfection, the effect
31

1 of perfection or nonperfection, and the priority of a
2 possessory security interest in that collateral.

3 (3) Except as otherwise provided in subsection (4),
4 while negotiable documents, goods, instruments, money, or
5 tangible chattel paper is located in a jurisdiction, the local
6 law of that jurisdiction governs:

7 (a) Perfection of a security interest in the goods by
8 filing a fixture filing;

9 (b) Perfection of a security interest in timber to be
10 cut; and

11 (c) The effect of perfection or nonperfection and the
12 priority of a nonpossessory security interest in the
13 collateral.

14 (4) The local law of the jurisdiction in which the
15 wellhead or minehead is located governs perfection, the effect
16 of perfection or nonperfection, and the priority of a security
17 interest in as-extracted collateral.

18 679.3021 Law governing perfection and priority of
19 agricultural liens.--While farm products are located in a
20 jurisdiction, the local law of that jurisdiction governs
21 perfection, the effect of perfection or nonperfection, and the
22 priority of an agricultural lien on the farm products.

23 679.3031 Law governing perfection and priority of
24 security interests in goods covered by a certificate of
25 title.--

26 (1) This section applies to goods covered by a
27 certificate of title, even if there is no other relationship
28 between the jurisdiction under whose certificate of title the
29 goods are covered and the goods or the debtor.

30 (2) Goods become covered by a certificate of title
31 when a valid application for the certificate of title and the

1 applicable fee are delivered to the appropriate authority.
2 Goods cease to be covered by a certificate of title at the
3 earlier of the time the certificate of title ceases to be
4 effective under the law of the issuing jurisdiction or the
5 time the goods become covered subsequently by a certificate of
6 title issued by another jurisdiction.

7 (3) The local law of the jurisdiction under whose
8 certificate of title the goods are covered governs perfection,
9 the effect of perfection or nonperfection, and the priority of
10 a security interest in goods covered by a certificate of title
11 from the time the goods become covered by the certificate of
12 title until the goods cease to be covered by the certificate
13 of title.

14 679.3041 Law governing perfection and priority of
15 security interests in deposit accounts.--

16 (1) The local law of a bank's jurisdiction governs
17 perfection, the effect of perfection or nonperfection, and the
18 priority of a security interest in a deposit account
19 maintained with that bank.

20 (2) The following rules determine a bank's
21 jurisdiction for purposes of this part:

22 (a) If an agreement between the bank and the debtor
23 governing the deposit account expressly provides that a
24 particular jurisdiction is the bank's jurisdiction for
25 purposes of this part, this chapter, or the Uniform Commercial
26 Code, that jurisdiction is the bank's jurisdiction.

27 (b) If paragraph (a) does not apply and an agreement
28 between the bank and its customer governing the deposit
29 account expressly provides that the agreement is governed by
30 the law of a particular jurisdiction, that jurisdiction is the
31 bank's jurisdiction.

1 (c) If neither paragraph (a) nor paragraph (b) applies
2 and an agreement between the bank and its customer governing
3 the deposit account expressly provides that the deposit
4 account is maintained at an office in a particular
5 jurisdiction, that jurisdiction is the bank's jurisdiction.

6 (d) If none of the preceding paragraphs applies, the
7 bank's jurisdiction is the jurisdiction in which the office
8 identified in an account statement as the office serving the
9 customer's account is located.

10 (e) If none of the preceding paragraphs applies, the
11 bank's jurisdiction is the jurisdiction in which the chief
12 executive office of the bank is located.

13 679.3051 Law governing perfection and priority of
14 security interests in investment property.--

15 (1) Except as otherwise provided in subsection (3),
16 the following rules apply:

17 (a) While a security certificate is located in a
18 jurisdiction, the local law of that jurisdiction governs
19 perfection, the effect of perfection or nonperfection, and the
20 priority of a security interest in the certificated security
21 represented thereby.

22 (b) The local law of the issuer's jurisdiction as
23 specified in s. 678.1101(4) governs perfection, the effect of
24 perfection or nonperfection, and the priority of a security
25 interest in an uncertificated security.

26 (c) The local law of the securities intermediary's
27 jurisdiction as specified in s. 678.1101(5) governs
28 perfection, the effect of perfection or nonperfection, and the
29 priority of a security interest in a security entitlement or
30 securities account.

31

1 (d) The local law of the commodity intermediary's
2 jurisdiction governs perfection, the effect of perfection or
3 nonperfection, and the priority of a security interest in a
4 commodity contract or commodity account.

5 (2) The following rules determine a commodity
6 intermediary's jurisdiction for purposes of this part:

7 (a) If an agreement between the commodity intermediary
8 and commodity customer governing the commodity account
9 expressly provides that a particular jurisdiction is the
10 commodity intermediary's jurisdiction for purposes of this
11 part, this chapter, or the Uniform Commercial Code, that
12 jurisdiction is the commodity intermediary's jurisdiction.

13 (b) If paragraph (a) does not apply and an agreement
14 between the commodity intermediary and commodity customer
15 governing the commodity account expressly provides that the
16 agreement is governed by the law of a particular jurisdiction,
17 that jurisdiction is the commodity intermediary's
18 jurisdiction.

19 (c) If neither paragraph (a) nor paragraph (b) applies
20 and an agreement between the commodity intermediary and
21 commodity customer governing the commodity account expressly
22 provides that the commodity account is maintained at an office
23 in a particular jurisdiction, that jurisdiction is the
24 commodity intermediary's jurisdiction.

25 (d) If none of the preceding paragraphs applies, the
26 commodity intermediary's jurisdiction is the jurisdiction in
27 which the office identified in an account statement as the
28 office serving the commodity customer's account is located.

29 (e) If none of the preceding paragraphs applies, the
30 commodity intermediary's jurisdiction is the jurisdiction in
31

1 which the chief executive office of the commodity intermediary
2 is located.

3 (3) The local law of the jurisdiction in which the
4 debtor is located governs:

5 (a) Perfection of a security interest in investment
6 property by filing;

7 (b) Automatic perfection of a security interest in
8 investment property created by a broker or securities
9 intermediary; and

10 (c) Automatic perfection of a security interest in a
11 commodity contract or commodity account created by a commodity
12 intermediary.

13 679.3061 Law governing perfection and priority of
14 security interests in letter-of-credit rights.--

15 (1) Subject to subsection (3), the local law of the
16 issuer's jurisdiction or a nominated person's jurisdiction
17 governs perfection, the effect of perfection or nonperfection,
18 and the priority of a security interest in a letter-of-credit
19 right if the issuer's jurisdiction or nominated person's
20 jurisdiction is a state.

21 (2) For purposes of this part, an issuer's
22 jurisdiction or nominated person's jurisdiction is the
23 jurisdiction whose law governs the liability of the issuer or
24 nominated person with respect to the letter-of-credit right as
25 provided in s. 675.116.

26 (3) This section does not apply to a security interest
27 that is perfected only under s. 679.3081(4).

28 679.3071 Location of debtor.--

29 (1) In this section, the term "place of business"
30 means a place where a debtor conducts its affairs.

31

1 (2) Except as otherwise provided in this section, the
2 following rules determine a debtor's location:

3 (a) A debtor who is an individual is located at the
4 individual's principal residence.

5 (b) A debtor that is an organization and has only one
6 place of business is located at its place of business.

7 (c) A debtor that is an organization and has more than
8 one place of business is located at its chief executive
9 office.

10 (3) Subsection (2) applies only if a debtor's
11 residence, place of business, or chief executive office, as
12 applicable, is located in a jurisdiction whose law generally
13 requires information concerning the existence of a
14 nonpossessory security interest to be made generally available
15 in a filing, recording, or registration system as a condition
16 or result of the security interest's obtaining priority over
17 the rights of a lien creditor with respect to the collateral.
18 If subsection (2) does not apply, the debtor is located in the
19 District of Columbia.

20 (4) A person that ceases to exist, have a residence,
21 or have a place of business continues to be located in the
22 jurisdiction specified by subsections (2) and (3).

23 (5) A registered organization that is organized under
24 the law of a state is located in that state.

25 (6) Except as otherwise provided in subsection (9), a
26 registered organization that is organized under the law of the
27 United States and a branch or agency of a bank that is not
28 organized under the law of the United States or a state are
29 located:

30 (a) In the state that the law of the United States
31 designates, if the law designates a state of location;

1 (b) In the state that the registered organization,
2 branch, or agency designates, if the law of the United States
3 authorizes the registered organization, branch, or agency to
4 designate its state of location; or

5 (c) In the District of Columbia, if neither paragraph
6 (a) nor paragraph (b) applies.

7 (7) A registered organization continues to be located
8 in the jurisdiction specified by subsection (5) or subsection
9 (6) notwithstanding:

10 (a) The suspension, revocation, forfeiture, or lapse
11 of the registered organization's status as such in its
12 jurisdiction of organization; or

13 (b) The dissolution, winding up, or cancellation of
14 the existence of the registered organization.

15 (8) The United States is located in the District of
16 Columbia.

17 (9) A branch or agency of a bank that is not organized
18 under the law of the United States or a state is located in
19 the state in which the branch or agency is licensed, if all
20 branches and agencies of the bank are licensed in only one
21 state.

22 (10) A foreign air carrier under the Federal Aviation
23 Act of 1958, as amended, is located at the designated office
24 of the agent upon which service of process may be made on
25 behalf of the carrier.

26 (11) This section applies only for purposes of this
27 part.

28 679.3081 When security interest or agricultural lien
29 is perfected; continuity of perfection.--

30 (1) Except as otherwise provided in this section and
31 s. 679.3091, a security interest is perfected if it has

1 attached and all of the applicable requirements for perfection
2 in ss. 679.3101-679.3161 have been satisfied. A security
3 interest is perfected when it attaches if the applicable
4 requirements are satisfied before the security interest
5 attaches.

6 (2) An agricultural lien is perfected if it has become
7 effective and all of the applicable requirements for
8 perfection in s. 679.3101 have been satisfied. An
9 agricultural lien is perfected when it becomes effective if
10 the applicable requirements are satisfied before the
11 agricultural lien becomes effective.

12 (3) A security interest or agricultural lien is
13 perfected continuously if it is originally perfected by one
14 method under this chapter and is later perfected by another
15 method under this chapter, without an intermediate period when
16 it was unperfected.

17 (4) Perfection of a security interest in collateral
18 also perfects a security interest in a supporting obligation
19 for the collateral.

20 (5) Perfection of a security interest in a right to
21 payment or performance also perfects a security interest in a
22 security interest, mortgage, or other lien on personal or real
23 property securing the right.

24 (6) Perfection of a security interest in a securities
25 account also perfects a security interest in the security
26 entitlements carried in the securities account.

27 (7) Perfection of a security interest in a commodity
28 account also perfects a security interest in the commodity
29 contracts carried in the commodity account.

30
31

1 679.3091 Security interest perfected upon
2 attachment.--The following security interests are perfected
3 when they attach:

4 (1) A purchase-money security interest in consumer
5 goods, except as otherwise provided in s. 679.3111(2) with
6 respect to consumer goods that are subject to a statute or
7 treaty described in s. 679.3111(1);

8 (2) An assignment of accounts or payment intangibles
9 which does not by itself or in conjunction with other
10 assignments to the same assignee transfer a significant part
11 of the assignor's outstanding accounts or payment intangibles;

12 (3) A sale of a payment intangible;

13 (4) A sale of a promissory note;

14 (5) A security interest created by the assignment of a
15 health-care-insurance receivable to the provider of the
16 health-care goods or services;

17 (6) A security interest arising under s. 672.401, s.
18 672.505, s. 672.711(3), or s. 680.508(5), until the debtor
19 obtains possession of the collateral;

20 (7) A security interest of a collecting bank arising
21 under s. 674.2101;

22 (8) A security interest of an issuer or nominated
23 person arising under s. 675.118;

24 (9) A security interest arising in the delivery of a
25 financial asset under s. 679.2061(3);

26 (10) A security interest in investment property
27 created by a broker or securities intermediary;

28 (11) A security interest in a commodity contract or a
29 commodity account created by a commodity intermediary;

30
31

1 (12) An assignment for the benefit of all creditors of
2 the transferor and subsequent transfers by the assignee
3 thereunder; and

4 (13) A security interest created by an assignment of a
5 beneficial interest in a decedent's estate.

6 679.3101 When filing required to perfect security
7 interest or agricultural lien; security interests and
8 agricultural liens to which filing provisions do not apply.--

9 (1) Except as otherwise provided in subsection (2) and
10 s. 679.3121(2), a financing statement must be filed to perfect
11 all security interests and agricultural liens.

12 (2) The filing of a financing statement is not
13 necessary to perfect a security interest:

14 (a) That is perfected under s. 679.3081(4), (5), (6),
15 or (7);

16 (b) That is perfected under s. 679.3091 when it
17 attaches;

18 (c) In property subject to a statute, regulation, or
19 treaty described in s. 679.3111(1);

20 (d) In goods in possession of a bailee which is
21 perfected under s. 679.3121(4)(a) or (b);

22 (e) In certificated securities, documents, goods, or
23 instruments which is perfected without filing or possession
24 under s. 679.3121(5), (6), or (7);

25 (f) In collateral in the secured party's possession
26 under s. 679.3131;

27 (g) In a certificated security which is perfected by
28 delivery of the security certificate to the secured party
29 under s. 679.3131;

30
31

1 (h) In deposit accounts, electronic chattel paper,
2 investment property, or letter-of-credit rights which is
3 perfected by control under s. 679.3141;

4 (i) In proceeds which is perfected under s. 679.3151;
5 or

6 (j) That is perfected under s. 679.3161.

7 (3) If a secured party assigns a perfected security
8 interest or agricultural lien, a filing under this chapter is
9 not required to continue the perfected status of the security
10 interest against creditors of and transferees from the
11 original debtor.

12 679.3111 Perfection of security interests in property
13 subject to certain statutes, regulations, and treaties.--

14 (1) Except as otherwise provided in subsection (4),
15 the filing of a financing statement is not necessary or
16 effective to perfect a security interest in property subject
17 to:

18 (a) A statute, regulation, or treaty of the United
19 States whose requirements for a security interest's obtaining
20 priority over the rights of a lien creditor with respect to
21 the property preempt s. 679.3101(1);

22 (b) A statute covering automobiles, trailers, mobile
23 homes, boats, farm tractors, or the like, which provides for a
24 security interest to be indicated on a certificate of title of
25 such property as a condition or result of perfection, and any
26 non-Uniform Commercial Code central filing statute; or

27 (c) A certificate-of-title statute of another
28 jurisdiction which provides for a security interest to be
29 indicated on the certificate as a condition or result of the
30 security interest's obtaining priority over the rights of a
31 lien creditor with respect to the property.

1 (2) Compliance with the requirements of a statute,
2 regulation, or treaty described in paragraph (1) for obtaining
3 priority over the rights of a lien creditor is equivalent to
4 the filing of a financing statement under this chapter.
5 Except as otherwise provided in subsection (4) and ss.
6 679.3131 and 679.3161(4) and (5) for goods covered by a
7 certificate of title, a security interest in property subject
8 to a statute, regulation, or treaty described in subsection
9 (1) may be perfected only by compliance with those
10 requirements, and a security interest so perfected remains
11 perfected notwithstanding a change in the use or transfer of
12 possession of the collateral.

13 (3) Except as otherwise provided in subsection (4) and
14 s. 679.3161(4) and (5), duration and renewal of perfection of
15 a security interest perfected by compliance with the
16 requirements prescribed by a statute, regulation, or treaty
17 described in subsection (1) are governed by the statute,
18 regulation, or treaty. In other respects, the security
19 interest is subject to this chapter.

20 (4) During any period in which collateral subject to a
21 statute specified in paragraph (1)(b) is inventory held for
22 sale or lease by a person or leased by that person as lessor
23 and that person is in the business of selling goods of that
24 kind, this section does not apply to a security interest in
25 that collateral created by that person.

26 679.3121 Perfection of security interests in chattel
27 paper, deposit accounts, documents, goods covered by
28 documents, instruments, investment property, letter-of-credit
29 rights, and money; perfection by permissive filing; temporary
30 perfection without filing or transfer of possession.--

31

1 (1) A security interest in chattel paper, negotiable
2 documents, instruments, or investment property may be
3 perfected by filing.

4 (2)(a) Except as otherwise provided in s. 679.3151(3)
5 and (4) for proceeds, a security interest in a deposit account
6 may be perfected only by control under s. 679.3141.

7 (b) Except as otherwise provided in s. 679.3081(4), a
8 security interest in a letter-of-credit right may be perfected
9 only by control under s. 679.3141.

10 (c) A security interest in money may be perfected only
11 by the secured party's taking possession under s. 679.3131.

12 (3) While goods are in the possession of a bailee that
13 has issued a negotiable document covering the goods:

14 (a) A security interest in the goods may be perfected
15 by perfecting a security interest in the document; and

16 (b) A security interest perfected in the document has
17 priority over any security interest that becomes perfected in
18 the goods by another method during that time.

19 (4) While goods are in the possession of a bailee that
20 has issued a nonnegotiable document covering the goods, a
21 security interest in the goods may be perfected by:

22 (a) Issuance of a document in the name of the secured
23 party;

24 (b) The bailee's receipt of notification of the
25 secured party's interest; or

26 (c) Filing as to the goods.

27 (5) A security interest in certificated securities,
28 negotiable documents, or instruments is perfected without
29 filing or the taking of possession for a period of 20 days
30 from the time it attaches to the extent that it arises for new
31 value given under an authenticated security agreement.

1 (6) A perfected security interest in a negotiable
2 document or goods in possession of a bailee, other than one
3 that has issued a negotiable document for the goods, remains
4 perfected for 20 days without filing if the secured party
5 makes available to the debtor the goods or documents
6 representing the goods for the purpose of:

7 (a) Ultimate sale or exchange; or

8 (b) Loading, unloading, storing, shipping,
9 transshipping, manufacturing, processing, or otherwise dealing
10 with them in a manner preliminary to their sale or exchange.

11 (7) A perfected security interest in a certificated
12 security or instrument remains perfected for 20 days without
13 filing if the secured party delivers the security certificate
14 or instrument to the debtor for the purpose of:

15 (a) Ultimate sale or exchange; or

16 (b) Presentation, collection, enforcement, renewal, or
17 registration of transfer.

18 (8) After the 20-day period specified in subsection
19 (5), subsection (6), or subsection (7) expires, perfection
20 depends upon compliance with this chapter.

21 679.3131 When possession by or delivery to secured
22 party perfects security interest without filing.--

23 (1) Except as otherwise provided in subsection (2), a
24 secured party may perfect a security interest in negotiable
25 documents, goods, instruments, money, or tangible chattel
26 paper by taking possession of the collateral. A secured party
27 may perfect a security interest in certificated securities by
28 taking delivery of the certificated securities under s.
29 678.3011.

30 (2) With respect to goods covered by a certificate of
31 title issued by this state, a secured party may perfect a

1 security interest in the goods by taking possession of the
2 goods only in the circumstances described in s. 679.3161(4).

3 (3) With respect to collateral other than certificated
4 securities and goods covered by a document, a secured party
5 takes possession of collateral in the possession of a person
6 other than the debtor, the secured party, or a lessee of the
7 collateral from the debtor in the ordinary course of the
8 debtor's business, when:

9 (a) The person in possession authenticates a record
10 acknowledging that it holds possession of the collateral for
11 the secured party's benefit; or

12 (b) The person takes possession of the collateral
13 after having authenticated a record acknowledging that it will
14 hold possession of collateral for the secured party's benefit.

15 (4) If perfection of a security interest depends upon
16 possession of the collateral by a secured party, perfection
17 occurs no earlier than the time the secured party takes
18 possession and continues only while the secured party retains
19 possession.

20 (5) A security interest in a certificated security in
21 registered form is perfected by delivery when delivery of the
22 certificated security occurs under s. 678.3011 and remains
23 perfected by delivery until the debtor obtains possession of
24 the security certificate.

25 (6) A person in possession of collateral is not
26 required to acknowledge that it holds possession for a secured
27 party's benefit.

28 (7) If a person acknowledges that it holds possession
29 for the secured party's benefit:

30
31

1 (a) The acknowledgment is effective under subsection
2 (3) or s. 678.3011(1), even if the acknowledgment violates the
3 rights of a debtor; and
4 (b) Unless the person otherwise agrees or law other
5 than this chapter otherwise provides, the person does not owe
6 any duty to the secured party and is not required to confirm
7 the acknowledgment to another person.
8 (8) A secured party having possession of collateral
9 does not relinquish possession by delivering the collateral to
10 a person other than the debtor or a lessee of the collateral
11 from the debtor in the ordinary course of the debtor's
12 business if the person was instructed before the delivery or
13 is instructed contemporaneously with the delivery:
14 (a) To hold possession of the collateral for the
15 secured party's benefit; or
16 (b) To redeliver the collateral to the secured party.
17 (9) A secured party does not relinquish possession,
18 even if a delivery under subsection (8) violates the rights of
19 a debtor. A person to which collateral is delivered under
20 subsection (8) does not owe any duty to the secured party and
21 is not required to confirm the delivery to another person
22 unless the person otherwise agrees or law other than this
23 chapter otherwise provides.
24 679.3141 Perfection by control.--
25 (1) A security interest in investment property,
26 deposit accounts, letter-of-credit rights, or electronic
27 chattel paper may be perfected by control of the collateral
28 under s. 679.1041, s. 679.1051, s. 679.1061, or s. 679.1071.
29 (2) A security interest in deposit accounts,
30 electronic chattel paper, or letter-of-credit rights is
31 perfected by control under s. 679.1041, s. 679.1051, or s.

1 679.1071 when the secured party obtains control and remains
2 perfected by control only while the secured party retains
3 control.

4 (3) A security interest in investment property is
5 perfected by control under s. 679.1061 from the time the
6 secured party obtains control and remains perfected by control
7 until:

8 (a) The secured party does not have control; and

9 (b) One of the following occurs:

10 1. If the collateral is a certificated security, the
11 debtor has or acquires possession of the security certificate;

12 2. If the collateral is an uncertificated security,
13 the issuer has registered or registers the debtor as the
14 registered owner; or

15 (3) If the collateral is a security entitlement, the
16 debtor is or becomes the entitlement holder.

17 679.3151 Secured party's rights on disposition of
18 collateral and in proceeds.--

19 (1) Except as otherwise provided in this chapter and
20 in s. 672.403(2):

21 (a) A security interest or agricultural lien continues
22 in collateral notwithstanding sale, lease, license, exchange,
23 or other disposition thereof unless the secured party
24 authorized the disposition free of the security interest or
25 agricultural lien; and

26 (b) A security interest attaches to any identifiable
27 proceeds of collateral.

28 (2) Proceeds that are commingled with other property
29 are identifiable proceeds:

30 (a) If the proceeds are goods, to the extent provided
31 by s. 679.336; and

1 **(b) If the proceeds are not goods, to the extent that**
2 **the secured party identifies the proceeds by a method of**
3 **tracing, including application of equitable principles, that**
4 **is permitted under law other than this chapter with respect to**
5 **commingled property of the type involved.**

6 **(3) A security interest in proceeds is a perfected**
7 **security interest if the security interest in the original**
8 **collateral was perfected.**

9 **(4) A perfected security interest in proceeds becomes**
10 **unperfected on the 21st day after the security interest**
11 **attaches to the proceeds unless:**

12 **(a) The following conditions are satisfied:**

13 **1. A filed financing statement covers the original**
14 **collateral;**

15 **2. The proceeds are collateral in which a security**
16 **interest may be perfected by filing in the office in which the**
17 **financing statement has been filed; and**

18 **3. The proceeds are not acquired with cash proceeds;**

19 **(b) The proceeds are identifiable cash proceeds; or**

20 **(c) The security interest in the proceeds is perfected**
21 **other than under subsection (3) when the security interest**
22 **attaches to the proceeds or within 20 days thereafter.**

23 **(5) If a filed financing statement covers the original**
24 **collateral, a security interest in proceeds which remains**
25 **perfected under paragraph (4)(a) becomes unperfected at the**
26 **later of:**

27 **(a) When the effectiveness of the filed financing**
28 **statement lapses under s. 679.515 or is terminated under s.**
29 **679.513; or**

30 **(b) The 21st day after the security interest attaches**
31 **to the proceeds.**

1 679.3161 Continued perfection of security interest
2 following change in governing law.--

3 (1) A security interest perfected pursuant to the law
4 of the jurisdiction designated in s. 679.3011(1) or s.
5 679.3051(3) remains perfected until the earliest of:

6 (a) The time perfection would have ceased under the
7 law of that jurisdiction;

8 (b) The expiration of 4 months after a change of the
9 debtor's location to another jurisdiction; or

10 (c) The expiration of 1 year after a transfer of
11 collateral to a person that thereby becomes a debtor and is
12 located in another jurisdiction.

13 (2) If a security interest described in subsection (1)
14 becomes perfected under the law of the other jurisdiction
15 before the earliest time or event described in that
16 subsection, it remains perfected thereafter. If the security
17 interest does not become perfected under the law of the other
18 jurisdiction before the earliest time or event, it becomes
19 unperfected and is deemed never to have been perfected as
20 against a purchaser of the collateral for value.

21 (3) A possessory security interest in collateral,
22 other than goods covered by a certificate of title and
23 as-extracted collateral consisting of goods, remains
24 continuously perfected if:

25 (a) The collateral is located in one jurisdiction and
26 subject to a security interest perfected under the law of that
27 jurisdiction;

28 (b) Thereafter the collateral is brought into another
29 jurisdiction; and

30
31

1 (c) Upon entry into the other jurisdiction, the
2 security interest is perfected under the law of the other
3 jurisdiction.

4 (4) Except as otherwise provided in subsection (5), a
5 security interest in goods covered by a certificate of title
6 which is perfected by any method under the law of another
7 jurisdiction when the goods become covered by a certificate of
8 title from this state remains perfected until the security
9 interest would have become unperfected under the law of the
10 other jurisdiction had the goods not become so covered.

11 (5) A security interest described in subsection (4)
12 becomes unperfected as against a purchaser of the goods for
13 value and is deemed never to have been perfected as against a
14 purchaser of the goods for value if the applicable
15 requirements for perfection under s. 679.3111(2) or s.
16 679.3131 are not satisfied before the earlier of:

17 (a) The time the security interest would have become
18 unperfected under the law of the other jurisdiction had the
19 goods not become covered by a certificate of title from this
20 state; or

21 (b) The expiration of 4 months after the goods had
22 become so covered.

23 (6) A security interest in deposit accounts,
24 letter-of-credit rights, or investment property which is
25 perfected under the law of the bank's jurisdiction, the
26 issuer's jurisdiction, a nominated person's jurisdiction, the
27 securities intermediary's jurisdiction, or the commodity
28 intermediary's jurisdiction, as applicable, remains perfected
29 until the earlier of:

30 (a) The time the security interest would have become
31 unperfected under the law of that jurisdiction; or

1 (b) The expiration of 4 months after a change of the
2 applicable jurisdiction to another jurisdiction.

3 (7) If a security interest described in subsection (6)
4 becomes perfected under the law of the other jurisdiction
5 before the earlier of the time or the end of the period
6 described in that subsection, it remains perfected thereafter.
7 If the security interest does not become perfected under the
8 law of the other jurisdiction before the earlier of that time
9 or the end of that period, it becomes unperfected and is
10 deemed never to have been perfected as against a purchaser of
11 the collateral for value.

12 679.3171 Interests that take priority over or take
13 free of security interest or agricultural lien.--

14 (1) A security interest or agricultural lien is
15 subordinate to the rights of:

16 (a) A person entitled to priority under s. 679.322;
17 and

18 (b) Except as otherwise provided in subsection (5), a
19 person that becomes a lien creditor before the earlier of the
20 time:

21 1. The security interest or agricultural lien is
22 perfected; or

23 2. One of the conditions specified in s.
24 679.2031(2)(c) is met and a financing statement covering the
25 collateral is filed.

26 (2) Except as otherwise provided in subsection (5), a
27 buyer, other than a secured party, of tangible chattel paper,
28 documents, goods, instruments, or a security certificate takes
29 free of a security interest or agricultural lien if the buyer
30 gives value and receives delivery of the collateral without
31

1 knowledge of the security interest or agricultural lien and
2 before it is perfected.

3 (3) Except as otherwise provided in subsection (5), a
4 lessee of goods takes free of a security interest or
5 agricultural lien if the lessee gives value and receives
6 delivery of the collateral without knowledge of the security
7 interest or agricultural lien and before it is perfected.

8 (4) A licensee of a general intangible or a buyer,
9 other than a secured party, of accounts, electronic chattel
10 paper, general intangibles, or investment property other than
11 a certificated security takes free of a security interest if
12 the licensee or buyer gives value without knowledge of the
13 security interest and before it is perfected.

14 (5) Except as otherwise provided in ss. 679.320 and
15 679.321, if a person files a financing statement with respect
16 to a purchase-money security interest before or within 20 days
17 after the debtor receives delivery of the collateral, the
18 security interest takes priority over the rights of a buyer,
19 lessee, or lien creditor which arise between the time the
20 security interest attaches and the time of filing.

21 679.3181 No interest retained in right to payment that
22 is sold; rights and title of seller of account or chattel
23 paper with respect to creditors and purchasers.--

24 (1) A debtor that has sold an account, chattel paper,
25 payment intangible, or promissory note does not retain a legal
26 or equitable interest in the collateral sold.

27 (2) For purposes of determining the rights of
28 creditors of, and purchasers for value of an account or
29 chattel paper from, a debtor that has sold an account or
30 chattel paper, while the buyer's security interest is
31 unperfected, the debtor is deemed to have rights and title to

1 the account or chattel paper identical to those the debtor
2 sold.

3 679.319 Rights and title of consignee with respect to
4 creditors and purchasers.--

5 (1) Except as otherwise provided in subsection (2),
6 for purposes of determining the rights of creditors of, and
7 purchasers for value of goods from, a consignee, while the
8 goods are in the possession of the consignee, the consignee is
9 deemed to have rights and title to the goods identical to
10 those the consignor had or had power to transfer.

11 (2) For purposes of determining the rights of a
12 creditor of a consignee, law other than this chapter
13 determines the rights and title of a consignee while goods are
14 in the consignee's possession if, under this part, a perfected
15 security interest held by the consignor would have priority
16 over the rights of the creditor.

17 679.320 Buyer of goods.--

18 (1) Except as otherwise provided in subsection (5), a
19 buyer in ordinary course of business, other than a person
20 buying farm products from a person engaged in farming
21 operations, takes free of a security interest created by the
22 buyer's seller, even if the security interest is perfected and
23 the buyer knows of its existence.

24 (2) Except as otherwise provided in subsection (5), a
25 buyer of goods from a person who used or bought the goods for
26 use primarily for personal, family, or household purposes
27 takes free of a security interest, even if perfected, if the
28 buyer buys:

29 (a) Without knowledge of the security interest;

30 (b) For value;

31

1 (c) Primarily for the buyer's personal, family, or
2 household purposes; and

3 (d) Before the filing of a financing statement
4 covering the goods.

5 (3) To the extent that it affects the priority of a
6 security interest over a buyer of goods under subsection (2),
7 the period of effectiveness of a filing made in the
8 jurisdiction in which the seller is located is governed by s.
9 679.3161(1) and (2).

10 (4) A buyer in ordinary course of business buying oil,
11 gas, or other minerals at the wellhead or minehead or after
12 extraction takes free of an interest arising out of an
13 encumbrance.

14 (5) Subsections (1) and (2) do not affect a security
15 interest in goods in the possession of the secured party under
16 s. 679.3131.

17 679.321 Licensee of general intangible and lessee of
18 goods in ordinary course of business.--

19 (1) In this section, the term "licensee in ordinary
20 course of business" means a person that becomes a licensee of
21 a general intangible in good faith, without knowledge that the
22 license violates the rights of another person in the general
23 intangible, and in the ordinary course from a person in the
24 business of licensing general intangibles of that kind. A
25 person becomes a licensee in the ordinary course if the
26 license to the person comports with the usual or customary
27 practices in the kind of business in which the licensor is
28 engaged or with the licensor's own usual or customary
29 practices.

30 (2) A licensee in ordinary course of business takes
31 its rights under a nonexclusive license free of a security

1 interest in the general intangible created by the licensor,
2 even if the security interest is perfected and the licensee
3 knows of its existence.

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

8 679.322 Priorities among conflicting security
9 interests in and agricultural liens on same collateral.--

10 (1) Except as otherwise provided in this section,
11 priority among conflicting security interests and agricultural
12 liens in the same collateral is determined according to the
13 following rules:

14 (a) Conflicting perfected security interests and
15 agricultural liens rank according to priority in time of
16 filing or perfection. Priority dates from the earlier of the
17 time a filing covering the collateral is first made or the
18 security interest or agricultural lien is first perfected, if
19 there is no period thereafter when there is neither filing nor
20 perfection.

21 (b) A perfected security interest or agricultural lien
22 has priority over a conflicting unperfected security interest
23 or agricultural lien.

24 (c) The first security interest or agricultural lien
25 to attach or become effective has priority if conflicting
26 security interests and agricultural liens are unperfected.

27 (2) For the purposes of paragraph (1)(a):

28 (a) The time of filing or perfection as to a security
29 interest in collateral is also the time of filing or
30 perfection as to a security interest in proceeds; and

31

1 **(b) The time of filing or perfection as to a security**
2 **interest in collateral supported by a supporting obligation is**
3 **also the time of filing or perfection as to a security**
4 **interest in the supporting obligation.**

5 **(3) Except as otherwise provided in subsection (6), a**
6 **security interest in collateral which qualifies for priority**
7 **over a conflicting security interest under s. 679.327, s.**
8 **679.328, s. 679.329, s. 679.330, or s. 679.331 also has**
9 **priority over a conflicting security interest in:**

10 **(a) Any supporting obligation for the collateral; and**

11 **(b) Proceeds of the collateral if:**

12 **1. The security interest in proceeds is perfected;**

13 **2. The proceeds are cash proceeds or of the same type**
14 **as the collateral; and**

15 **3. In the case of proceeds that are proceeds of**
16 **proceeds, all intervening proceeds are cash proceeds, proceeds**
17 **of the same type as the collateral, or an account relating to**
18 **the collateral.**

19 **(4) Subject to subsection (5) and except as otherwise**
20 **provided in subsection (6), if a security interest in chattel**
21 **paper, deposit accounts, negotiable documents, instruments,**
22 **investment property, or letter-of-credit rights is perfected**
23 **by a method other than filing, conflicting perfected security**
24 **interests in proceeds of the collateral rank according to**
25 **priority in time of filing.**

26 **(5) Subsection (4) applies only if the proceeds of the**
27 **collateral are not cash proceeds, chattel paper, negotiable**
28 **documents, instruments, investment property, or**
29 **letter-of-credit rights.**

30 **(6) Subsections (1) through (5) are subject to:**

31

1 (a) Subsection (7) and the other provisions of this
2 part;

3 (b) Section 674.2101 with respect to a security
4 interest of a collecting bank;

5 (c) Section 675.118 with respect to a security
6 interest of an issuer or nominated person; and

7 (d) Section 679.1101 with respect to a security
8 interest arising under chapter 672 or chapter 680.

9 (7) A perfected agricultural lien on collateral has
10 priority over a conflicting security interest in or
11 agricultural lien on the same collateral if the statute
12 creating the agricultural lien so provides.

13 679.323 Future advances.--

14 (1) Except as otherwise provided in subsection (3),
15 for purposes of determining the priority of a perfected
16 security interest under s. 679.322(1)(a), perfection of the
17 security interest dates from the time an advance is made to
18 the extent that the security interest secures an advance that:

19 (a) Is made while the security interest is perfected
20 only:

21 1. Under s. 679.3091 when it attaches; or

22 2. Temporarily under s. 679.3121(5), (6), or (7); and

23 (b) Is not made pursuant to a commitment entered into
24 before or while the security interest is perfected by a method
25 other than under s. 679.3091 or s. 679.3121(5), (6), or (7).

26 (2) Except as otherwise provided in subsection (3), a
27 security interest is subordinate to the rights of a person
28 that becomes a lien creditor to the extent that the security
29 interest secures an advance made more than 45 days after the
30 person becomes a lien creditor unless the advance is made:

31 (a) Without knowledge of the lien; or

1 (b) Pursuant to a commitment entered into without
2 knowledge of the lien.

3 (3) Subsections (1) and (2) do not apply to a security
4 interest held by a secured party that is a buyer of accounts,
5 chattel paper, payment intangibles, or promissory notes or a
6 consignor.

7 (4) Except as otherwise provided in subsection (5), a
8 buyer of goods other than a buyer in ordinary course of
9 business takes free of a security interest to the extent that
10 it secures advances made after the earlier of:

11 (a) The time the secured party acquires knowledge of
12 the buyer's purchase; or

13 (b) Forty-five days after the purchase.

14 (5) Subsection (4) does not apply if the advance is
15 made pursuant to a commitment entered into without knowledge
16 of the buyer's purchase and before the expiration of the
17 45-day period.

18 (6) Except as otherwise provided in subsection (7), a
19 lessee of goods, other than a lessee in ordinary course of
20 business, takes the leasehold interest free of a security
21 interest to the extent that it secures advances made after the
22 earlier of:

23 (a) The time the secured party acquires knowledge of
24 the lease; or

25 (b) Forty-five days after the lease contract becomes
26 enforceable.

27 (7) Subsection (6) does not apply if the advance is
28 made pursuant to a commitment entered into without knowledge
29 of the lease and before the expiration of the 45-day period.

30 679.324 Priority of purchase-money security
31 interests.--

1 (1) Except as otherwise provided in subsection (7), a
2 perfected purchase-money security interest in goods other than
3 inventory or livestock has priority over a conflicting
4 security interest in the same goods, and, except as otherwise
5 provided in s. 679.327, a perfected security interest in its
6 identifiable proceeds also has priority, if the purchase-money
7 security interest is perfected when the debtor receives
8 possession of the collateral or within 20 days thereafter.

9 (2) Subject to subsection (3) and except as otherwise
10 provided in subsection (7), a perfected purchase-money
11 security interest in inventory has priority over a conflicting
12 security interest in the same inventory, has priority over a
13 conflicting security interest in chattel paper or an
14 instrument constituting proceeds of the inventory and in
15 proceeds of the chattel paper, if so provided in s. 679.330,
16 and, except as otherwise provided in s. 679.327, also has
17 priority in identifiable cash proceeds of the inventory to the
18 extent the identifiable cash proceeds are received on or
19 before the delivery of the inventory to a buyer, if:

20 (a) The purchase-money security interest is perfected
21 when the debtor receives possession of the inventory;

22 (b) The purchase-money secured party sends an
23 authenticated notification to the holder of the conflicting
24 security interest;

25 (c) The holder of the conflicting security interest
26 receives the notification within 5 years before the debtor
27 receives possession of the inventory; and

28 (d) The notification states that the person sending
29 the notification has or expects to acquire a purchase-money
30 security interest in inventory of the debtor and describes the
31 inventory.

1 (3) Paragraphs (2)(b), (c), and (d) apply only if the
2 holder of the conflicting security interest had filed a
3 financing statement covering the same types of inventory:

4 (a) If the purchase-money security interest is
5 perfected by filing, before the date of the filing; or

6 (b) If the purchase-money security interest is
7 temporarily perfected without filing or possession under s.
8 679.3121(6), before the beginning of the 20-day period
9 thereunder.

10 (4) Subject to subsection (5) and except as otherwise
11 provided in subsection (7), a perfected purchase-money
12 security interest in livestock that are farm products has
13 priority over a conflicting security interest in the same
14 livestock, and, except as otherwise provided in s. 679.327, a
15 perfected security interest in their identifiable proceeds and
16 identifiable products in their unmanufactured states also has
17 priority, if:

18 (a) The purchase-money security interest is perfected
19 when the debtor receives possession of the livestock;

20 (b) The purchase-money secured party sends an
21 authenticated notification to the holder of the conflicting
22 security interest;

23 (c) The holder of the conflicting security interest
24 receives the notification within 6 months before the debtor
25 receives possession of the livestock; and

26 (d) The notification states that the person sending
27 the notification has or expects to acquire a purchase-money
28 security interest in livestock of the debtor and describes the
29 livestock.

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1 (5) Paragraphs (4)(b), (c), and (d) apply only if the
2 holder of the conflicting security interest had filed a
3 financing statement covering the same types of livestock:

4 (a) If the purchase-money security interest is
5 perfected by filing, before the date of the filing; or

6 (b) If the purchase-money security interest is
7 temporarily perfected without filing or possession under s.
8 679.3121(6), before the beginning of the 20-day period
9 thereunder.

10 (6) Except as otherwise provided in subsection (7), a
11 perfected purchase-money security interest in software has
12 priority over a conflicting security interest in the same
13 collateral, and, except as otherwise provided in s. 679.327, a
14 perfected security interest in its identifiable proceeds also
15 has priority, to the extent that the purchase-money security
16 interest in the goods in which the software was acquired for
17 use has priority in the goods and proceeds of the goods under
18 this section.

19 (7) If more than one security interest qualifies for
20 priority in the same collateral under subsection (1),
21 subsection (2), subsection (4), or subsection (6):

22 (a) A security interest securing an obligation
23 incurred as all or part of the price of the collateral has
24 priority over a security interest securing an obligation
25 incurred for value given to enable the debtor to acquire
26 rights in or the use of collateral; and

27 (b) In all other cases, s. 679.322(1) applies to the
28 qualifying security interests.

29 679.325 Priority of security interests in transferred
30 collateral.--

31

1 (1) Except as otherwise provided in subsection (2), a
2 security interest created by a debtor is subordinate to a
3 security interest in the same collateral created by another
4 person if:

5 (a) The debtor acquired the collateral subject to the
6 security interest created by the other person;

7 (b) The security interest created by the other person
8 was perfected when the debtor acquired the collateral; and

9 (c) There is no period thereafter when the security
10 interest is unperfected.

11 (2) Subsection (1) subordinates a security interest
12 only if the security interest:

13 (a) Otherwise would have priority solely under s.
14 679.322(1) or s. 679.324; or

15 (b) Arose solely under s. 672.711(3) or s. 680.508(5).
16 679.326 Priority of security interests created by new
17 debtor.--

18 (1) Subject to subsection (2), a security interest
19 created by a new debtor which is perfected by a filed
20 financing statement that is effective solely under s. 679.508
21 in collateral in which a new debtor has or acquires rights is
22 subordinate to a security interest in the same collateral
23 which is perfected other than by a filed financing statement
24 that is effective solely under s. 679.508.

25 (2) The other provisions of this part determine the
26 priority among conflicting security interests in the same
27 collateral perfected by filed financing statements that are
28 effective solely under s. 679.508. However, if the security
29 agreements to which a new debtor became bound as debtor were
30 not entered into by the same original debtor, the conflicting

31

1 security interests rank according to priority in time of the
2 new debtor's having become bound.

3 679.327 Priority of security interests in deposit
4 account.--The following rules govern priority among
5 conflicting security interests in the same deposit account:

6 (1) A security interest held by a secured party having
7 control of the deposit account under s. 679.1041 has priority
8 over a conflicting security interest held by a secured party
9 that does not have control.

10 (2) Except as otherwise provided in subsections (3)
11 and (4), security interests perfected by control under s.
12 679.3141 rank according to priority in time of obtaining
13 control.

14 (3) Except as otherwise provided in subsection (4), a
15 security interest held by the bank with which the deposit
16 account is maintained has priority over a conflicting security
17 interest held by another secured party.

18 (4) A security interest perfected by control under s.
19 679.1041(1)(c) has priority over a security interest held by
20 the bank with which the deposit account is maintained.

21 679.328 Priority of security interests in investment
22 property.--The following rules govern priority among
23 conflicting security interests in the same investment
24 property:

25 (1) A security interest held by a secured party having
26 control of investment property under s. 679.1061 has priority
27 over a security interest held by a secured party that does not
28 have control of the investment property.

29 (2) Except as otherwise provided in subsections (3)
30 and (4), conflicting security interests held by secured

31

1 parties each of which has control under s. 679.1061 rank
2 according to priority in time of:

3 (a) If the collateral is a security, obtaining
4 control;

5 (b) If the collateral is a security entitlement
6 carried in a securities account and:

7 1. If the secured party obtained control under s.
8 678.1061(4)(a), the secured party's becoming the person for
9 which the securities account is maintained;

10 2. If the secured party obtained control under s.
11 678.1061(4)(b), the securities intermediary's agreement to
12 comply with the secured party's entitlement orders with
13 respect to security entitlements carried or to be carried in
14 the securities account; or

15 3. If the secured party obtained control through
16 another person under s. 768.1061(4)(c), the time on which
17 priority would be based under this paragraph if the other
18 person were the secured party; or

19 (c) If the collateral is a commodity contract carried
20 with a commodity intermediary, the satisfaction of the
21 requirement for control specified in s. 679.1061(2)(b) with
22 respect to commodity contracts carried or to be carried with
23 the commodity intermediary.

24 (3) A security interest held by a securities
25 intermediary in a security entitlement or a securities account
26 maintained with the securities intermediary has priority over
27 a conflicting security interest held by another secured party.

28 (4) A security interest held by a commodity
29 intermediary in a commodity contract or a commodity account
30 maintained with the commodity intermediary has priority over a
31 conflicting security interest held by another secured party.

1 (5) A security interest in a certificated security in
2 registered form which is perfected by taking delivery under s.
3 679.3131(1) and not by control under s. 679.3141 has priority
4 over a conflicting security interest perfected by a method
5 other than control.

6 (6) Conflicting security interests created by a
7 broker, securities intermediary, or commodity intermediary
8 which are perfected without control under s. 679.1061 rank
9 equally.

10 (7) In all other cases, priority among conflicting
11 security interests in investment property is governed by ss.
12 679.322 and 679.323.

13 679.329 Priority of security interests in
14 letter-of-credit right.--The following rules govern priority
15 among conflicting security interests in the same
16 letter-of-credit right:

17 (1) A security interest held by a secured party having
18 control of the letter-of-credit right under s. 679.1071 has
19 priority to the extent of its control over a conflicting
20 security interest held by a secured party that does not have
21 control.

22 (2) Security interests perfected by control under s.
23 679.3141 rank according to priority in time of obtaining
24 control.

25 679.330 Priority of purchaser of chattel paper or
26 instrument.--

27 (1) A purchaser of chattel paper has priority over a
28 security interest in the chattel paper which is claimed merely
29 as proceeds of inventory subject to a security interest if:

30 (a) In good faith and in the ordinary course of the
31 purchaser's business, the purchaser gives new value and takes

1 possession of the chattel paper or obtains control of the
2 chattel paper under s. 679.1051; and

3 (b) The chattel paper does not indicate that it has
4 been assigned to an identified assignee other than the
5 purchaser.

6 (2) A purchaser of chattel paper has priority over a
7 security interest in the chattel paper which is claimed other
8 than merely as proceeds of inventory subject to a security
9 interest if the purchaser gives new value and takes possession
10 of the chattel paper or obtains control of the chattel paper
11 under s. 679.1051 in good faith, in the ordinary course of the
12 purchaser's business, and without knowledge that the purchase
13 violates the rights of the secured party.

14 (3) Except as otherwise provided in s. 679.327, a
15 purchaser having priority in chattel paper under subsection
16 (1) or subsection (2) also has priority in proceeds of the
17 chattel paper to the extent that:

18 (a) Section 679.322 provides for priority in the
19 proceeds; or

20 (b) The proceeds consist of the specific goods covered
21 by the chattel paper or cash proceeds of the specific goods,
22 even if the purchaser's security interest in the proceeds is
23 unperfected.

24 (4) Except as otherwise provided in s. 679.331(1), a
25 purchaser of an instrument has priority over a security
26 interest in the instrument perfected by a method other than
27 possession if the purchaser gives value and takes possession
28 of the instrument in good faith and without knowledge that the
29 purchase violates the rights of the secured party.

30 (5) For purposes of subsections (1) and (2), the
31 holder of a purchase-money security interest in inventory

1 gives new value for chattel paper constituting proceeds of the
2 inventory.

3 (6) For purposes of subsections (2) and (4), if
4 chattel paper or an instrument indicates that it has been
5 assigned to an identified secured party other than the
6 purchaser, a purchaser of the chattel paper or instrument has
7 knowledge that the purchase violates the rights of the secured
8 party.

9 679.331 Priority of rights of purchasers of
10 instruments, documents, and securities under other articles;
11 priority of interests in financial assets and security
12 entitlements under chapter 678.--

13 (1) This chapter does not limit the rights of a holder
14 in due course of a negotiable instrument, a holder to which a
15 negotiable document of title has been duly negotiated, or a
16 protected purchaser of a security. These holders or
17 purchasers take priority over an earlier security interest,
18 even if perfected, to the extent provided in chapters 673,
19 677, and 678.

20 (2) This chapter does not limit the rights of or
21 impose liability on a person to the extent that the person is
22 protected against the assertion of an adverse claim under
23 chapter 678.

24 (3) Filing under this chapter does not constitute
25 notice of a claim or defense to the holders, or purchasers, or
26 persons described in subsections (1) and (2).

27 679.332 Transfer of money; transfer of funds from
28 deposit account.--

29 (1) A transferee of money takes the money free of a
30 security interest unless the transferee acts in collusion with
31 the debtor in violating the rights of the secured party.

1 (2) A transferee of funds from a deposit account takes
2 the funds free of a security interest in the deposit account
3 unless the transferee acts in collusion with the debtor in
4 violating the rights of the secured party.

5 679.333 Priority of certain liens arising by operation
6 of law.--

7 (1) In this section, the term "possessory lien" means
8 an interest, other than a security interest or an agricultural
9 lien:

10 (a) Which secures payment or performance of an
11 obligation for services or materials furnished with respect to
12 goods by a person in the ordinary course of the person's
13 business;

14 (b) Which is created by statute or rule of law in
15 favor of the person; and

16 (c) Whose effectiveness depends on the person's
17 possession of the goods.

18 (2) A possessory lien on goods has priority over a
19 security interest in the goods unless the lien is created by a
20 statute that expressly provides otherwise.

21 679.334 Priority of security interests in fixtures and
22 crops.--

23 (1) A security interest under this chapter may be
24 created in goods that are fixtures or may continue in goods
25 that become fixtures. A security interest does not exist
26 under this chapter in ordinary building materials incorporated
27 into an improvement on land.

28 (2) This chapter does not prevent creation of an
29 encumbrance upon fixtures under real property law.

30 (3) In cases not governed by subsections (4) through
31 (8), a security interest in fixtures is subordinate to a

1 conflicting interest of an encumbrancer or owner of the
2 related real property other than the debtor.

3 (4) Except as otherwise provided in subsection (8), a
4 perfected security interest in fixtures has priority over a
5 conflicting interest of an encumbrancer or owner of the real
6 property if the debtor has an interest of record in or is in
7 possession of the real property and:

8 (a) The security interest is a purchase-money security
9 interest;

10 (b) The interest of the encumbrancer or owner arises
11 before the goods become fixtures; and

12 (c) The security interest is perfected by a fixture
13 filing before the goods become fixtures or within 20 days
14 thereafter.

15 (5) A perfected security interest in fixtures has
16 priority over a conflicting interest of an encumbrancer or
17 owner of the real property if:

18 (a) The debtor has an interest of record in the real
19 property or is in possession of the real property and the
20 security interest:

21 1. Is perfected by a fixture filing before the
22 interest of the encumbrancer or owner is of record; and

23 2. Has priority over any conflicting interest of a
24 predecessor in title of the encumbrancer or owner;

25 (b) Before the goods become fixtures, the security
26 interest is perfected by any method permitted by this chapter
27 and the fixtures are readily removable:

28 1. Factory or office machines;

29 2. Equipment that is not primarily used or leased for
30 use in the operation of the real property; or

31

1 3. Replacements of domestic appliances that are
2 consumer goods;

3 (c) The conflicting interest is a lien on the real
4 property obtained by legal or equitable proceedings after the
5 security interest was perfected by any method permitted by
6 this chapter; or

7 (d) The security interest is:

8 1. Created in a manufactured home in a
9 manufactured-home transaction; and

10 2. Perfected pursuant to a statute described in s.
11 679.3111(1)(b).

12 (6) A security interest in fixtures, whether or not
13 perfected, has priority over a conflicting interest of an
14 encumbrancer or owner of the real property if:

15 (a) The encumbrancer or owner has, in an authenticated
16 record, consented to the security interest or disclaimed an
17 interest in the goods as fixtures; or

18 (b) The debtor has a right to remove the goods as
19 against the encumbrancer or owner.

20 (7) The priority of the security interest under
21 subsection (6)(b) continues for a reasonable time if the
22 debtor's right to remove the goods as against the encumbrancer
23 or owner terminates.

24 (8) A mortgage is a construction mortgage to the
25 extent that it secures an obligation incurred for the
26 construction of an improvement on land, including the
27 acquisition cost of the land, if a recorded record of the
28 mortgage so indicates. Except as otherwise provided in
29 subsections (5) and (6), a security interest in fixtures is
30 subordinate to a construction mortgage if a record of the
31 mortgage is recorded before the goods become fixtures and the

1 goods become fixtures before the completion of the
2 construction. A mortgage has this priority to the same extent
3 as a construction mortgage to the extent that it is given to
4 refinance a construction mortgage.

5 (9) A perfected security interest in crops growing on
6 real property has priority over a conflicting interest of an
7 encumbrancer or owner of the real property if the debtor has
8 an interest of record in or is in possession of the real
9 property.

10 (10) Subsection (9) prevails over any inconsistent
11 provisions of the statutes.

12 679.335 Accessions.--

13 (1) A security interest may be created in an accession
14 and continues in collateral that becomes an accession.

15 (2) If a security interest is perfected when the
16 collateral becomes an accession, the security interest remains
17 perfected in the collateral.

18 (3) Except as otherwise provided in subsection (4),
19 the other provisions of this part determine the priority of a
20 security interest in an accession.

21 (4) A security interest in an accession is subordinate
22 to a security interest in the whole which is perfected by
23 compliance with the requirements of a certificate-of-title
24 statute under s. 679.3111(2).

25 (5) After default, subject to part VI, a secured party
26 may remove an accession from other goods if the security
27 interest in the accession has priority over the claims of
28 every person having an interest in the whole.

29 (6) A secured party that removes an accession from
30 other goods under subsection (5) shall promptly reimburse any
31 holder of a security interest or other lien on, or owner of,

1 the whole or of the other goods, other than the debtor, for
2 the cost of repair of any physical injury to the whole or the
3 other goods. The secured party need not reimburse the holder
4 or owner for any diminution in value of the whole or the other
5 goods caused by the absence of the accession removed or by any
6 necessity for replacing it. A person entitled to
7 reimbursement may refuse permission to remove until the
8 secured party gives adequate assurance for the performance of
9 the obligation to reimburse.

10 679.336 Commingled goods.--

11 (1) In this section, the term "commingled goods" means
12 goods that are physically united with other goods in such a
13 manner that their identity is lost in a product or mass.

14 (2) A security interest does not exist in commingled
15 goods as such. However, a security interest may attach to a
16 product or mass that results when goods become commingled
17 goods.

18 (3) If collateral becomes commingled goods, a security
19 interest attaches to the product or mass.

20 (4) If a security interest in collateral is perfected
21 before the collateral becomes commingled goods, the security
22 interest that attaches to the product or mass under subsection
23 (3) is perfected.

24 (5) Except as otherwise provided in subsection (6),
25 the other provisions of this part determine the priority of a
26 security interest that attaches to the product or mass under
27 subsection (3).

28 (6) If more than one security interest attaches to the
29 product or mass under subsection (3), the following rules
30 determine priority:

31

1 (a) A security interest that is perfected under
2 subsection (4) has priority over a security interest that is
3 unperfected at the time the collateral becomes commingled
4 goods.

5 (b) If more than one security interest is perfected
6 under subsection (4), the security interests rank equally in
7 proportion to value of the collateral at the time it became
8 commingled goods.

9 679.337 Priority of security interests in goods
10 covered by certificate of title.--If, while a security
11 interest in goods is perfected by any method under the law of
12 another jurisdiction, this state issues a certificate of title
13 that does not show that the goods are subject to the security
14 interest or contain a statement that they may be subject to
15 security interests not shown on the certificate:

16 (1) A buyer of the goods, other than a person in the
17 business of selling goods of that kind, takes free of the
18 security interest if the buyer gives value and receives
19 delivery of the goods after issuance of the certificate and
20 without knowledge of the security interest; and

21 (2) The security interest is subordinate to a
22 conflicting security interest in the goods that attaches, and
23 is perfected under s. 679.3111(2), after issuance of the
24 certificate and without the conflicting secured party's
25 knowledge of the security interest.

26 679.338 Priority of security interest or agricultural
27 lien perfected by filed financing statement providing certain
28 incorrect information.--If a security interest or agricultural
29 lien is perfected by a filed financing statement providing
30 information described in s. 679.516(2)(e) which is incorrect
31 at the time the financing statement is filed:

1 (1) The security interest or agricultural lien is
2 subordinate to a conflicting perfected security interest in
3 the collateral to the extent that the holder of the
4 conflicting security interest gives value in reasonable
5 reliance upon the incorrect information; and

6 (2) A purchaser, other than a secured party, of the
7 collateral takes free of the security interest or agricultural
8 lien to the extent that, in reasonable reliance upon the
9 incorrect information, the purchaser gives value and, in the
10 case of chattel paper, documents, goods, instruments, or a
11 security certificate, receives delivery of the collateral.

12 679.339 Priority subject of subordination.--This
13 chapter does not preclude subordination by agreement by a
14 person entitled to priority.

15 679.340 Effectiveness of right of recoupment or
16 set-off against deposit account.--

17 (1) Except as otherwise provided in subsection (3), a
18 bank with which a deposit account is maintained may exercise
19 any right of recoupment or set-off against a secured party
20 that holds a security interest in the deposit account.

21 (2) Except as otherwise provided in subsection (3),
22 the application of this chapter to a security interest in a
23 deposit account does not affect a right of recoupment or
24 set-off of the secured party as to a deposit account
25 maintained with the secured party.

26 (3) The exercise by a bank of a set-off against a
27 deposit account is ineffective against a secured party that
28 holds a security interest in the deposit account which is
29 perfected by control under s. 679.1041(1)(c), if the set-off
30 is based on a claim against the debtor.

31

1 debtor's rights in collateral may be voluntarily or
2 involuntarily transferred is governed by law other than this
3 chapter.

4 (2) An agreement between the debtor and secured party
5 which prohibits a transfer of the debtor's rights in
6 collateral or makes the transfer a default does not prevent
7 the transfer from taking effect.

8 679.4021 Secured party not obligated on contract of
9 debtor or in tort.--The existence of a security interest,
10 agricultural lien, or authority given to a debtor to dispose
11 of or use collateral, without more, does not subject a secured
12 party to liability in contract or tort for the debtor's acts
13 or omissions.

14 679.4031 Agreement not to assert defenses against
15 assignee.--

16 (1) In this section, the term "value" has the meaning
17 provided in s. 673.3031(1).

18 (2) Except as otherwise provided in this section, an
19 agreement between an account debtor and an assignor not to
20 assert against an assignee any claim or defense that the
21 account debtor may have against the assignor is enforceable by
22 an assignee that takes an assignment:

23 (a) For value;

24 (b) In good faith;

25 (c) Without notice of a claim of a property or
26 possessory right to the property assigned; and

27 (d) Without notice of a defense or claim in recoupment
28 of the type that may be asserted against a person entitled to
29 enforce a negotiable instrument under s. 673.3031(1).

30
31

1 (3) Subsection (2) does not apply to defenses of a
2 type that may be asserted against a holder in due course of a
3 negotiable instrument under s. 673.3031(2).

4 (4) In a consumer transaction, if a record evidences
5 the account debtor's obligation, law other than this chapter
6 requires that the record include a statement to the effect
7 that the rights of an assignee are subject to claims or
8 defenses that the account debtor could assert against the
9 original obligee, and the record does not include such a
10 statement:

11 (a) The record has the same effect as if the record
12 included such a statement; and

13 (b) The account debtor may assert against an assignee
14 those claims and defenses that would have been available if
15 the record included such a statement.

16 (5) This section is subject to law other than this
17 chapter which establishes a different rule for an account
18 debtor who is an individual and who incurred the obligation
19 primarily for personal, family, or household purposes.

20 (6) Except as otherwise provided in subsection (4),
21 this section does not displace law other than this chapter
22 which gives effect to an agreement by an account debtor not to
23 assert a claim or defense against an assignee.

24 679.4041 Rights acquired by assignee; claims and
25 defenses against assignee.--

26 (1) Unless an account debtor has made an enforceable
27 agreement not to assert defenses or claims, and subject to
28 subsections (2) through (5), the rights of an assignee are
29 subject to:

30 (a) All terms of the agreement between the account
31 debtor and assignor and any defense or claim in recoupment

1 arising from the transaction that gave rise to the contract;
2 and

3 (b) Any other defense or claim of the account debtor
4 against the assignor which accrues before the account debtor
5 receives a notification of the assignment authenticated by the
6 assignor or the assignee.

7 (2) Subject to subsection (3) and except as otherwise
8 provided in subsection (4), the claim of an account debtor
9 against an assignor may be asserted against an assignee under
10 subsection (1) only to reduce the amount the account debtor
11 owes.

12 (3) This section is subject to law other than this
13 chapter which establishes a different rule for an account
14 debtor who is an individual and who incurred the obligation
15 primarily for personal, family, or household purposes.

16 (4) In a consumer transaction, if a record evidences
17 the account debtor's obligation, law other than this chapter
18 requires that the record include a statement to the effect
19 that the account debtor's recovery against an assignee with
20 respect to claims and defenses against the assignor may not
21 exceed amounts paid by the account debtor under the record,
22 and the record does not include such a statement, the extent
23 to which a claim of an account debtor against the assignor may
24 be asserted against an assignee is determined as if the record
25 included such a statement.

26 (5) This section does not apply to an assignment of a
27 health-care-insurance receivable.

28 679.4051 Modification of assigned contract.--

29 (1) A modification of or substitution for an assigned
30 contract is effective against an assignee if made in good
31 faith. The assignee acquires corresponding rights under the

1 modified or substituted contract. The assignment may provide
2 that the modification or substitution is a breach of contract
3 by the assignor. This subsection is subject to subsections
4 (2) through (4).

5 (2) Subsection (1) applies to the extent that:

6 (a) The right to payment or a part thereof under an
7 assigned contract has not been fully earned by performance; or

8 (b) The right to payment or a part thereof has been
9 fully earned by performance and the account debtor has not
10 received notification of the assignment under s. 679.4061(1).

11 (3) This section is subject to law other than this
12 chapter which establishes a different rule for an account
13 debtor who is an individual and who incurred the obligation
14 primarily for personal, family, or household purposes.

15 (4) This section does not apply to an assignment of a
16 health-care-insurance receivable.

17 679.4061 Discharge of account debtor; notification of
18 assignment; identification and proof of assignment;
19 restrictions on assignment of accounts, chattel paper, payment
20 intangibles, and promissory notes ineffective.--

21 (1) Subject to subsections (2) through (9), an account
22 debtor on an account, chattel paper, or a payment intangible
23 may discharge its obligation by paying the assignor until, but
24 not after, the account debtor receives a notification,
25 authenticated by the assignor or the assignee, that the amount
26 due or to become due has been assigned and that payment is to
27 be made to the assignee. After receipt of the notification,
28 the account debtor may discharge its obligation by paying the
29 assignee and may not discharge the obligation by paying the
30 assignor.

31

1 (2) Subject to subsection (8), notification is
2 ineffective under subsection (1):

3 (a) If it does not reasonably identify the rights
4 assigned;

5 (b) To the extent that an agreement between an account
6 debtor and a seller of a payment intangible limits the account
7 debtor's duty to pay a person other than the seller and the
8 limitation is effective under law other than this chapter; or

9 (c) At the option of an account debtor, if the
10 notification notifies the account debtor to make less than the
11 full amount of any installment or other periodic payment to
12 the assignee, even if:

13 1. Only a portion of the account, chattel paper, or
14 payment intangible has been assigned to that assignee;

15 2. A portion has been assigned to another assignee; or

16 3. The account debtor knows that the assignment to
17 that assignee is limited.

18 (3) Subject to subsection (8), if requested by the
19 account debtor, an assignee shall seasonably furnish
20 reasonable proof that the assignment has been made. Unless
21 the assignee complies, the account debtor may discharge its
22 obligation by paying the assignor, even if the account debtor
23 has received a notification under subsection (1).

24 (4) Except as otherwise provided in subsection (5) and
25 ss. 680.303 and 679.4071, and subject to subsection (8), a
26 term in an agreement between an account debtor and an assignor
27 or in a promissory note is ineffective to the extent that it:

28 (a) Prohibits, restricts, or requires the consent of
29 the account debtor or person obligated on the promissory note
30 to the assignment or transfer of, or the creation, attachment,
31 perfection, or enforcement of a security interest in, the

1 account, chattel paper, payment intangible, or promissory
2 note; or

3 (b) Provides that the assignment or transfer or the
4 creation, attachment, perfection, or enforcement of the
5 security interest may give rise to a default, breach, right of
6 recoupment, claim, defense, termination, right of termination,
7 or remedy under the account, chattel paper, payment
8 intangible, or promissory note.

9 (5) Subsection (4) does not apply to the sale of a
10 payment intangible or promissory note.

11 (6) Except as otherwise provided in ss. 680.303 and
12 679.4071 and subject to subsections (8) and (9), a rule of
13 law, statute, or regulation that prohibits, restricts, or
14 requires the consent of a government, governmental body or
15 official, or account debtor to the assignment or transfer of,
16 or creation of a security interest in, an account or chattel
17 paper is ineffective to the extent that the rule of law,
18 statute, or regulation:

19 (a) Prohibits, restricts, or requires the consent of
20 the government, governmental body or official, or account
21 debtor to the assignment or transfer of, or the creation,
22 attachment, perfection, or enforcement of a security interest
23 in the account or chattel paper; or

24 (b) Provides that the assignment or transfer or the
25 creation, attachment, perfection, or enforcement of the
26 security interest may give rise to a default, breach, right of
27 recoupment, claim, defense, termination, right of termination,
28 or remedy under the account or chattel paper.

29 (7) Subject to subsection (8), an account debtor may
30 not waive or vary its option under paragraph (2)(c).

31

1 (8) This section is subject to law other than this
2 chapter which establishes a different rule for an account
3 debtor who is an individual and who incurred the obligation
4 primarily for personal, family, or household purposes.

5 (9) This section does not apply to an assignment of a
6 health-care-insurance receivable.

7 (10) This section prevails over any inconsistent
8 statute, rule, or regulation.

9 679.4071 Restrictions on creation or enforcement of
10 security interest in leasehold interest or in lessor's
11 residual interest.--

12 (1) Except as otherwise provided in subsection (2), a
13 term in a lease agreement is ineffective to the extent that
14 it:

15 (a) Prohibits, restricts, or requires the consent of a
16 party to the lease to the assignment or transfer of, or the
17 creation, attachment, perfection, or enforcement of a security
18 interest in, an interest of a party under the lease contract
19 or in the lessor's residual interest in the goods; or

20 (b) Provides that the assignment or transfer or the
21 creation, attachment, perfection, or enforcement of the
22 security interest may give rise to a default, breach, right of
23 recoupment, claim, defense, termination, right of termination,
24 or remedy under the lease.

25 (2) Except as otherwise provided in s. 680.303(7), a
26 term described in paragraph (1)(b) is effective to the extent
27 that there is:

28 (a) A transfer by the lessee of the lessee's right of
29 possession or use of the goods in violation of the term; or

30 (b) A delegation of a material performance of either
31 party to the lease contract in violation of the term.

1 (3) The creation, attachment, perfection, or
2 enforcement of a security interest in the lessor's interest
3 under the lease contract or the lessor's residual interest in
4 the goods is not a transfer that materially impairs the
5 lessee's prospect of obtaining return performance or
6 materially changes the duty of or materially increases the
7 burden or risk imposed on the lessee within the purview of s.
8 680.303(4) unless, and then only to the extent that,
9 enforcement actually results in a delegation of material
10 performance of the lessor.

11 679.4081 Restrictions on assignment of promissory
12 notes, health-care-insurance receivables, and certain general
13 intangibles ineffective.--

14 (1) Except as otherwise provided in subsection (2), a
15 term in a promissory note or in an agreement between an
16 account debtor and a debtor which relates to a
17 health-care-insurance receivable or a general intangible,
18 including a contract, permit, license, or franchise, and which
19 term prohibits, restricts, or requires the consent of the
20 person obligated on the promissory note or the account debtor
21 to, the assignment or transfer of, or creation, attachment, or
22 perfection of a security interest in, the promissory note,
23 health-care-insurance receivable, or general intangible, is
24 ineffective to the extent that the term:

25 (a) Would impair the creation, attachment, or
26 perfection of a security interest; or

27 (b) Provides that the assignment or transfer or the
28 creation, attachment, or perfection of the security interest
29 may give rise to a default, breach, right of recoupment,
30 claim, defense, termination, right of termination, or remedy
31

1 under the promissory note, health-care-insurance receivable,
2 or general intangible.

3 (2) Subsection (1) applies to a security interest in a
4 payment intangible or promissory note only if the security
5 interest arises out of a sale of the payment intangible or
6 promissory note.

7 (3) A rule of law, statute, or regulation that
8 prohibits, restricts, or requires the consent of a government,
9 governmental body or official, person obligated on a
10 promissory note, or account debtor to the assignment or
11 transfer of, or creation of a security interest in, a
12 promissory note, health-care-insurance receivable, or general
13 intangible, including a contract, permit, license, or
14 franchise between an account debtor and a debtor, is
15 ineffective to the extent that the rule of law, statute, or
16 regulation:

17 (a) Would impair the creation, attachment, or
18 perfection of a security interest; or

19 (b) Provides that the assignment or transfer or the
20 creation, attachment, or perfection of the security interest
21 may give rise to a default, breach, right of recoupment,
22 claim, defense, termination, right of termination, or remedy
23 under the promissory note, health-care-insurance receivable,
24 or general intangible.

25 (4) To the extent that a term in a promissory note or
26 in an agreement between an account debtor and a debtor which
27 relates to a health-care-insurance receivable or general
28 intangible or a rule of law, statute, or regulation described
29 in subsection (3) would be effective under law other than this
30 chapter but is ineffective under subsection (1) or subsection
31 (3), the creation, attachment, or perfection of a security

1 interest in the promissory note, health-care-insurance
2 receivable, or general intangible:

3 (a) Is not enforceable against the person obligated on
4 the promissory note or the account debtor;

5 (b) Does not impose a duty or obligation on the person
6 obligated on the promissory note or the account debtor;

7 (c) Does not require the person obligated on the
8 promissory note or the account debtor to recognize the
9 security interest, pay or render performance to the secured
10 party, or accept payment or performance from the secured
11 party;

12 (d) Does not entitle the secured party to use or
13 assign the debtor's rights under the promissory note,
14 health-care-insurance receivable, or general intangible,
15 including any related information or materials furnished to
16 the debtor in the transaction giving rise to the promissory
17 note, health-care-insurance receivable, or general intangible;

18 (e) Does not entitle the secured party to use, assign,
19 possess, or have access to any trade secrets or confidential
20 information of the person obligated on the promissory note or
21 the account debtor; and

22 (f) Does not entitle the secured party to enforce the
23 security interest in the promissory note,
24 health-care-insurance receivable, or general intangible.

25 (5) This section prevails over any inconsistent
26 statute, rule, or regulation.

27 679.409 Restrictions on assignment of letter-of-credit
28 rights ineffective.--

29 (1) A term in a letter of credit or a rule of law,
30 statute, regulation, custom, or practice applicable to the
31 letter of credit which prohibits, restricts, or requires the

1 consent of an applicant, issuer, or nominated person to a
2 beneficiary's assignment of or creation of a security interest
3 in a letter-of-credit right is ineffective to the extent that
4 the term or rule of law, statute, regulation, custom, or
5 practice:

6 (a) Would impair the creation, attachment, or
7 perfection of a security interest in the letter-of-credit
8 right; or

9 (b) Provides that the assignment or the creation,
10 attachment, or perfection of the security interest may give
11 rise to a default, breach, right of recoupment, claim,
12 defense, termination, right of termination, or remedy under
13 the letter-of-credit right.

14 (2) To the extent that a term in a letter of credit is
15 ineffective under subsection (1) but would be effective under
16 law other than this chapter or a custom or practice applicable
17 to the letter of credit, to the transfer of a right to draw or
18 otherwise demand performance under the letter of credit, or to
19 the assignment of a right to proceeds of the letter of credit,
20 the creation, attachment, or perfection of a security interest
21 in the letter-of-credit right:

22 (a) Is not enforceable against the applicant, issuer,
23 nominated person, or transferee beneficiary;

24 (b) Imposes no duties or obligations on the applicant,
25 issuer, nominated person, or transferee beneficiary; and

26 (c) Does not require the applicant, issuer, nominated
27 person, or transferee beneficiary to recognize the security
28 interest, pay or render performance to the secured party, or
29 accept payment or other performance from the secured party.

30 Section 5. Part V of chapter 679, Florida Statutes,
31 consisting of sections 679.501, 679.502, 679.503, 679.504,

1 679.505, 679.506, and 679.507, Florida Statutes, is repealed
2 and a new part V, consisting of sections 679.5011, 679.5021,
3 679.5031. 679.5041, 679.5051, 679.5061, 679.5071, 679.508,
4 679.509, 679.510, 679.511, 679.512, 679.513, 671.514, 679.515,
5 679.516, 679.517, 679.518, 679.519, 679.520, 679.521, 679.522,
6 679.523, 679.524, 679.525, 679.526, and 679.527, Florida
7 Statutes, is created to read:

8 PART V

9 FILING

10 679.5011 Filing office.--

11 (1) Except as otherwise provided in subsection (2),
12 the office in which to file a financing statement to perfect a
13 security interest or agricultural lien is:

14 (a) The office of the clerk of the circuit court, if:

15 1. The collateral is as-extracted collateral or timber
16 to be cut; or

17 2. The financing statement is filed as a fixture
18 filing and the collateral is goods that are or are to become
19 fixtures; or

20 (b) The office of the Secretary of State, in
21 accordance with ss. 679.3011-679.3071, and in all other cases,
22 including a case in which the collateral is goods that are or
23 are to become fixtures and the financing statement is not
24 filed as a fixture filing.

25 (2) The office in which to file a financing statement
26 to perfect a security interest in collateral, including
27 fixtures, of a transmitting utility is the office of the
28 Secretary of State. The financing statement also constitutes
29 a fixture filing as to the collateral indicated in the
30 financing statement which is or is to become fixtures.

31

1 679.5021 Contents of financing statement; record of
2 mortgage as financing statement; time of filing financing
3 statement.--

4 (1) Subject to subsection (2), a financing statement
5 is sufficient only if it:

6 (a) Provides the name of the debtor;

7 (b) Provides the name of the secured party or a
8 representative of the secured party; and

9 (c) Indicates the collateral covered by the financing
10 statement.

11 (2) Except as otherwise provided in s. 679.5011(2), to
12 be sufficient, a financing statement that covers as-extracted
13 collateral or timber to be cut, or which is filed as a fixture
14 filing and covers goods that are or are to become fixtures,
15 must comply with the requirements of subsection (1) and also:

16 (a) Indicate that it covers this type of collateral;

17 (b) Indicate that it is to be filed in the real
18 property records;

19 (c) Provide a description of the real property to
20 which the collateral is related; and

21 (d) If the debtor does not have an interest of record
22 in the real property, provide the name of a record owner.

23 (3) A real property mortgage is effective, from the
24 date of recording, as a financing statement filed as a fixture
25 filing or as a financing statement covering as-extracted
26 collateral or timber to be cut only if:

27 (a) The mortgage indicates the goods or accounts that
28 it covers;

29 (b) The goods are or are to become fixtures related to
30 the real property described in the mortgage or the collateral
31

1 is related to the real property described in the mortgage and
2 is as-extracted collateral or timber to be cut;

3 (c) The mortgage complies with the requirements for a
4 financing statement in this section other than an indication
5 that it is to be filed in the real property records; and

6 (d) The mortgage is recorded.

7 (4) A financing statement may be filed before a
8 security agreement is made or a security interest otherwise
9 attaches.

10 679.5031 Name of debtor and secured party.--

11 (1) A financing statement sufficiently provides the
12 name of the debtor:

13 (a) If the debtor is a registered organization, only
14 if the financing statement provides the name of the debtor
15 indicated on the public record of the debtor's jurisdiction of
16 organization which shows the debtor to have been organized;

17 (b) If the debtor is a decedent's estate, only if the
18 financing statement provides the name of the decedent and
19 indicates that the debtor is an estate;

20 (c) If the debtor is a trust or a trustee acting with
21 respect to property held in trust, only if the financing
22 statement:

23 1. Provides the name, if any, specified for the trust
24 in its organic documents or, if no name is specified, provides
25 the name of the settlor and additional information sufficient
26 to distinguish the debtor from other trusts having one or more
27 of the same settlors; and

28 2. Indicates, in the debtor's name or otherwise, that
29 the debtor is a trust or is a trustee acting with respect to
30 property held in trust; and

31 (d) In other cases:

1 1. If the debtor has a name, only if it provides the
2 individual or organizational name of the debtor; and

3 2. If the debtor does not have a name, only if it
4 provides the names of the partners, members, associates, or
5 other persons comprising the debtor.

6 (2) A financing statement that provides the name of
7 the debtor in accordance with subsection (1) is not rendered
8 ineffective by the absence of:

9 (a) A trade name or other name of the debtor; or

10 (b) Unless required under subparagraph (1)(d)2., names
11 of partners, members, associates, or other persons comprising
12 the debtor.

13 (3) A financing statement that provides only the
14 debtor's trade name does not sufficiently provide the name of
15 the debtor.

16 (4) Failure to indicate the representative capacity of
17 a secured party or representative of a secured party does not
18 affect the sufficiency of a financing statement.

19 (5) A financing statement may provide the name of more
20 than one debtor and the name of more than one secured party.

21 679.5041 Indication of collateral.--A financing
22 statement sufficiently indicates the collateral that it covers
23 if the financing statement provides:

24 (1) A description of the collateral pursuant to s.
25 679.1081; or

26 (2) If the security agreement grants a security
27 interest in all of the debtor's personal property which is
28 reasonably identified in the security agreement, as permitted
29 by s. 679.1081, an indication that the financing statement
30 covers all assets or all personal property.

31

1 679.5051 Filing and compliance with other statutes and
2 treaties for consignments, leases, bailments, and other
3 transactions.--

4 (1) A consignor, lessor, or bailor of goods, a
5 licensor, or a buyer of a payment intangible or promissory
6 note may file a financing statement, or may comply with a
7 statute or treaty described in s. 679.3111(1), using the terms
8 "consignor, consignee, lessor, lessee, bailor, bailee,
9 licensor, licensee, owner, registered owner, buyer, seller,"
10 or words of similar import, instead of the terms "secured
11 party" and "debtor."

12 (2) This part applies to the filing of a financing
13 statement under subsection (1) and, as appropriate, to
14 compliance that is equivalent to filing a financing statement
15 under s. 679.3111(2), but the filing or compliance is not of
16 itself a factor in determining whether the collateral secures
17 an obligation. If it is determined for another reason that the
18 collateral secures an obligation, a security interest held by
19 the consignor, lessor, bailor, licensor, owner, or buyer which
20 attaches to the collateral is perfected by the filing or
21 compliance.

22 679.5061 Effect of errors or omissions.--

23 (1) A financing statement substantially complying with
24 the requirements of this part is effective, even if it has
25 minor errors or omissions, unless the errors or omissions make
26 the financing statement seriously misleading.

27 (2) Except as otherwise provided in subsection (3), a
28 financing statement that fails sufficiently to provide the
29 name of the debtor in accordance with s. 679.5031(1) is
30 seriously misleading.

31

1 (3) If a search of the records of the filing office
2 under the debtor's correct name, using the filing office's
3 standard search logic, if any, would disclose a financing
4 statement that fails sufficiently to provide the name of the
5 debtor in accordance with s. 679.5031(1), the name provided
6 does not make the financing statement seriously misleading.

7 (4) For purposes of s. 679.508(2), the term "debtor's
8 correct name" as used in subsection (3) means the correct name
9 of the new debtor.

10 679.5071 Effect of certain events on effectiveness of
11 financing statement.--

12 (1) A filed financing statement remains effective with
13 respect to collateral that is sold, exchanged, leased,
14 licensed, or otherwise disposed of and in which a security
15 interest or agricultural lien continues, even if the secured
16 party knows of or consents to the disposition.

17 (2) Except as otherwise provided in subsection (3) and
18 s. 679.508, a financing statement is not rendered ineffective
19 if, after the financing statement is filed, the information
20 provided in the financing statement becomes seriously
21 misleading under the standard set forth in s. 679.5061.

22 (3) If a debtor so changes its name that a filed
23 financing statement becomes seriously misleading under the
24 standard set forth in s. 679.5061:

25 (a) The financing statement is effective to perfect a
26 security interest in collateral acquired by the debtor before,
27 or within 4 months after, the change; and

28 (b) The financing statement is not effective to
29 perfect a security interest in collateral acquired by the
30 debtor more than 4 months after the change, unless an
31 amendment to the financing statement which renders the

1 financing statement not seriously misleading is filed within 4
2 months after the change.

3 679.508 Effectiveness of financing statement if new
4 debtor becomes bound by security agreement.--

5 (1) Except as otherwise provided in this section, a
6 filed financing statement naming an original debtor is
7 effective to perfect a security interest in collateral in
8 which a new debtor has or acquires rights to the extent that
9 the financing statement would have been effective had the
10 original debtor acquired rights in the collateral.

11 (2) If the difference between the name of the original
12 debtor and that of the new debtor causes a filed financing
13 statement that is effective under subsection (1) to be
14 seriously misleading under the standard set forth in s.
15 679.5061:

16 (a) The financing statement is effective to perfect a
17 security interest in collateral acquired by the new debtor
18 before, and within 4 months after, the new debtor becomes
19 bound under s. 679.2031(4); and

20 (b) The financing statement is not effective to
21 perfect a security interest in collateral acquired by the new
22 debtor more than 4 months after the new debtor becomes bound
23 under s. 679.2031(4) unless an initial financing statement
24 providing the name of the new debtor is filed before the
25 expiration of that time.

26 (3) This section does not apply to collateral as to
27 which a filed financing statement remains effective against
28 the new debtor under s. 679.5071(1).

29 679.509 Persons entitled to file a record.--

30 (1) A person may file an initial financing statement,
31 amendment that adds collateral covered by a financing

1 statement, or amendment that adds a debtor to a financing
2 statement only if:
3 (a) The debtor authorizes the filing in an
4 authenticated record; or
5 (b) The person holds an agricultural lien that has
6 become effective at the time of filing and the financing
7 statement covers only collateral in which the person holds an
8 agricultural lien.
9 (2) By authenticating a security agreement, a debtor
10 or new debtor authorizes the filing of an initial financing
11 statement, and an amendment, covering:
12 (a) The collateral described in the security
13 agreement; and
14 (b) Property that becomes collateral under s.
15 679.3151(1)(b), whether or not the security agreement
16 expressly covers proceeds.
17 (3) A person may file an amendment other than an
18 amendment that adds collateral covered by a financing
19 statement or an amendment that adds a debtor to a financing
20 statement only if:
21 (a) The secured party of record authorizes the filing;
22 or
23 (b) The amendment is a termination statement for a
24 financing statement as to which the secured party of record
25 has failed to file or send a termination statement as required
26 by s. 679.5131(1) or (3).
27 (4) If there is more than one secured party of record
28 for a financing statement, each secured party of record may
29 authorize the filing of an amendment under subsection (3).
30 679.510 Effectiveness of filed record.--
31

1 (1) Subject to subsection (3), a filed record is
2 effective only to the extent that it was filed by a person
3 that may file it under s. 679.509.

4 (2) A record authorized by one secured party of record
5 does not affect the financing statement with respect to
6 another secured party of record.

7 (3) If a person may file a termination statement only
8 under s. 679.509(3)(b), the filed termination statement is
9 effective only if the debtor authorizes the filing and the
10 termination statement indicates that the debtor authorized it
11 to be filed.

12 (4) A continuation statement that is not filed within
13 the 6-month period prescribed by s. 679.514(1) is ineffective.

14 679.511 Secured party of record.--

15 (1) A secured party of record with respect to a
16 financing statement is a person whose name is provided as the
17 name of the secured party or a representative of the secured
18 party in an initial financing statement that has been filed.
19 If an initial financing statement is filed under s.
20 679.514(1), the assignee named in the initial financing
21 statement is the secured party of record with respect to the
22 financing statement.

23 (2) If an amendment of a financing statement which
24 provides the name of a person as a secured party or a
25 representative of a secured party is filed, the person named
26 in the amendment is a secured party of record. If an
27 amendment is filed under s. 679.514(2), the assignee named in
28 the amendment is a secured party of record.

29 (3) A person remains a secured party of record until
30 the filing of an amendment of the financing statement which
31 deletes the person.

1 679.512 Amendment of financing statement.--
2 (1) Subject to s. 679.509, a person may add or delete
3 collateral covered by, continue or terminate the effectiveness
4 of, or, subject to subsection (5), otherwise amend the
5 information provided in, a financing statement by filing an
6 amendment that:
7 (a) Identifies, by its correct file number or official
8 records book and page number, as applicable, and the secured
9 party of record, the initial financing statement to which the
10 amendment relates; and
11 (b) If the amendment relates to an initial financing
12 statement filed in a filing office described in s.
13 679.5011(1)(b), provides the information specified in s.
14 679.5021(2).
15 (2) Except as otherwise provided in s. 679.515, the
16 filing of an amendment does not extend the period of
17 effectiveness of the financing statement.
18 (3) A financing statement that is amended by an
19 amendment that adds collateral is effective as to the added
20 collateral only from the date of the filing of the amendment.
21 (4) A financing statement that is amended by an
22 amendment that adds a debtor is effective as to the added
23 debtor only from the date of the filing of the amendment.
24 (5) An amendment is ineffective to the extent it:
25 (a) Purports to delete all debtors and fails to
26 provide the name of a debtor to be covered by the financing
27 statement; or
28 (b) Purports to delete all secured parties of record
29 and fails to provide the name of a new secured party of
30 record.
31 679.513 Termination statement.--

1 (1) A secured party shall cause the secured party of
2 record for a financing statement to file a termination
3 statement for the financing statement if the financing
4 statement covers consumer goods and:

5 (a) There is no obligation secured by the collateral
6 covered by the financing statement and no commitment to make
7 an advance, incur an obligation, or otherwise give value; or

8 (b) The debtor did not authorize the filing of the
9 initial financing statement.

10 (2) To comply with subsection (1), a secured party
11 shall cause the secured party of record to file the
12 termination statement:

13 (a) Within 1 month after there is no obligation
14 secured by the collateral covered by the financing statement
15 and no commitment to make an advance, incur an obligation, or
16 otherwise give value; or

17 (b) If earlier, within 20 days after the secured party
18 receives an authenticated demand from a debtor.

19 (3) In cases not governed by subsection (1), within 20
20 days after a secured party receives an authenticated demand
21 from a debtor, the secured party shall cause the secured party
22 of record for a financing statement to send to the debtor a
23 termination statement for the financing statement or file the
24 termination statement in the filing office if:

25 (a) Except in the case of a financing statement
26 covering accounts or chattel paper that has been sold or goods
27 that are the subject of a consignment, there is no obligation
28 secured by the collateral covered by the financing statement
29 and no commitment to make an advance, incur an obligation, or
30 otherwise give value;

31

1 (b) The financing statement covers accounts or chattel
2 paper that has been sold but as to which the account debtor or
3 other person obligated has discharged its obligation;

4 (c) The financing statement covers goods that were the
5 subject of a consignment to the debtor but are not in the
6 debtor's possession; or

7 (d) The debtor did not authorize the filing of the
8 initial financing statement.

9 (4) Except as otherwise provided in s. 679.510, upon
10 the filing of a termination statement with the filing office,
11 the financing statement to which the termination statement
12 relates ceases to be effective.

13 679.514 Assignment of powers of secured party of
14 record.--

15 (1) Except as otherwise provided in subsection (3), an
16 initial financing statement may reflect an assignment of all
17 of the secured party's power to authorize an amendment to the
18 financing statement by providing the name and mailing address
19 of the assignee as the name and address of the secured party.

20 (2) Except as otherwise provided in subsection (3), a
21 secured party of record may assign of record all or part of
22 its power to authorize an amendment to a financing statement
23 by filing in the filing office an amendment of the financing
24 statement which:

25 (a) Identifies, by its correct file number and the
26 annual party of record, the initial financing statement to
27 which it relates;

28 (b) Provides the name of the assignor; and

29 (c) Provides the name and mailing address of the
30 assignee.

31

1 (3) An assignment of record of a security interest in
2 a fixture covered by a real property mortgage that is
3 effective as a fixture filing under s. 679.5021(3) may be made
4 only by an assignment of record of the mortgage in the manner
5 provided by s. 701.02.

6 679.515 Duration and effectiveness of financing
7 statement; effect of lapsed financing statement.--

8 (1) Except as otherwise provided in subsections (2),
9 (5), (6), and (7), a filed financing statement is effective
10 for a period of 5 years after the date of filing.

11 (2) Except as otherwise provided in subsections (5),
12 (6), and (7), an initial financing statement filed in
13 connection with a manufactured-home transaction is effective
14 for a period of 30 years after the date of filing if it
15 indicates that it is filed in connection with a
16 manufactured-home transaction.

17 (3) The effectiveness of a filed financing statement
18 lapses on the expiration of the period of its effectiveness
19 unless before the lapse a continuation statement is filed
20 pursuant to subsection (4). Upon lapse, a financing statement
21 ceases to be effective and any security interest or
22 agricultural lien that was perfected by the financing
23 statement becomes unperfected, unless the security interest is
24 perfected without filing. If the security interest or
25 agricultural lien becomes unperfected upon lapse, it is deemed
26 never to have been perfected as against a purchaser of the
27 collateral for value.

28 (4) A continuation statement may be filed only within
29 6 months before the expiration of the 5-year period specified
30 in subsection (1) or the 30-year period specified in
31 subsection (2), whichever is applicable.

1 (5) Except as otherwise provided in s. 679.510, upon
2 timely filing of a continuation statement, the effectiveness
3 of the initial financing statement continues for a period of 5
4 years commencing on the day on which the financing statement
5 would have become ineffective in the absence of the filing.
6 Upon the expiration of the 5-year period, the financing
7 statement lapses in the same manner as provided in subsection
8 (3), unless, before the lapse, another continuation statement
9 is filed pursuant to subsection (4). Succeeding continuation
10 statements may be filed in the same manner to continue the
11 effectiveness of the initial financing statement.

12 (6) If a debtor is a transmitting utility and a filed
13 financing statement so indicates, the financing statement is
14 effective until a termination statement is filed.

15 (7) A real property mortgage that is effective as a
16 fixture filing under s. 679.5021(3) remains effective as a
17 financing statement filed as a fixture filing until the
18 mortgage is released or satisfied of record or its
19 effectiveness otherwise terminates as to the real property.

20 679.516 What constitutes filing; effectiveness of
21 filing.--

22 (1) Except as otherwise provided in subsection (2),
23 communication of a record to a filing office, tender of the
24 processing fee, and acceptance of the record by the filing
25 office constitutes filing.

26 (2) Filing does not occur with respect to a record
27 that a filing office refuses to accept because:

28 (a) The record is not communicated by a method or
29 medium of communication authorized by the filing office;

30 (b) An amount equal to or greater than the applicable
31 processing fee is not tendered;

1 (c) The record does not include the notation required
2 by s. 201.22 indicating that the excise tax required by
3 chapter 201 had been paid or is not required;

4 (d) The record is submitted to the wrong office for
5 filing;

6 (e) The filing office is unable to index the record
7 because:

8 1. In the case of an initial financing statement, the
9 record does not provide an organization's name or, if an
10 individual, the individual's last name and first name or
11 initial;

12 2. In the case of an amendment or correction
13 statement, the record:

14 a. Does not correctly identify the initial financing
15 statement as required by s. 679.512 or s. 679.518, as
16 applicable; or

17 b. Identifies an initial financing statement whose
18 effectiveness has lapsed under s. 679.515 or was previously
19 terminated under s. 679.513;

20 3. In the case of an initial financing statement that
21 provides the name of a debtor identified as an individual or
22 an amendment that provides a name of a debtor identified as an
23 individual which was not previously provided in the financing
24 statement to which the record relates, the record does not
25 identify the debtor's last name and first name or initial; or

26 4. In the case of a record filed or recorded in the
27 filing office described in s. 679.5011(1)(a), the record does
28 not provide a sufficient description of the real property to
29 which it relates;

30 (f) In the case of an initial financing statement or
31 an amendment that adds a secured party of record, the record

1 does not provide an organization's name or, if an individual,
2 the individual's last name and first name or initial and
3 mailing address for the secured party of record;

4 (g) In the case of an initial financing statement or
5 an amendment that provides a name of a debtor which was not
6 previously provided in the financing statement to which the
7 amendment relates, the record does not:

8 1. Provide a mailing address for the debtor;

9 2. Indicate whether the debtor is an individual or an
10 organization; or

11 3. If the financing statement indicates that the
12 debtor is an organization, provide:

13 a. A type of organization for the debtor;

14 b. A jurisdiction of organization for the debtor; or

15 c. An organizational identification number for the
16 debtor or indicate that the debtor has none;

17 (h) In the case of an assignment reflected in an
18 initial financing statement under s. 679.514(1) or an
19 amendment filed under s. 679.514(2), the record does not
20 provide an organization's name or, if an individual, the
21 individual's last name and first name or initial and mailing
22 address for the assignee;

23 (i) In the case of a continuation statement, the
24 record is not filed within the 6-month period prescribed by s.
25 679.515(4);

26 (j) In the case of an initial financing statement or
27 an amendment, where appropriate, the record does not provide a
28 statement of collateral; or

29 (k) In the case of an initial financing statement or
30 an amendment, any mentioned attachment or exhibit is not
31 included with the record.

- 1 (3) For purposes of subsection (2):
2 (a) A record does not provide information if the
3 filing office is unable to read or decipher the information;
4 and
5 (b) A record that does not indicate that it is an
6 amendment or identify an initial financing statement to which
7 it relates, as required by s. 679.512, s. 679.514, or 679.518,
8 is an initial financing statement.
9 (4) A record that is communicated to the filing office
10 with tender of the filing fee, but which the filing office
11 refuses to accept for a reason other than one set forth in
12 subsection (2), is effective as a filed record except as
13 against a purchaser of the collateral which gives value in
14 reasonable reliance upon the absence of the record from the
15 files.
16 679.517 Effect of indexing errors.--The failure of the
17 filing office to index a record correctly does not affect the
18 effectiveness of the filed record.
19 679.518 Claim concerning inaccurate or wrongfully
20 filed record.--
21 (1) A person may file in the filing office a
22 correction statement with respect to a record indexed there
23 under the person's name if the person believes that the record
24 is inaccurate or was wrongfully filed.
25 (2) A correction statement must:
26 (a) Identify the record to which it relates by the
27 file number assigned to the initial financing statement and
28 the secured party of record to which the record relates;
29 (b) Indicate that it is a correction statement; and
30 (c) Provide the basis for the person's belief that the
31 record is inaccurate and indicate the manner in which the

1 person believes the record should be amended to cure any
2 inaccuracy or provide the basis for the person's belief that
3 the record was wrongfully filed.

4 (3) The filing of a correction statement does not
5 affect the effectiveness of an initial financing statement or
6 other filed record.

7 679.519 Numbering, maintaining, and indexing records;
8 communicating information provided in records.--

9 (1) Except as otherwise provided in subsection (9),
10 for each record filed in a filing office, the filing office
11 shall:

12 (a) Assign a unique number to the filed record;

13 (b) Create a record that bears the number assigned to
14 the filed record and the date of filing;

15 (c) Maintain the filed record for public inspection;
16 and

17 (d) Index the filed record in accordance with
18 subsections (3), (4), and (5).

19 (2) Except as otherwise provided in subsection (9), a
20 file number assigned after January 1, 2002, must include a
21 digit that:

22 (a) Is mathematically derived from or related to the
23 other digits of the file number; and

24 (b) Enables the filing office to detect whether a
25 number communicated as the file number includes a single-digit
26 or transpositional error.

27 (3) Except as otherwise provided in subsections (4)
28 and (5), the filing office shall:

29 (a) Index an initial financing statement according to
30 the name of the debtor and shall index all filed records
31 relating to the initial financing statement in a manner that

1 associates with one another an initial financing statement and
2 all filed records relating to the initial financing statement;
3 and

4 (b) Index a record that provides a name of a debtor
5 which was not previously provided in the financing statement
6 to which the record relates also according to the name that
7 was not previously provided.

8 (4) If a financing statement is filed as a fixture
9 filing or covers as-extracted collateral or timber to be cut,
10 the filing office shall index it:

11 (a) Under the names of the debtor and of each owner of
12 record shown on the financing statement as if they were the
13 mortgagors under a mortgage of the real property described;
14 and

15 (b) To the extent that the law of this state provides
16 for indexing of mortgages under the name of the mortgagee,
17 under the name of the secured party as if the secured party
18 were the mortgagee thereunder, or, if indexing is by
19 description, as if the financing statement were a mortgage of
20 the real property described.

21 (5) If a financing statement is filed as a fixture
22 filing or covers as-extracted collateral or timber to be cut,
23 the filing office shall index an assignment filed under s.
24 679.514(1) or an amendment filed under s. 679.514(2):

25 (a) Under the name of the assignor as grantor; and

26 (b) To the extent that the law of this state provides
27 for indexing the assignment of a real property mortgage under
28 the name of the assignee, under the name of the assignee.

29 (6) The filing office shall maintain a capability for:
30
31

1 (a) Retrieving a record by the name of the debtor and
2 by the file number assigned to the initial financing statement
3 to which the record relates; and

4 (b) Associating and retrieving with one another an
5 initial financing statement and each filed record relating to
6 the initial financing statement.

7 (7) The filing office may not remove a debtor's name
8 from the index until 1 year after the effectiveness of a
9 financing statement naming the debtor lapses under s. 679.515
10 with respect to all secured parties of record.

11 (8) Except as otherwise provided in subsection (9),
12 the filing office shall perform the acts required by
13 subsections (1) through (5) at the time and in the manner
14 prescribed by filing-office rule, but not later than 2
15 business days after the filing office receives the record in
16 question.

17 (9) Subsections (1), (2), and (8) do not apply to a
18 filing office described in s. 679.5011(1)(a).

19 679.520 Acceptance and refusal to accept record.--

20 (1) A filing office shall refuse to accept a record
21 for filing for a reason set forth in s. 679.516(2) and may
22 refuse to accept a record for filing only for a reason set
23 forth in s. 679.516(2).

24 (2) If a filing office refuses to accept a record for
25 filing, it shall communicate to the person that presented the
26 record the fact of and reason for the refusal and the date and
27 time the record would have been filed had the filing office
28 accepted it. The communication must be made at the time and
29 in the manner prescribed by filing-office rule but, in the
30 case of a filing office described in s. 679.5011(1)(b), in no
31

1 event more than 2 business days after the filing office
2 receives the record.

3 (3) A filed financing statement satisfying s.
4 679.5021(1) and (2) is effective, even if the filing office is
5 required to refuse to accept it for filing under subsection
6 (1). However, s. 679.338 applies to a filed financing
7 statement providing information described in s. 679.516(2)(e)
8 which is incorrect at the time the financing statement is
9 filed.

10 (4) If a record communicated to a filing office
11 provides information that relates to more than one debtor,
12 this part applies as to each debtor separately.

13 679.521 Uniform form of written financing statement
14 and amendment.--The Secretary of State shall develop or
15 approve mandatory forms for use in filing under this chapter.
16 Such forms must be in accord with the requirements of Florida
17 law, including s. 201.22. The secretary may, if he or she
18 finds that such forms meet these requirements, approve the use
19 of a standard national form for this purpose.

20 679.522 Maintenance and destruction of records.--

21 (1) The filing office shall maintain a record of the
22 information provided in a filed financing statement for at
23 least 1 year after the effectiveness of the financing
24 statement has lapsed under s. 679.515 with respect to all
25 secured parties of record. The record must be retrievable by
26 using the name of the debtor and by using the file number, or
27 official records book and page number if a fixture filing,
28 assigned to the initial financing statement to which the
29 record relates.

30 (2) Except to the extent that chapter 119 governing
31 disposition of public records provides otherwise, the filing

1 office immediately may destroy any written record evidencing a
2 financing statement. However, if the filing office destroys a
3 written record, it shall maintain another record of the
4 financing statement which complies with subsection (1).

5 679.523 Information from filing office; sale or
6 license of records.--

7 (1) If a person files a written record, the filing
8 office shall make available, on the data base, an image of the
9 record showing the number assigned to the record pursuant to
10 s. 679.519(1)(a) and the date of the filing of the record or,
11 if requested, send to the person a separate printed
12 acknowledgement indicating the debtor's name, the number
13 assigned to the record pursuant to s. 679.519(1)(a), and the
14 date of the filing of the record.

15 (2) If a person files a record other than a written
16 record, the filing office described in s. 679.5011(1)(b) shall
17 communicate to the person an image that provides:

18 (a) The information in the record;

19 (b) The number assigned to the record pursuant to s.
20 679.519(1)(a); and

21 (c) The date and time of the filing of the record.

22 (3) The filing office shall communicate or otherwise
23 make available in a record the following information to any
24 person that requests it:

25 (a) Whether there is on file on a date and time
26 specified by the filing office, but not a date earlier than 3
27 business days before the filing office receives the request,
28 any financing statement that:

29 1. Designates a particular debtor;

30 2. Has not lapsed under s. 679.515 with respect to all
31 secured parties of record; and

1 3. If the request so states, has lapsed under s.
2 679.515 and a record of which is maintained by the filing
3 office under s. 679.522(1);

4 (b) The date and time of filing of each financing
5 statement; and

6 (c) The information provided in each financing
7 statement.

8 (4) In complying with its duty under subsection (3),
9 the filing office described in s. 679.5011(1)(b) may
10 communicate information in any medium. However, if requested,
11 the filing office shall communicate information by issuing its
12 written certificate or a record that can be admitted into
13 evidence in the courts of the state without extrinsic evidence
14 of its authenticity.

15 (5) The filing office described in s. 679.5011(1)(b)
16 shall perform the acts required by subsections (1) through (4)
17 at the time and in the manner prescribed by filing office
18 rule, but not later than 2 business days after the filing
19 office receives the request.

20 (6) At least weekly, the filing office described in s.
21 679.5011(1)(b) shall offer to sell or license to the public on
22 a nonexclusive basis, in bulk, copies of all records filed in
23 it under this part, in every medium from time to time
24 available to the filing office.

25 679.524 Delay by filing office.--Delay by the filing
26 office beyond a time limit prescribed by this part is excused
27 if:

28 (1) The delay is caused by interruption of
29 communication or computer facilities, war, emergency
30 conditions, failure of equipment, or other circumstances
31 beyond control of the filing office; and

1 (2) The filing office exercises reasonable diligence
2 under the circumstances.

3 679.525 Processing fees.--

4 (1) Except as otherwise provided in subsection (3),
5 the nonrefundable processing fee for filing and indexing a
6 record under this part, other than an initial financing
7 statement of the kind described in s. 679.5021(3), is:

8 (a) For filing a financing statement, \$25 for the
9 first page, which shall include the cost of filing a
10 termination statement for the financing statement;

11 (b) For filing an assignment, continuation, or
12 amendment, \$12 for the first page;

13 (c) For indexing by additional debtor, secured party,
14 or assignee, \$3 per additional name indexed;

15 (d) For use of a nonapproved form, \$5;

16 (e) For each additional facing page attached to a
17 record, \$3;

18 (f) For filing a financing statement communicated by
19 an electronic filing process authorized by the filing office,
20 \$15 with no additional fees for multiple names or attached
21 pages;

22 (g) For filing an assignment, continuation, or
23 amendment communicated by an electronic filing process
24 authorized by the filing office, \$5 with no additional fees
25 for multiple names or attached pages;

26 (h) For a certified copy of a financing statement and
27 any and all associated amendments, \$30; and

28 (i) For a photocopy of a filed record \$1 per page.

29 (2) Except as otherwise provided in subsection (3),
30 the fee for filing and indexing an initial financing statement
31

1 of the kind described in s. 679.5021(3) is the amount
2 specified in chapter 28.

3 (3) This section does not require a fee with respect
4 to a mortgage that is effective as a financing statement filed
5 as a fixture filing or as a financing statement covering
6 as-extracted collateral or timber to be cut under s.
7 679.5021(3). However, the recording and satisfaction fees
8 that otherwise would be applicable to the mortgage apply.

9 679.526 Filing-office rules.--

10 (1) The Department of State shall adopt and publish
11 rules to administer this chapter. The filing-office rules
12 must be:

13 (a) Consistent with this chapter; and

14 (b) Adopted and published in accordance with the
15 Administrative Procedure Act.

16 (2) To keep the filing-office rules and practices of
17 the filing office in harmony with the rules and practices of
18 filing offices in other jurisdictions that enact substantially
19 this part, and to keep the technology used by the filing
20 office compatible with the technology used by filing offices
21 in other jurisdictions that enact substantially this part, the
22 Department of State, so far as is consistent with the
23 purposes, policies, and provisions of this chapter, in
24 adopting, amending, and repealing filing-office rules, shall:

25 (a) Consult with filing offices in other jurisdictions
26 that enact substantially this part; and

27 (b) Consult the most recent version of the Model Rules
28 promulgated by the International Association of Corporate
29 Administrators or any successor organization; and

30
31

1 (c) Take into consideration the rules and practices
2 of, and the technology used by, filing offices in other
3 jurisdictions that enact substantially this part.

4 679.527 Duty to report.--The Secretary of State shall
5 report annually on or before the first day of the session to
6 the Governor and Legislature on the operation of the filing
7 office. The report must contain a statement of the extent to
8 which:

9 (1) The filing-office rules are not in harmony with
10 the rules of filing offices in other jurisdictions that enact
11 substantially this part and the reasons for these variations;
12 and

13 (2) The filing-office rules are not in harmony with
14 the most recent version of the Model Rules promulgated by the
15 International Association of Corporate Administrators, or any
16 successor organization, and the reasons for these variations.

17 Section 6. Part VI of chapter 679, Florida Statutes,
18 consisting of sections 679.601, 679.602, 679.603, 679.604,
19 679.605, 679.606, 679.607, 679.608, 679.609, 679.610, 679.611,
20 679.612, 679.613, 679.614, 679.615, 679.616, 679.617, 679.618,
21 679.619, 679.620, 679.621, 679.622, 679.623, 679.624, 679.625,
22 679.626, 679.627, and 679.628, Florida Statutes, is created to
23 read:

24 PART VI

25 DEFAULT

26 679.601 Rights after default; judicial enforcement;
27 consignor or buyer of accounts, chatter paper, payment
28 intangibles, or promissory notes.--

29 (1) After default, a secured party has the rights
30 provided in this part and, except as otherwise provided in s.
31

1 679.602, those provided by agreement of the parties. A secured
2 party:
3 (a) May reduce a claim to judgment, foreclose, or
4 otherwise enforce the claim, security interest, or
5 agricultural lien by any available judicial procedure; and
6 (b) If the collateral is documents, may proceed either
7 as to the documents or as to the goods they cover.
8 (2) A secured party in possession of collateral or
9 control of collateral under s. 679.1041, s. 679.1051, s.
10 679.1061, or s. 679.1071 has the rights and duties provided in
11 s. 679.2071.
12 (3) The rights under subsections (1) and (2) are
13 cumulative and may be exercised simultaneously.
14 (4) Except as otherwise provided in subsection (7) and
15 s. 679.605, after default, a debtor and an obligor have the
16 rights provided in this part and by agreement of the parties.
17 (5) If a secured party has reduced its claim to
18 judgment, the lien of any levy that may be made upon the
19 collateral by virtue of an execution based upon the judgment
20 relates back to the earliest of:
21 (a) The date of perfection of the security interest or
22 agricultural lien in the collateral;
23 (b) The date of filing a financing statement covering
24 the collateral; or
25 (c) Any date specified in a statute under which the
26 agricultural lien was created.
27 (6) A sale pursuant to an execution is a foreclosure
28 of the security interest or agricultural lien by judicial
29 procedure within the meaning of this section. A secured party
30 may purchase at the sale and thereafter hold the collateral
31 free of any other requirements of this chapter.

1 (7) Except as otherwise provided in s. 679.607(3),
2 this part imposes no duties upon a secured party that is a
3 consignor or is a buyer of accounts, chattel paper, payment
4 intangibles, or promissory notes.

5 679.602 Waiver and variance of rights and
6 duties.--Except as otherwise provided in s. 679.624, to the
7 extent that they give rights to a debtor or obligor and impose
8 duties on a secured party, the debtor or obligor may not waive
9 or vary the rules stated in the following listed sections:

10 (1) Section 679.2071(2)(d)3., which deals with use and
11 operation of the collateral by the secured party;

12 (2) Section 679.210, which deals with requests for an
13 accounting and requests concerning a list of collateral and
14 statement of account;

15 (3) Section 679.607(3), which deals with collection
16 and enforcement of collateral;

17 (4) Sections 679.608(1) and 679.615(3) to the extent
18 that they deal with application or payment of noncash proceeds
19 of collection, enforcement, or disposition;

20 (5) Sections 679.608(1) and 679.615(4) to the extent
21 that they require accounting for or payment of surplus
22 proceeds of collateral;

23 (6) Section 679.609 to the extent that it imposes upon
24 a secured party that takes possession of collateral without
25 judicial process the duty to do so without breach of the
26 peace;

27 (7) Sections 679.610(2), 679.611, 679.613, and
28 679.614, which deal with disposition of collateral;

29 (8) Section 679.615(6), which deals with calculation
30 of a deficiency or surplus when a disposition is made to the
31

1 secured party, a person related to the secured party, or a
2 secondary obligor;
3 (9) Section 679.616, which deals with explanation of
4 the calculation of a surplus or deficiency;
5 (10) Sections 679.620, 679.621, and 679.622, which
6 deal with acceptance of collateral in satisfaction of
7 obligation;
8 (11) Section 679.623, which deals with redemption of
9 collateral;
10 (12) Section 679.624, which deals with permissible
11 waivers; and
12 (13) Sections 679.625 and 679.626, which deal with the
13 secured party's liability for failure to comply with this
14 article.
15 679.603 Agreement on standards concerning rights and
16 duties.--
17 (1) The parties may determine by agreement the
18 standards measuring the fulfillment of the rights of a debtor
19 or obligor and the duties of a secured party under a rule
20 stated in s. 679.602 if the standards are not manifestly
21 unreasonable.
22 (2) Subsection (1) does not apply to the duty under s.
23 679.609 to refrain from breaching the peace.
24 679.604 Procedure if security agreement covers real
25 property or fixtures.--
26 (1) If a security agreement covers both personal and
27 real property, a secured party may proceed:
28 (a) Under this part as to the personal property
29 without prejudicing any rights with respect to the real
30 property; or
31

1 (b) As to both the personal property and the real
2 property in accordance with the rights with respect to the
3 real property, in which case the other provisions of this part
4 do not apply.

5 (2) Subject to subsection (3), if a security agreement
6 covers goods that are or become fixtures, a secured party may
7 proceed:

8 (a) Under this part; or

9 (b) In accordance with the rights with respect to real
10 property, in which case the other provisions of this part do
11 not apply.

12 (3) Subject to the other provisions of this part, if a
13 secured party holding a security interest in fixtures has
14 priority over all owners and encumbrancers of the real
15 property, the secured party, after default, may remove the
16 collateral from the real property. The secured party shall
17 give reasonable notification of its intent to remove the
18 collateral to all persons entitled to reimbursement under
19 subsection (4).

20 (4) A secured party that removes collateral shall
21 promptly reimburse any encumbrancer or owner of the real
22 property, other than the debtor, for the cost of repair of any
23 physical injury caused by the removal. The secured party need
24 not reimburse the encumbrancer or owner for any diminution in
25 value of the real property caused by the absence of the goods
26 removed or by any necessity of replacing them. A person
27 entitled to reimbursement may refuse permission to remove
28 until the secured party gives adequate assurance for the
29 performance of the obligation to reimburse. This subsection
30 does not prohibit a secured party and the person entitled to
31 reimbursement from entering into an authenticated record

1 providing for the removal of fixtures and reimbursement for
2 any damage caused thereby.

3 679.605 Unknown debtor or secondary obligor.--A
4 secured party does not owe a duty based on its status as
5 secured party:

6 (1) To a person that is a debtor or obligor, unless
7 the secured party knows:

8 (a) That the person is a debtor or obligor;

9 (b) The identity of the person; and

10 (c) How to communicate with the person; or

11 (2) To a secured party or lienholder that has filed a
12 financing statement against a person, unless the secured party
13 knows:

14 (a) That the person is a debtor; and

15 (b) The identity of the person.

16 679.606 Time of default for agricultural lien.--For
17 purposes of this part, a default occurs in connection with an
18 agricultural lien at the time the secured party becomes
19 entitled to enforce the lien in accordance with the statute
20 under which it was created.

21 679.607 Collection and enforcement by secured party.--

22 (1) If so agreed, and in any event after default, a
23 secured party:

24 (a) May notify an account debtor or other person
25 obligated on collateral to make payment or otherwise render
26 performance to or for the benefit of the secured party;

27 (b) May take any proceeds to which the secured party
28 is entitled under s. 679.3151;

29 (c) May enforce the obligations of an account debtor
30 or other person obligated on collateral and exercise the
31 rights of the debtor with respect to the obligation of the

1 account debtor or other person obligated on collateral to make
2 payment or otherwise render performance to the debtor, and
3 with respect to any property that secures the obligations of
4 the account debtor or other person obligated on the
5 collateral;

6 (d) If it holds a security interest in a deposit
7 account perfected by control under s. 679.1041(1)(a), may
8 apply the balance of the deposit account to the obligation
9 secured by the deposit account; and

10 (e) If it holds a security interest in a deposit
11 account perfected by control under s. 679.1041(1)(b) or (c),
12 may instruct the bank to pay the balance of the deposit
13 account to or for the benefit of the secured party.

14 (2) If necessary to enable a secured party to exercise
15 under paragraph (1)(c) the right of a debtor to enforce
16 nonjudicially a mortgage recorded outside this state, the
17 secured party may record in the office in which a record of
18 the mortgage is recorded:

19 (a) A copy of the security agreement that creates or
20 provides for a security interest in the obligation secured by
21 the mortgage; and

22 (b) The secured party's sworn affidavit in recordable
23 form stating that:

24 1. A default has occurred; and

25 2. The secured party is entitled to enforce the
26 mortgage nonjudicially.

27 (3) A secured party shall proceed in a commercially
28 reasonable manner if the secured party:

29 (a) Undertakes to collect from or enforce an
30 obligation of an account debtor or other person obligated on
31 collateral; and

1 (b) Is entitled to charge back uncollected collateral
2 or otherwise to full or limited recourse against the debtor or
3 a secondary obligor.

4 (4) A secured party may deduct from the collections
5 made pursuant to subsection (3) reasonable expenses of
6 collection and enforcement, including reasonable attorney's
7 fees and legal expenses incurred by the secured party.

8 (5) This section does not determine whether an account
9 debtor, bank, or other person obligated on collateral owes a
10 duty to a secured party.

11 679.608 Application of proceeds of collection or
12 enforcement; liability for deficiency and right to surplus.--

13 (1) If a security interest or agricultural lien
14 secures payment or performance of an obligation, the following
15 rules apply:

16 (a) A secured party shall apply or pay over for
17 application the cash proceeds of collection or enforcement
18 under s. 679.607 in the following order to:

19 1. The reasonable expenses of collection and
20 enforcement and, to the extent provided for by agreement and
21 not prohibited by law, reasonable attorney's fees and legal
22 expenses incurred by the secured party;

23 2. The satisfaction of obligations secured by the
24 security interest or agricultural lien under which the
25 collection or enforcement is made; and

26 3. The satisfaction of obligations secured by any
27 subordinate security interest in or other lien on the
28 collateral subject to the security interest or agricultural
29 lien under which the collection or enforcement is made if the
30 secured party receives an authenticated demand for proceeds
31 before distribution of the proceeds is completed.

1 (b) If requested by a secured party, a holder of a
2 subordinate security interest or other lien shall furnish
3 reasonable proof of the interest or lien within a reasonable
4 time and agree to indemnify the secured party on reasonable
5 terms acceptable to the secured party for damages, including
6 reasonable attorney's fees and costs, incurred or suffered by
7 the secured party if the subordinate holder did not have the
8 right to receive the amounts to be paid to it. Unless the
9 holder complies, the secured party need not comply with the
10 holder's demand under paragraph (a)(3).

11 (c) A secured party need not apply or pay over for
12 application noncash proceeds of collection and enforcement
13 under s. 679.607 unless the failure to do so would be
14 commercially unreasonable. A secured party that applies or
15 pays over for application noncash proceeds shall do so in a
16 commercially reasonable manner.

17 (d) A secured party shall account to and pay a debtor
18 for any surplus, and the obligor is liable for any deficiency.

19 (2) If the underlying transaction is a sale of
20 accounts, chattel paper, payment intangibles, or promissory
21 notes, the debtor is not entitled to any surplus, and the
22 obligor is not liable for any deficiency.

23 (3) If the secured party in good faith cannot
24 determine the validity, extent or priority of a subordinate
25 security interest or other lien or there are conflicting
26 claims of subordinate interests or liens, the secured party
27 may commence an interpleader action with respect to the
28 remaining proceeds in the circuit or county court, as
29 applicable based upon the amount to be deposited, where the
30 collateral was located or collected or in the county where the
31 debtor has its chief executive office or principal residence

1 in this state, as applicable. The secured party is entitled
2 to be paid from the remaining proceeds the reasonable
3 attorney's fees and expenses incurred in such an action.

4 679.609 Secured party's right to take possession after
5 default.--

6 (1) After default, a secured party:

7 (a) May take possession of the collateral; and

8 (b) Without removal, may render equipment unusable and
9 dispose of collateral on a debtor's premises under s. 679.610.

10 (2) A secured party may proceed under subsection (1):

11 (a) Pursuant to judicial process; or

12 (b) Without judicial process, if it proceeds without
13 breach of the peace.

14 (3) If so agreed, and in any event after default, a
15 secured party may require the debtor to assemble the
16 collateral and make it available to the secured party at a
17 place to be designated by the secured party which is
18 reasonably convenient to both parties.

19 679.610 Disposition of collateral after default.--

20 (1) After default, a secured party may sell, lease,
21 license, or otherwise dispose of any or all of the collateral
22 in its present condition or following any commercially
23 reasonable preparation or processing.

24 (2) Every aspect of a disposition of collateral,
25 including the method, manner, time, place, and other terms,
26 must be commercially reasonable. If commercially reasonable,
27 a secured party may dispose of collateral by public or private
28 proceedings, by one or more contracts, as a unit or in
29 parcels, and at any time and place and on any terms.

30 (3) A secured party may purchase collateral:

31 (a) At a public disposition; or

1 (b) At a private disposition only if the collateral is
2 of a kind that is customarily sold on a recognized market or
3 the subject of widely distributed standard price quotations.

4 (4) A contract for sale, lease, license, or other
5 disposition includes the warranties relating to title,
6 possession, quiet enjoyment, and the like which by operation
7 of law accompany a voluntary disposition of property of the
8 kind subject to the contract.

9 (5) A secured party may disclaim or modify warranties
10 under subsection (4):

11 (a) In a manner that would be effective to disclaim or
12 modify the warranties in a voluntary disposition of property
13 of the kind subject to the contract of disposition; or

14 (b) By communicating to the purchaser a record
15 evidencing the contract for disposition and including an
16 express disclaimer or modification of the warranties.

17 (6) A record is sufficient to disclaim warranties
18 under subsection (5) if it indicates "There is no warranty
19 relating to title, possession, quiet enjoyment, or the like in
20 this disposition" or uses words of similar import.

21 679.611 Notification before disposition of
22 collateral.--

23 (1) In this section, the term "notification date"
24 means the earlier of the date on which:

25 (a) A secured party sends to the debtor and any
26 secondary obligor an authenticated notification of
27 disposition; or

28 (b) The debtor and any secondary obligor waive the
29 right to notification.

30 (2) Except as otherwise provided in subsection (4), a
31 secured party that disposes of collateral under s. 679.610

1 shall send to the persons specified in subsection (3) a
2 reasonable authenticated notification of disposition.
3 (3) To comply with subsection (2), the secured party
4 shall send an authenticated notification of disposition to:
5 (a) The debtor;
6 (b) Any secondary obligor; and
7 (c) If the collateral is other than consumer goods:
8 1. Any other person from which the secured party has
9 received, before the notification date, an authenticated
10 notification of a claim of an interest in the collateral;
11 2. Any other secured party or lienholder that, 10 days
12 before the notification date, held a security interest in or
13 other lien on the collateral perfected by the filing of a
14 financing statement that:
15 a. Identified the collateral;
16 b. Was indexed under the debtor's name as of that
17 date; and
18 c. Was filed in the office in which to file a
19 financing statement against the debtor covering the collateral
20 as of that date; and
21 3. Any other secured party that, 10 days before the
22 notification date, held a security interest in the collateral
23 perfected by compliance with a statute, regulation, or treaty
24 described in s. 679.3111(1).
25 (4) Subsection (2) does not apply if the collateral is
26 perishable or threatens to decline speedily in value or is of
27 a type customarily sold on a recognized market.
28 (5) A secured party complies with the requirement for
29 notification prescribed by subparagraph (3)(c)2. if:
30 (a) Not later than 20 days or earlier than 30 days
31 before the notification date, the secured party requests, in a

1 commercially reasonable manner, information concerning
2 financing statements indexed under the debtor's name in the
3 office indicated in subparagraph (3)(c)2.; and
4 (b) Before the notification date, the secured party:
5 1. Did not receive a response to the request for
6 information; or
7 2. Received a response to the request for information
8 and sent an authenticated notification of disposition to each
9 secured party or other lienholder named in that response whose
10 financing statement covered the collateral.
11 (6) For purposes of subsection (3), the secured party
12 shall send the authenticated notification as follows:
13 (a) To the debtor at the address in the financing
14 statement, unless the secured party has received an
15 authenticated record from the debtor notifying the secured
16 party of a different address for such notification purposes or
17 the secured party has actual knowledge of the address at which
18 the debtor has its chief executive office or principal
19 residence, as applicable, at the time the notification is
20 sent;
21 (b) To any secondary obligor at the address, if any,
22 in the authenticated agreement, unless the secured party has
23 received an authenticated record from the secondary obligor
24 notifying the secured party of a different address for such
25 notification purposes or the secured party has actual
26 knowledge of the address at which the secondary obligor has
27 its chief executive office or principal residence, as
28 applicable, at the time the notification is sent; and
29 (c) If the collateral is other than consumer goods:
30 1. To the person described in subparagraph (3)(c)1.,
31 at the address stated in the notification;

1 2. To the person described in subparagraph (3)(c)2.,
2 at the address stated in the financing statement;

3 3. To the person described in subparagraph (3)(c)1.,
4 at the address stated in the official records of the recording
5 or registration agency.

6 679.612 Timeliness of notification before disposition
7 of collateral.--

8 (1) Except as otherwise provided in subsection (2),
9 whether a notification is sent within a reasonable time is a
10 question of fact.

11 (2) A notification of disposition sent after default
12 and 10 days or more before the earliest time of disposition
13 set forth in the notification is sent within a reasonable time
14 before the disposition.

15 679.613 Contents and form of notification before
16 disposition of collateral; general.--Except in a
17 consumer-goods transaction, the following rules apply:

18 (1) The contents of a notification of disposition are
19 sufficient if the notification:

20 (a) Describes the debtor and the secured party;

21 (b) Describes the collateral that is the subject of
22 the intended disposition;

23 (c) States the method of intended disposition;

24 (d) States that the debtor is entitled to an
25 accounting of the unpaid indebtedness and states the charge,
26 if any, for an accounting; and

27 (e) States the time and place of a public disposition
28 or the time after which any other disposition is to be made.

29 (2) Whether the contents of a notification that lacks
30 any of the information specified in subsection (1) are
31 nevertheless sufficient is a question of fact.

1 (3) The contents of a notification providing
2 substantially the information specified in subsection (1) are
3 sufficient, even if the notification includes:
4 (a) Information not specified by that paragraph; or
5 (b) Minor errors that are not seriously misleading.
6 (4) A particular phrasing of the notification is not
7 required.
8 (5) The following form of notification and the form
9 appearing in s. 679.614(3), when completed, each provides
10 sufficient information:
11 NOTIFICATION OF DISPOSITION OF COLLATERAL
12 To:....(Name of debtor, obligor, or other person to which the
13 notification is sent)....
14 From:....(Name, address, and telephone number of secured
15 party)....
16 Name of Debtor(s):....(Include only if debtor(s) are not an
17 addressee)....
18 [For a public disposition:]
19 We will sell [or lease or license, as applicable] the
20(describe collateral)....to the highest qualified bidder
21 in public as follows:
22 Day and Date:
23 Time:
24 Place:
25 [For a private disposition:]
26 We will sell [or lease or license, as applicable] the
27(describe collateral).... privately sometime after
28(day and date).....
29 You are entitled to an accounting of the unpaid
30 indebtedness secured by the property that we intend to sell
31 [or lease or license, as applicable] for a charge of \$_____.

1 You may request an accounting by calling us at(telephone
2 number).....
3 679.614 Contents and form of notification before
4 disposition of collateral; consumer-goods transaction.--In a
5 consumer-goods transaction, the following rules apply:
6 (1) A notification of disposition must provide the
7 following information:
8 (a) The information specified in s. 679.613(1);
9 (b) A description of any liability for a deficiency of
10 the person to which the notification is sent;
11 (c) A telephone number from which the amount that must
12 be paid to the secured party to redeem the collateral under s.
13 679.623 is available; and
14 (d) A telephone number or mailing address from which
15 additional information concerning the disposition and the
16 obligation secured is available.
17 (2) A particular phrasing of the notification is not
18 required.
19 (3) The following form of notification, when
20 completed, provides sufficient information:
21(Name and address of secured party)....
22 (Date)....
23 NOTICE OF OUR PLAN TO SELL PROPERTY
24 (Name and address of any obligor who is also a
25 debtor)....
26 Subject:....(Identification of Transaction)....
27 We have your(describe collateral)...., because you broke
28 promises in our agreement.
29
30 [For a public disposition:]
31

1 We will sell(describe collateral).... at public sale. A
2 sale could include a lease or license. The sale will be held
3 as follows:
4 Date:
5 Time:
6 Place:
7 You may attend the sale and bring bidders if you want.
8 [For a private disposition:]
9 We will sell(describe collateral).... at private sale
10 sometime after(date)..... A sale could include a lease or
11 license.
12
13 The money that we get from the sale (after paying our costs)
14 will reduce the amount you owe. If we get less money than you
15 owe, you(will or will not, as applicable).... still owe
16 us the difference. If we get more money than you owe, you will
17 get the extra money, unless we must pay it to someone else.
18
19 You can get the property back at any time before we sell it by
20 paying us the full amount you owe (not just the past due
21 payments), including our expenses. To learn the exact amount
22 you must pay, call us at(telephone number).....
23
24 If you want us to explain to you in writing how we have
25 figured the amount that you owe us, you may call us at
26(telephone number).... or write us at(secured party's
27 address).... and request a written explanation. We will charge
28 you \$_____ for the explanation if we sent you another written
29 explanation of the amount you owe us within the last 6 months.
30
31

1 If you need more information about the sale, call us at
2 ...(telephone number).... or write us at ...(secured party's
3 address).....

4
5 We are sending this notice to the following other people who
6 have an interest in ...(describe collateral).... or who owe
7 money under your agreement:

8 ...(Names of all other debtors and obligors, if any)....

9 (4) A notification in the form of subsection (3) is
10 sufficient, even if additional information appears at the end
11 of the form.

12 (5) A notification in the form of subsection (3) is
13 sufficient, even if it includes errors in information not
14 required by subsection (1), unless the error is misleading
15 with respect to rights arising under this chapter.

16 (6) If a notification under this section is not in the
17 form of subsection (3), law other than this chapter determines
18 the effect of including information not required by subsection
19 (1).

20 679.615 Application of proceeds of disposition;
21 liability for deficiency and right to surplus.--

22 (1) A secured party shall apply or pay over for
23 application the cash proceeds of disposition under s. 679.610
24 in the following order to:

25 (a) The reasonable expenses of retaking, holding,
26 preparing for disposition, processing, and disposing, and, to
27 the extent provided for by agreement and not prohibited by
28 law, reasonable attorney's fees and legal expenses incurred by
29 the secured party;

30
31

1 (b) The satisfaction of obligations secured by the
2 security interest or agricultural lien under which the
3 disposition is made;

4 (c) The satisfaction of obligations secured by any
5 subordinate security interest in or other subordinate lien on
6 the collateral if:

7 1. The secured party receives from the holder of the
8 subordinate security interest or other lien an authenticated
9 demand for proceeds before distribution of the proceeds is
10 completed; and

11 2. In a case in which a consignor has an interest in
12 the collateral, the subordinate security interest or other
13 lien is senior to the interest of the consignor; and

14 (d) A secured party that is a consignor of the
15 collateral if the secured party receives from the consignor an
16 authenticated demand for proceeds before distribution of the
17 proceeds is completed.

18 (2) If requested by a secured party, a holder of a
19 subordinate security interest or other lien shall furnish
20 reasonable proof of the interest or lien within a reasonable
21 time after receipt of the request and agree to indemnify the
22 secured party on reasonable terms acceptable to the secured
23 party for damages, including reasonable attorney's fees and
24 costs, incurred or suffered by the secured party if the
25 subordinate holder did not have the right to receive the
26 amounts to be paid to it. Unless the holder complies, the
27 secured party need not comply with the holder's demand under
28 paragraph (1)(c).

29 (3) A secured party need not apply or pay over for
30 application noncash proceeds of disposition under s. 679.610
31 unless the failure to do so would be commercially

1 unreasonable. A secured party that applies or pays over for
2 application noncash proceeds shall do so in a commercially
3 reasonable manner.

4 (4) If the security interest under which a disposition
5 is made secures payment or performance of an obligation, after
6 making the payments and applications required by subsection
7 (1) and permitted by subsection (3):

8 (a) Unless paragraph (1)(d) requires the secured party
9 to apply or pay over cash proceeds to a consignor, the secured
10 party shall account to and pay a debtor for any surplus; and

11 (b) The obligor is liable for any deficiency.

12 (5) If the underlying transaction is a sale of
13 accounts, chattel paper, payment intangibles, or promissory
14 notes:

15 (a) The debtor is not entitled to any surplus; and

16 (b) The obligor is not liable for any deficiency.

17 (6) The surplus or deficiency following a disposition
18 is calculated based on the amount of proceeds that would have
19 been realized in a disposition complying with this part to a
20 transferee other than the secured party, a person related to
21 the secured party, or a secondary obligor if:

22 (a) The transferee in the disposition is the secured
23 party, a person related to the secured party, or a secondary
24 obligor; and

25 (b) The amount of proceeds of the disposition is
26 significantly below the range of proceeds that a complying
27 disposition to a person other than the secured party, a person
28 related to the secured party, or a secondary obligor would
29 have brought.

30 (7) A secured party that receives cash proceeds of a
31 disposition in good faith and without knowledge that the

1 receipt violates the rights of the holder of a security
2 interest or other lien that is not subordinate to the security
3 interest or agricultural lien under which the disposition is
4 made:

5 (a) Takes the cash proceeds free of the security
6 interest or other lien;

7 (b) Is not obligated to apply the proceeds of the
8 disposition to the satisfaction of obligations secured by the
9 security interest or other lien; and

10 (c) Is not obligated to account to or pay the holder
11 of the security interest or other lien for any surplus.

12 (8) If the secured party in good faith cannot
13 determine the validity, extent or priority of a subordinate
14 security interest or other lien or there are conflicting
15 claims of subordinate interests or liens, the secured party
16 may commence an interpleader action with respect to the
17 remaining proceeds in the circuit or county court, as
18 applicable based upon the amount to be deposited, where the
19 collateral was located or collected or in the county where the
20 debtor has its chief executive office or principal residence
21 in this state, as applicable. The secured party is entitled
22 to be paid from the remaining proceeds the reasonable
23 attorney's fees and expenses incurred in such an action.

24 679.616 Explanation of calculation of surplus or
25 deficiency.--

26 (1) In this section, the term:

27 (a) "Explanation" means a writing that:

28 1. States the amount of the surplus or deficiency;

29 2. Provides an explanation in accordance with

30 subsection (3) of how the secured party calculated the surplus
31 or deficiency;

1 3. States, if applicable, that future debits, credits,
2 charges, including additional credit service charges or
3 interest, rebates, and expenses may affect the amount of the
4 surplus or deficiency; and

5 4. Provides a telephone number or mailing address from
6 which additional information concerning the transaction is
7 available.

8 (b) "Request" means a record:

9 1. Authenticated by a debtor or consumer obligor;

10 2. Requesting that the recipient provide an
11 explanation; and

12 3. Sent after disposition of the collateral under s.
13 679.610.

14 (2) In a consumer-goods transaction in which the
15 debtor is entitled to a surplus or a consumer obligor is
16 liable for a deficiency under s. 679.615, the secured party
17 shall:

18 (a) Send an explanation to the debtor or consumer
19 obligor, as applicable, after the disposition and:

20 1. Before or when the secured party accounts to the
21 debtor and pays any surplus or first makes written demand on
22 the consumer obligor after the disposition for payment of the
23 deficiency; and

24 2. Within 14 days after receipt of a request; or

25 (b) In the case of a consumer obligor who is liable
26 for a deficiency, within 14 days after receipt of a request,
27 send to the consumer obligor a record waiving the secured
28 party's right to a deficiency.

29 (3) To comply with subparagraph (1)(a)2., a writing
30 must provide the following information in the following order:

31

1 (a) The aggregate amount of obligations secured by the
2 security interest under which the disposition was made, and,
3 if the amount reflects a rebate of unearned interest or credit
4 service charge, an indication of that fact, calculated as of a
5 specified date:

6 1. If the secured party takes or receives possession
7 of the collateral after default, not more than 35 days before
8 the secured party takes or receives possession; or

9 2. If the secured party takes or receives possession
10 of the collateral before default or does not take possession
11 of the collateral, not more than 35 days before the
12 disposition;

13 (b) The amount of proceeds of the disposition;

14 (c) The aggregate amount of the obligations after
15 deducting the amount of proceeds;

16 (d) The amount, in the aggregate or by type, and types
17 of expenses, including expenses of retaking, holding,
18 preparing for disposition, processing, and disposing of the
19 collateral, and attorney's fees secured by the collateral
20 which are known to the secured party and relate to the current
21 disposition;

22 (e) The amount, in the aggregate or by type, and types
23 of credits, including rebates of interest or credit service
24 charges, to which the obligor is known to be entitled and
25 which are not reflected in the amount in paragraph (a); and

26 (f) The amount of the surplus or deficiency.

27 (4) A particular phrasing of the explanation is not
28 required. An explanation complying substantially with the
29 requirements of subsection (1) is sufficient, even if it
30 includes minor errors that are not seriously misleading.

31

1 (5) A debtor or consumer obligor is entitled without
2 charge to one response to a request under this section during
3 any 6-month period in which the secured party did not send to
4 the debtor or consumer obligor an explanation pursuant to
5 paragraph (2)(a). The secured party may require payment of a
6 charge not exceeding \$25 for each additional response.

7 679.617 Rights of transferee of collateral.--

8 (1) A secured party's disposition of collateral after
9 default:

10 (a) Transfers to a transferee for value all of the
11 debtor's rights in the collateral;

12 (b) Discharges the security interest under which the
13 disposition is made; and

14 (c) Discharges any subordinate security interest or
15 other subordinate lien other than liens created under statutes
16 providing for liens, if any, that are not to be discharged.

17 (2) A transferee that acts in good faith takes free of
18 the rights and interests described in subsection (1), even if
19 the secured party fails to comply with this chapter or the
20 requirements of any judicial proceeding.

21 (3) If a transferee does not take free of the rights
22 and interests described in subsection (1), the transferee
23 takes the collateral subject to:

24 (a) The debtor's rights in the collateral;

25 (b) The security interest or agricultural lien under
26 which the disposition is made; and

27 (c) Any other security interest or other lien.

28 679.618 Rights and duties of certain secondary
29 obligors.--

1 (1) A secondary obligor acquires the rights and
2 becomes obligated to perform the duties of the secured party
3 after the secondary obligor:

4 (a) Receives an assignment of a secured obligation
5 from the secured party;

6 (b) Receives a transfer of collateral from the secured
7 party and agrees to accept the rights and assume the duties of
8 the secured party; or

9 (c) Is subrogated to the rights of a secured party
10 with respect to collateral.

11 (2) An assignment, transfer, or subrogation described
12 in subsection (1):

13 (a) Is not a disposition of collateral under s.
14 679.610; and

15 (b) Relieves the secured party of further duties under
16 this chapter.

17 679.619 Transfer of record or legal title.--

18 (1) In this section, the term "transfer statement"
19 means a record authenticated by a secured party stating:

20 (a) That the debtor has defaulted in connection with
21 an obligation secured by specified collateral;

22 (b) That the secured party has exercised its
23 post-default remedies with respect to the collateral;

24 (c) That, by reason of the exercise, a transferee has
25 acquired the rights of the debtor in the collateral; and

26 (d) The name and mailing address of the secured party,
27 debtor, and transferee.

28 (2) A transfer statement entitles the transferee to
29 the transfer of record of all rights of the debtor in the
30 collateral specified in the statement in any official filing,
31 recording, registration, or certificate-of-title system

1 covering the collateral. If a transfer statement is presented
2 with the applicable fee and request form to the official or
3 office responsible for maintaining the system, the official or
4 office shall:

5 (a) Accept the transfer statement;

6 (b) Promptly amend its records to reflect the
7 transfer; and

8 (c) If applicable, issue a new appropriate certificate
9 of title in the name of the transferee.

10 (3) A transfer of the record or legal title to
11 collateral to a secured party under subsection (2) or
12 otherwise is not of itself a disposition of collateral under
13 this chapter and does not of itself relieve the secured party
14 of its duties under this chapter.

15 679.620 Acceptance of collateral in full or partial
16 satisfaction of obligation; compulsory disposition of
17 collateral.--

18 (1) Except as otherwise provided in subsection (7), a
19 secured party may accept collateral in full or partial
20 satisfaction of the obligation it secures only if:

21 (a) The debtor consents to the acceptance under
22 subsection (3);

23 (b) The secured party does not receive, within the
24 time set forth in subsection (4), a notification of objection
25 to the proposal authenticated by:

26 1. A person to which the secured party was required to
27 send a proposal under s. 679.621; or

28 2. Any other person, other than the debtor, holding an
29 interest in the collateral subordinate to the security
30 interest that is the subject of the proposal;

31

1 (c) If the collateral is consumer goods, the
2 collateral is not in the possession of the debtor when the
3 debtor consents to the acceptance; and

4 (d) Subsection (5) does not require the secured party
5 to dispose of the collateral or the debtor waives the
6 requirement pursuant to s. 679.624.

7 (2) A purported or apparent acceptance of collateral
8 under this section is ineffective unless:

9 (a) The secured party consents to the acceptance in an
10 authenticated record or sends a proposal to the debtor; and

11 (b) The conditions of subsection (1) are met.

12 (3) For purposes of this section:

13 (a) A debtor consents to an acceptance of collateral
14 in partial satisfaction of the obligation it secures only if
15 the debtor agrees to the terms of the acceptance in a record
16 authenticated after default; and

17 (b) A debtor consents to an acceptance of collateral
18 in full satisfaction of the obligation it secures only if the
19 debtor agrees to the terms of the acceptance in a record
20 authenticated after default or the secured party:

21 1. Sends to the debtor after default a proposal that
22 is unconditional or subject only to a condition that
23 collateral not in the possession of the secured party be
24 preserved or maintained;

25 2. In the proposal, proposes to accept collateral in
26 full satisfaction of the obligation it secures; and

27 3. Does not receive a notification of objection
28 authenticated by the debtor within 20 days after the proposal
29 is sent.

30
31

1 (4) To be effective under paragraph (1)(b), a
2 notification of objection must be received by the secured
3 party:

4 (a) In the case of a person to which the proposal was
5 sent pursuant to s. 679.621, within 20 days after notification
6 was sent to that person; and

7 (b) In other cases:

8 1. Within 20 days after the last notification was sent
9 pursuant to s. 679.621; or

10 2. If a notification was not sent, before the debtor
11 consents to the acceptance under subsection (3).

12 (5) A secured party that has taken possession of
13 collateral shall dispose of the collateral pursuant to s.
14 679.610 within the time specified in subsection (6) if:

15 (a) Sixty percent of the cash price has been paid in
16 the case of a purchase-money security interest in consumer
17 goods; or

18 (b) Sixty percent of the principal amount of the
19 obligation secured has been paid in the case of a
20 non-purchase-money security interest in consumer goods.

21 (6) To comply with subsection (5), the secured party
22 shall dispose of the collateral:

23 (a) Within 90 days after taking possession; or

24 (b) Within any longer period to which the debtor and
25 all secondary obligors have agreed in an agreement to that
26 effect entered into and authenticated after default.

27 (7) In a consumer transaction, a secured party may not
28 accept collateral in partial satisfaction of the obligation it
29 secures.

30 679.621 Notification of proposal to accept
31 collateral.--

1 (1) A secured party that desires to accept collateral
2 in full or partial satisfaction of the obligation it secures
3 shall send its proposal to:

4 (a) Any person from which the secured party has
5 received, before the debtor consented to the acceptance, an
6 authenticated notification of a claim of an interest in the
7 collateral;

8 (b) Any other secured party or lienholder that, 10
9 days before the debtor consented to the acceptance, held a
10 security interest in or other lien on the collateral perfected
11 by the filing of a financing statement that:

12 1. Identified the collateral;

13 2. Was indexed under the debtor's name as of that
14 date; and

15 3. Was filed in the office or offices in which to file
16 a financing statement against the debtor covering the
17 collateral as of that date; and

18 (c) Any other secured party that, 10 days before the
19 debtor consented to the acceptance, held a security interest
20 in the collateral perfected by compliance with a statute,
21 regulation, or treaty described in s. 679.3111(1).

22 (2) A secured party that desires to accept collateral
23 in partial satisfaction of the obligation it secures shall
24 send its proposal to any secondary obligor in addition to the
25 persons described in subsection (1).

26 (3) A secured party shall send its proposal under s.
27 679.621(1) or (2) to the affected party at the address
28 prescribed in s. 679.611(6).

29 679.622 Effect of acceptance of collateral.--

30 (1) A secured party's acceptance of collateral in full
31 or partial satisfaction of the obligation it secures:

1 (a) Discharges the obligation to the extent consented
2 to by the debtor;

3 (b) Transfers to the secured party all of a debtor's
4 rights in the collateral;

5 (c) Discharges the security interest or agricultural
6 lien that is the subject of the debtor's consent and any
7 subordinate security interest or other subordinate lien; and

8 (d) Terminates any other subordinate interest.

9 (2) A subordinate interest is discharged or terminated
10 under subsection (1), even if the secured party fails to
11 comply with this chapter.

12 679.623 Right to redeem collateral.--

13 (1) A debtor, any secondary obligor, or any other
14 secured party or lienholder may redeem collateral.

15 (2) To redeem collateral, a person shall tender:

16 (a) Fulfillment of all obligations secured by the
17 collateral; and

18 (b) The reasonable expenses and attorney's fees
19 described in s. 679.615(1)(a).

20 (3) A redemption may occur at any time before a
21 secured party:

22 (a) Has collected collateral under s. 679.607;

23 (b) Has disposed of collateral or entered into a
24 contract for its disposition under s. 679.610; or

25 (c) Has accepted collateral in full or partial
26 satisfaction of the obligation it secures under s. 679.622.

27 679.624 Waiver.--

28 (1) A debtor or secondary obligor may waive the right
29 to notification of disposition of collateral under s. 679.611
30 only by an agreement to that effect entered into and
31 authenticated after default.

1 (2) A debtor may waive the right to require
2 disposition of collateral under s. 679.620(5) only by an
3 agreement to that effect entered into and authenticated after
4 default.

5 (3) Except in a consumer-goods transaction, a debtor
6 or secondary obligor may waive the right to redeem collateral
7 under s. 679.623 only by an agreement to that effect entered
8 into and authenticated after default.

9 679.625 Remedies for failure to comply with article.--

10 (1) If it is established that a secured party is not
11 proceeding in accordance with this charter, a court may order
12 or restrain collection, enforcement, or disposition of
13 collateral on appropriate terms and conditions. This
14 subsection shall not preclude a debtor and a secured party, or
15 two or more secured parties, from agreeing in an authenticated
16 record that the debtor or secured party must first provide to
17 the alleged offending secured party notice of a violation of
18 this chapter and opportunity to cure before commencing any
19 legal proceeding under this section.

20 (2) Subject to subsections (3), (4), and (6), a person
21 is liable for damages in the amount of any actual loss caused
22 by a failure to comply with this chapter, including damages
23 suffered by the debtor resulting from the debtor's inability
24 to obtain, or increased costs of alternative financing, but
25 not including consequential, special or penal damages
26 consistent with s. 671.106(1).

27 (3) Except as otherwise provided in s. 671.628:

28 (a) A person that, at the time of the failure, was a
29 debtor, was an obligor, or held a security interest in or
30 other lien on the collateral may recover damages under
31 subsection (2) for its loss; and

1 **(b) If the collateral is consumer goods, a person that**
2 **was a debtor or a secondary obligor at the time a secured**
3 **party failed to comply with this part may recover for that**
4 **failure in any event an amount not less than the credit**
5 **service charge plus 10 percent of the principal amount of the**
6 **obligation or the time-price differential plus 10 percent of**
7 **the cash price.**

8 **(4) A debtor whose deficiency is eliminated under s.**
9 **679.626 may recover damages for the loss of any surplus.**
10 **However, a debtor or secondary obligor whose deficiency is**
11 **eliminated or reduced under s. 679.626 may not otherwise**
12 **recover under subsection (2) for noncompliance with the**
13 **provisions of this part relating to collection, enforcement,**
14 **disposition, or acceptance.**

15 **(5) In lieu of damages recoverable under subsection**
16 **(2), the debtor, consumer obligor, or person named as a debtor**
17 **in a filed record, as applicable, may recover \$500 in each**
18 **case from a person that:**

19 **(a) Fails to comply with s. 679.2081;**

20 **(b) Fails to comply with s. 679.209;**

21 **(c) Files a record that the person is not entitled to**
22 **file under s. 679.509(1);**

23 **(d) Fails to cause the secured party of record to file**
24 **or send a termination statement as required by s. 579.513(1)**
25 **or (3) after receipt of an authenticated record notifying the**
26 **person of such non-compliance;**

27 **(e) Fails to comply with s. 679.616(2)(a) and whose**
28 **failure is part of a pattern, or consistent with a practice,**
29 **of noncompliance; or**

30
31

1 (f) Fails to comply with s. 679.616(2)(b) after
2 receipt of an authenticated record notifying the person of
3 such noncompliance.

4 (6) A debtor or consumer obligor may recover damages
5 under subsection (2) and, in addition, \$500 in each case from
6 a person that, without reasonable cause, fails to comply with
7 a request under s. 679.210. A recipient of a request under s.
8 679.210 which never claimed an interest in the collateral or
9 obligations that are the subject of a request under that
10 section has a reasonable excuse for failure to comply with the
11 request within the meaning of this subsection.

12 (7) If a secured party fails to comply with a request
13 regarding a list of collateral or a statement of account under
14 S. 679.210, the secured party may claim a security interest
15 only as shown in the list or statement included in the request
16 as against a person that is reasonably misled by the failure.

17 679.626 Action in which deficiency or surplus is in
18 issue.--In an action arising from a transaction in which the
19 amount of a deficiency or surplus is in issue, the following
20 rules apply:

21 (1) A secured party need not prove compliance with the
22 provisions of this part relating to collection, enforcement,
23 disposition, or acceptance unless the debtor or a secondary
24 obligor places the secured party's compliance in issue.

25 (2) If the secured party's compliance is placed in
26 issue, the secured party has the burden of establishing that
27 the collection, enforcement, disposition, or acceptance was
28 conducted in accordance with this part.

29 (3) Except as otherwise provided in s. 679.628, if a
30 secured party fails to prove that the collection, enforcement,
31 disposition, or acceptance was conducted in accordance with

1 the provisions of this part relating to collection,
2 enforcement, disposition, or acceptance, the liability of a
3 debtor or a secondary obligor for a deficiency is limited to
4 an amount by which the sum of the secured obligation,
5 expenses, and attorney's fees exceeds the greater of:

6 (a) The proceeds of the collection, enforcement,
7 disposition, or acceptance; or

8 (b) The amount of proceeds that would have been
9 realized had the noncomplying secured party proceeded in
10 accordance with the provisions of this part relating to
11 collection, enforcement, disposition, or acceptance.

12 (4) For purposes of paragraph (3)(b), the amount of
13 proceeds that would have been realized is equal to the sum of
14 the secured obligation, expenses, and attorney's fees unless
15 the secured party proves that the amount is less than that
16 sum.

17 (5) If a deficiency or surplus is calculated under s.
18 679.615(6), the debtor or obligor has the burden of
19 establishing that the amount of proceeds of the disposition is
20 significantly below the range of prices that a complying
21 disposition to a person other than the secured party, a person
22 related to the secured party, or a secondary obligor would
23 have brought.

24 679.627 Determination of whether conduct was
25 commercially reasonable.--

26 (1) The fact that a greater amount could have been
27 obtained by a collection, enforcement, disposition, or
28 acceptance at a different time or in a different method from
29 that selected by the secured party is not of itself sufficient
30 to preclude the secured party from establishing that the
31

1 collection, enforcement, disposition, or acceptance was made
2 in a commercially reasonable manner.

3 (2) A disposition of collateral is made in a
4 commercially reasonable manner if the disposition is made:

5 (a) In the usual manner on any recognized market;

6 (b) At the price current in any recognized market at
7 the time of the disposition; or

8 (c) Otherwise in conformity with reasonable commercial
9 practices among dealers in the type of property that was the
10 subject of the disposition.

11 (3) A collection, enforcement, disposition, or
12 acceptance is commercially reasonable if it has been approved:

13 (a) In a judicial proceeding;

14 (b) By a bona fide creditors' committee;

15 (c) By a representative of creditors; or

16 (d) By an assignee for the benefit of creditors.

17 (4) Approval under subsection (3) need not be
18 obtained, and lack of approval does not mean that the
19 collection, enforcement, disposition, or acceptance is not
20 commercially reasonable.

21 679.628 Nonliability and limitation on liability of
22 secured party; liability of secondary obligor.--

23 (1) Unless a secured party knows that a person is a
24 debtor or obligor, knows the identity of the person, and knows
25 how to communicate with the person:

26 (a) The secured party is not liable to the person, or
27 to a secured party or lienholder that has filed a financing
28 statement against the person, for failure to comply with this
29 chapter; and

30
31

1 (b) The secured party's failure to comply with this
2 chapter does not affect the liability of the person for a
3 deficiency.

4 (2) A secured party is not liable because of its
5 status as a secured party:

6 (a) To a person that is a debtor or obligor, unless
7 the secured party knows:

8 1. That the person is a debtor or obligor;

9 2. The identity of the person; and

10 3. How to communicate with the person; or

11 (b) To a secured party or lienholder that has filed a
12 financing statement against a person, unless the secured party
13 knows:

14 1. That the person is a debtor; and

15 2. The identity of the person.

16 (3) A secured party is not liable to any person, and a
17 person's liability for a deficiency is not affected, because
18 of any act or omission arising out of the secured party's
19 reasonable belief that a transaction is not a consumer-goods
20 transaction or a consumer transaction or that goods are not
21 consumer goods, if the secured party's belief is based on its
22 reasonable reliance on:

23 (a) A debtor's representation concerning the purpose
24 for which collateral was to be used, acquired, or held; or

25 (b) an obligor's representation concerning the purpose
26 for which a secured obligation was incurred.

27 (4) A secured party is not liable to any person under
28 s. 679.625(3)(b) for its failure to comply with s. 679.616.

29 (5) A secured party is not liable under s.
30 679.625(3)(b) more than once with respect to any one secured
31 obligation.

1 Section 7. Part VII of chapter 679, Florida Statutes,
2 consisting of sections 679.701, 679.702, 679.703, 679.704,
3 679.705, 679.706, 679.707, 679.708, and 679.709, Florida
4 Statutes, is created to read:

5 PART VII

6 TRANSITION

7 679.701 Effective date.--This act takes effect July 1,
8 2001.

9 679.702 Savings clause.--

10 (1) Except as otherwise provided in this part, this
11 act applies to a transaction or lien within its scope, even if
12 the transaction or lien was entered into or created before
13 this act takes effect.

14 (2) Except as otherwise provided in subsection (3) and
15 ss. 679.703-679.709:

16 (a) Transactions and liens that were not governed by
17 chapter 679, Florida Statutes 2000, were validly entered into
18 or created before this act takes effect, and would be subject
19 to this act if they had been entered into or created after
20 this act takes effect, and the rights, duties, and interests
21 flowing from those transactions and liens remain valid after
22 this act takes effect; and

23 (b) The transactions and liens may be terminated,
24 completed, consummated, and enforced as required or permitted
25 by this act or by the law that otherwise would apply if this
26 act had not taken effect.

27 (3) This act does not affect an action, case, or
28 proceeding commenced before this act takes effect.

29 679.703 Security interest perfected before effective
30 date.--

31

1 (1) A security interest that is enforceable
2 immediately before this act takes effect and would have
3 priority over the rights of a person that becomes a lien
4 creditor at that time is a perfected security interest under
5 this act if, when this act takes effect, the applicable
6 requirements for enforceability and perfection under this act
7 are satisfied without further action.

8 (2) Except as otherwise provided in s. 679.705, if,
9 immediately before this act takes effect, a security interest
10 is enforceable and would have priority over the rights of a
11 person that becomes a lien creditor at that time, but the
12 applicable requirements for enforceability or perfection under
13 this act are not satisfied when this act takes effect, the
14 security interest:

15 (a) Is a perfected security interest for 1 year after
16 this act takes effect;

17 (b) Remains enforceable thereafter only if the
18 security interest becomes enforceable under s. 679.203 before
19 the year expires; and

20 (c) Remains perfected thereafter only if the
21 applicable requirements for perfection under this act are
22 satisfied before the year expires.

23 679.704 Security interest unperfected before effective
24 date.--A security interest that is enforceable immediately
25 before this act takes effect but which would be subordinate to
26 the rights of a person that becomes a lien creditor at that
27 time:

28 (1) Remains an enforceable security interest for 1
29 year after this act takes effect;

30
31

1 (2) Remains enforceable thereafter if the security
2 interest becomes enforceable under s. 679.203 when this act
3 takes effect or within 1 year thereafter; and

4 (3) Becomes perfected:

5 1. Without further action, when this act takes effect
6 if the applicable requirements for perfection under this act
7 are satisfied before or at that time; or

8 2. When the applicable requirements for perfection are
9 satisfied if the requirements are satisfied after that time.

10 679.705 Effectiveness of action taken before effective
11 date.--

12 (1) If action, other than the filing of a financing
13 statement, is taken before this act takes effect and the
14 action would have resulted in priority of a security interest
15 over the rights of a person that becomes a lien creditor had
16 the security interest become enforceable before this act takes
17 effect, the action is effective to perfect a security interest
18 that attaches under this act within 1 year after this act
19 takes effect. An attached security interest becomes
20 unperfected 1 year after this act takes effect unless the
21 security interest becomes a perfected security interest under
22 this act before the expiration of that period.

23 (2) The filing of a financing statement before this
24 act takes effect is effective to perfect a security interest
25 to the extent the filing would satisfy the applicable
26 requirements for perfection under this act.

27 (3) This act does not render ineffective an effective
28 financing statement that, before this act takes effect, is
29 filed and satisfies the applicable requirements for perfection
30 under the law of the jurisdiction governing perfection as
31 provided in s. 679.103, Florida Statutes 2000. However,

1 except as otherwise provided in subsections (4) and (5) and s.
2 679.706, the financing statement ceases to be effective at the
3 earlier of:

4 (a) The time the financing statement would have ceased
5 to be effective under the law of the jurisdiction in which it
6 is filed; or

7 (b) June 30, 2006.

8 (4) The filing of a continuation statement after this
9 act takes effect does not continue the effectiveness of the
10 financing statement filed before this act takes effect.

11 However, upon the timely filing of a continuation statement
12 after this act takes effect and in accordance with the law of
13 the jurisdiction governing perfection as provided in part III,
14 the effectiveness of a financing statement filed in the same
15 office in that jurisdiction before this act takes effect
16 continues for the period provided by the law of that
17 jurisdiction.

18 (5) Paragraph (3)(b) applies to a financing statement
19 that, before this act takes effect, is filed against a
20 transmitting utility and satisfies the applicable requirements
21 for perfection under the law of the jurisdiction governing
22 perfection as provided in s. 679.103, Florida Statutes 2000,
23 only to the extent that part III provides that the law of a
24 jurisdiction other than jurisdiction in which the financing
25 statement is filed governs perfection of a security interest
26 in collateral covered by the financing statement.

27 (6) A financing statement that includes a financing
28 statement filed before this act takes effect and a
29 continuation statement filed after this act takes effect is
30 effective only to the extent that it satisfies the
31 requirements of part V for an initial financing statement.

1 679.706 When initial financing statement suffices to
2 continue effectiveness of financing statement.--

3 (1) The filing of an initial financing statement in
4 the office specified in s. 679.5011 continues the
5 effectiveness of a financing statement filed before this act
6 takes effect if:

7 (a) The filing of an initial financing statement in
8 that office would be effective to perfect a security interest
9 under this act;

10 (b) The pre-effective-date financing statement was
11 filed in an office in another state or another office in this
12 state; and

13 (c) The initial financing statement satisfies
14 subsection (3).

15 (2) The filing of an initial financing statement under
16 subsection (1) continues the effectiveness of the
17 pre-effective-date financing statement:

18 (a) If the initial financing statement is filed before
19 this act takes effect, for the period provided in s. 679.403,
20 Florida Statutes 2000, with respect to a financing statement;
21 and

22 (b) If the initial financing statement is filed after
23 this act takes effect, for the period provided in s. 679.515
24 with respect to an initial financing statement.

25 (3) To be effective for purposes of subsection (1), an
26 initial financing statement must:

27 (a) Satisfy the requirements of part V for an initial
28 financing statement;

29 (b) Identify the pre-effective-date financing
30 statement by indicating the office in which the financing
31 statement was filed and providing the dates of filing and file

1 numbers, if any, of the financing statement and of the most
2 recent continuation statement filed with respect to the
3 financing statement; and

4 (c) Indicate that the pre-effective-date financing
5 statement remains effective.

6 679.707 Amendment or pre-effective-date financing
7 statement.--

8 (1) In this section, the term "pre-effective-date
9 financing statement" means a financing statement filed before
10 this act takes effect.

11 (2) After this act takes effect, a person may add or
12 delete collateral covered by, continue or terminate the
13 effectiveness of, or otherwise amend the information provided
14 in, a pre-effective-date financing statement only in
15 accordance with the law of the jurisdiction governing
16 perfection as provided in part III. However, the
17 effectiveness of a pre-effective-date financing statement also
18 may be terminated in accordance with the law of the
19 jurisdiction in which the financing statement is filed.

20 (3) Except as otherwise provided in subsection (4), if
21 the law of this state governs perfection of a security
22 interest, the information in a pre-effective-date financing
23 statement may be amended after this act takes effect only if:

24 (a) The pre-effective-date financing statement and an
25 amendment are filed in the office specified in s. 679.5011;

26 (b) An amendment is filed in the office specified in
27 s. 679.5011 concurrently with, or after the filing in that
28 office of, an initial financing statement that satisfies s.
29 671.706(3); or

30
31

1 (c) An initial financing statement that provides the
2 information as amended and satisfies s. 679.706(3) is filed in
3 the office specified in s. 679.5011.

4 (4) If the law of this state governs perfection of a
5 security interest, the effectiveness of a pre-effective-date
6 financing statement may be continued only under s. 679.705(4)
7 and (6) or s. 679.706.

8 (5) Whether or not the law of this state governs
9 perfection of a security interest, the effectiveness of a
10 pre-effective-date financing statement filed in this state may
11 be terminated after this act takes effect by filing a
12 termination statement in the office in which the
13 pre-effective-date financing statement is filed, unless an
14 initial financing statement that satisfies s. 679.706(3) has
15 been filed in the office specified by the law of the
16 jurisdiction governing perfection as provided in part III as
17 the office in which to file a financing statement.

18 679.708 Persons entitled to file initial financing
19 statement or continuation statement.--A person may file an
20 initial financing statement or a continuation statement under
21 this part if:

22 (1) The secured party of record authorizes the filing;
23 and

24 (2) The filing is necessary under this part:

25 (a) To continue the effectiveness of a financing
26 statement filed before this act takes effect; or

27 (b) To perfect or continue the perfection of a
28 security interest.

29 679.709 Priority.--

30 (1) This act determines the priority of conflicting
31 claims to collateral. However, if the relative priorities of

1 the claims were established before this act takes effect,
2 chapter 679, Florida Statutes 2000, determines priority.

3 (2) For purposes of s. 679.322(1), the priority of a
4 security interest that becomes enforceable under s. 679.2031
5 of this act dates from the time this act takes effect if the
6 security interest is perfected under this act by the filing of
7 a financing statement before this act takes effect which would
8 not have been effective to perfect the security interest under
9 chapter 679, Florida Statutes 2000. This subsection does not
10 apply to conflicting security interests each of which is
11 perfected by the filing of such a financing statement.

12 Section 8. Subsection (2) of section 671.105, Florida
13 Statutes, is amended to read:

14 671.105 Territorial application of the code; parties'
15 power to choose applicable law.--

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

21 (a) Governing law in the chapter on funds transfers.
22 (s. 670.507)

23 (b) Rights of sellers' creditors against sold goods.
24 (s. 672.402)

25 (c) Applicability of the chapter on bank deposits and
26 collections. (s. 674.102)

27 (d) Applicability of the chapter on letters of credit.
28 (s. 675.116)

29 (e) Applicability of the chapter on investment
30 securities. (s. 678.1101)

31

1 (f) Law governing perfection, the effect provisions of
2 perfection or nonperfection, and the priority of security
3 interests and agricultural liens chapter on secured
4 transactions. (ss. 679.3011-679.3071) ~~(s. 679.103)~~

5 (g) Applicability of the chapter on leases. (ss.
6 680.1051 and 680.1061)

7 Section 9. Subsections (9), (32), and (37) of section
8 671.201, Florida Statutes, are amended to read:

9 671.201 General definitions.--Subject to additional
10 definitions contained in the subsequent chapters of this code
11 which are applicable to specific chapters or parts thereof,
12 and unless the context otherwise requires, in this code:

13 (9) "Buyer in ordinary course of business" means a
14 person who buys goods in good faith ~~and~~ without knowledge that
15 the sale violates ~~to him or her is in violation of the~~
16 ownership rights or security interest of another person a
17 third party in the goods, and buys in the ordinary course from
18 a person, other than a pawnbroker, in the business of selling
19 goods of that kind ~~but does not include a pawnbroker.~~ A
20 person buys goods in the ordinary course if the sale to the
21 person comports with the usual or customary practices in the
22 kind of business in which the seller is engaged or with the
23 seller's own usual or customary practices. A person that sells
24 oil, gas, or other minerals at the wellhead or minehead is a
25 person ~~All persons who sell minerals or the like (including~~
26 ~~oil and gas) at wellhead or minehead shall be deemed to be~~
27 ~~persons~~ in the business of selling goods of that kind. A buyer
28 in the ordinary course of business ~~"Buying"~~ may buy ~~be~~ for
29 cash, ~~or~~ by exchange of other property, ~~or~~ on secured or
30 unsecured credit and may acquire ~~includes receiving~~ goods or
31 documents of title under a preexisting contract for sale ~~but~~

1 ~~does not include a transfer in bulk or as security for or in~~
2 ~~total or partial satisfaction of a money debt. Only a buyer~~
3 ~~who takes possession of the goods or has a right to recover~~
4 ~~the goods from the seller under chapter 672 may be a buyer in~~
5 ~~the ordinary course of business. A person that acquires goods~~
6 ~~in a transfer in bulk or as security for or in total or~~
7 ~~partial satisfaction of a money debt is not a buyer in the~~
8 ~~ordinary course of business.~~

9 (32) "Purchase" includes taking by sale, discount,
10 negotiation, mortgage, pledge, lien, security interest, issue
11 or reissue, gift or any other voluntary transaction creating
12 an interest in property.

13 (37) "Security interest" means an interest in personal
14 property or fixtures which secures payment or performance of
15 an obligation. ~~The retention or reservation of title by a~~
16 ~~seller of goods notwithstanding shipment or delivery to the~~
17 ~~buyer (s. 672.401) is limited in effect to a reservation of a~~
18 ~~security interest.~~The term also includes any interest of a
19 consignor and a buyer of accounts, or chattel paper, a payment
20 intangible, or a promissory note in a transaction which is
21 subject to chapter 679. The special property interest of a
22 buyer of goods on identification of those goods to a contract
23 for sale under s. 672.401 is not a security interest, but a
24 buyer may also acquire a security interest by complying with
25 chapter 679. Except as otherwise provided in s. 672.505, the
26 right of a seller or lessor of goods under chapter 672 or
27 chapter 680 to retain or acquire possession of the goods is
28 not a security interest, but a seller or lessor may also
29 acquire a security interest by complying with chapter 679. The
30 retention or reservation of title by a seller of goods,
31 notwithstanding shipment or delivery to the buyer (s.

1 672.401), is limited in effect to a reservation of a security
2 interest.~~Unless a consignment is intended as security,~~
3 ~~reservation of title thereunder is not a security interest,~~
4 ~~but a consignment is in any event subject to the provisions on~~
5 ~~consignment sales (s. 672.326).~~ Whether a transaction creates
6 a lease or security interest is determined by the facts of
7 each case; however:

8 (a) A transaction creates a security interest if the
9 consideration the lessee is to pay the lessor for the right to
10 possession and use of the goods is an obligation for the term
11 of the lease not subject to termination by the lessee, and;

12 1. The original term of the lease is equal to or
13 greater than the remaining economic life of the goods;

14 2. The lessee is bound to renew the lease for the
15 remaining economic life of the goods or is bound to become the
16 owner of the goods;

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

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

24 (b) A transaction does not create a security interest
25 merely because it provides that:

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

31

1 2. The lessee assumes the risk of loss of the goods or
2 agrees to pay taxes; insurance; filing, recording, or
3 registration fees; or service or maintenance costs with
4 respect to the goods;

5 3. The lessee has an option to renew the lease or to
6 become the owner of the goods;

7 4. The lessee has an option to renew the lease for a
8 fixed rent that is equal to or greater than the reasonably
9 predictable fair market rent for the use of the goods for the
10 term of the renewal at the time the option is to be performed;
11 or

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

16 (c) For purposes of this subsection:

17 1. Additional consideration is not nominal if, when
18 the option to renew the lease is granted to the lessee, the
19 rent is stated to be the fair market rent for the use of the
20 goods for the term of the renewal determined at the time the
21 option is to be performed or if, when the option to become the
22 owner of the goods is granted to the lessee, the price is
23 stated to be the fair market value of the goods determined at
24 the time the option is to be performed. Additional
25 consideration is nominal if it is less than the lessee's
26 reasonably predictable cost of performing under the lease
27 agreement if the option is not exercised.

28 2. "Reasonably predictable" and "remaining economic
29 life of the goods" are to be determined with reference to the
30 facts and circumstances at the time the transaction is entered
31 into.

1 3. "Present value" means the amount as of a date
2 certain of one or more sums payable in the future, discounted
3 to the date certain. The discount is determined by the
4 interest rate specified by the parties if the rate is not
5 manifestly unreasonable at the time the transaction is entered
6 into; otherwise, the discount is determined by a commercially
7 reasonable rate that takes into account the facts and
8 circumstances of each case at the time the transaction was
9 entered into.

10 Section 10. Subsection (3) of section 672.103, Florida
11 Statutes, is amended to read:

12 672.103 Definitions and index of definitions.--

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

15 "Check," s. 673.1041.

16 "Consignee," s. 677.102.

17 "Consignor," s. 677.102.

18 "Consumer goods," s. 679.1021 ~~s. 679.109~~.

19 "Dishonor," s. 673.5021.

20 "Draft," s. 673.1041.

21 Section 11. Section 672.210, Florida Statutes, is
22 amended to read:

23 672.210 Delegation of performance; assignment of
24 rights.--

25 (1) A party may perform her or his duty through a
26 delegate unless otherwise agreed or unless the other party has
27 a substantial interest in having her or his original promisor
28 perform or control the acts required by the contract. No
29 delegation of performance relieves the party delegating of any
30 duty to perform or any liability for breach.

31

1 (2) Except as otherwise provided in s. 679.4061,
2 unless otherwise agreed all rights of either seller or buyer
3 can be assigned except where the assignment would materially
4 change the duty of the other party, or increase materially the
5 burden or risk imposed on her or him by her or his contract,
6 or impair materially her or his chance of obtaining return
7 performance. A right to damages for breach of the whole
8 contract or a right arising out of the assignor's due
9 performance of her or his entire obligation can be assigned
10 despite agreement otherwise.

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

28 ~~(4)~~(3) Unless the circumstances indicate the contrary
29 a prohibition of assignment of "the contract" is to be
30 construed as barring only the delegation to the assignee of
31 the assignor's performance.

1 (5)~~(4)~~ An assignment of "the contract" or of "all my
2 rights under the contract" or an assignment in similar general
3 terms is an assignment of rights and unless the language or
4 the circumstances (as in an assignment for security) indicate
5 the contrary, it is a delegation of performance of the duties
6 of the assignor and its acceptance by the assignee constitutes
7 a promise by her or him to perform those duties. This promise
8 is enforceable by either the assignor or the other party to
9 the original contract.

10 (6)~~(5)~~ The other party may treat any assignment which
11 delegates performance as creating reasonable grounds for
12 insecurity and may without prejudice to her or his rights
13 against the assignor demand assurances from the assignee (s.
14 672.609).

15 Section 12. Section 672.326, Florida Statutes, is
16 amended to read:

17 672.326 Sale on approval and sale or return;
18 ~~consignment sales and rights of creditors.--~~

19 (1) Unless otherwise agreed, if delivered goods may be
20 returned by the buyer even though they conform to the
21 contract, the transaction is:

22 (a) A "sale on approval" if the goods are delivered
23 primarily for use, and

24 (b) A "sale or return" if the goods are delivered
25 primarily for resale.

26 (2) ~~Except as provided in subsection (3),~~ Goods held
27 on approval are not subject to the claims of the buyer's
28 creditors until acceptance; goods held on sale or return are
29 subject to such claims while in the buyer's possession.

30 ~~(3) Where goods are delivered to a person for sale and~~
31 ~~such person maintains a place of business at which she or he~~

1 ~~deals in goods of the kind involved, under a name other than~~
2 ~~the name of the person making delivery, then with respect to~~
3 ~~claims of creditors of the person conducting the business the~~
4 ~~goods are deemed to be on sale or return. The provisions of~~
5 ~~this subsection are applicable even though an agreement~~
6 ~~purports to reserve title to the person making delivery until~~
7 ~~payment or resale or uses such words as "on consignment" or~~
8 ~~"on memorandum." However, this subsection is not applicable if~~
9 ~~the person making delivery:~~

10 ~~(a) Complies with an applicable law providing for a~~
11 ~~consignor's interest or the like to be evidenced by a sign, or~~

12 ~~(b) Establishes that the person conducting the~~
13 ~~business is generally known by her or his creditors to be~~
14 ~~substantially engaged in selling the goods of others, or~~

15 ~~(c) Complies with the filing provisions of the chapter~~
16 ~~on secured transactions (chapter 679).~~

17 ~~(3)(4)~~ Any "or return" term of a contract for sale is
18 to be treated as a separate contract for sale within the
19 statute of frauds section of this chapter (s. 672.201) and as
20 contradicting the sale aspect of the contract within the
21 provisions of this chapter on parol or extrinsic evidence (s.
22 672.202).

23 Section 13. Section 672.502, Florida Statutes, is
24 amended to read:

25 672.502 Buyer's right to goods on seller's
26 repudiation, failure to deliver, or insolvency.--

27 (1) Subject to subsections (2) and (3), ~~subsection (2)~~
28 and even though the goods have not been shipped, a buyer who
29 has paid a part or all of the price of goods in which she or
30 he has a special property under the provisions of the
31 immediately preceding section may on making and keeping good a

1 tender of any unpaid portion of their price recover them from
2 the seller if:

3 (a) In the case of goods bought for personal, family,
4 or household purposes, the seller repudiates or fails to
5 deliver as required by the contract; or

6 (b) In all cases,the seller becomes insolvent within
7 ten days after receipt of the first installment on their
8 price.

9 (2) The buyer's right to recover the goods under
10 paragraph (1)(a) vests upon acquisition of a special property,
11 even if the seller has not then repudiated or failed to
12 deliver.

13 (3)(2) If the identification creating her or his
14 special property has been made by the buyer she or he acquires
15 the right to recover the goods only if they conform to the
16 contract for sale.

17 Section 14. Section 672.716, Florida Statutes, is
18 amended to read:

19 672.716 Buyer's right to specific performance or
20 replevin.--

21 (1) Specific performance may be decreed where the
22 goods are unique or in other proper circumstances.

23 (2) The decree for specific performance may include
24 such terms and conditions as to payment of the price, damages,
25 or other relief as the court may deem just.

26 (3) The buyer has a right of replevin for goods
27 identified to the contract if after reasonable effort she or
28 he is unable to effect cover for such goods or the
29 circumstances reasonably indicate that such effort will be
30 unavailing or if the goods have been shipped under reservation
31 and satisfaction of the security interest in them has been

1 made or tendered. In the case of goods bought for personal,
2 family, or household purposes, the buyer's right of replevin
3 vests upon acquisition of a special property, even if the
4 seller had not then repudiated or failed to deliver.

5 Section 15. Subsection (3) of section 674.2101,
6 Florida Statutes, is amended to read:

7 674.2101 Security interest of collecting bank in
8 items, accompanying documents, and proceeds.--

9 (3) Receipt by a collecting bank of a final settlement
10 for an item is a realization on its security interest in the
11 item, accompanying documents, and proceeds. So long as the
12 bank does not receive final settlement for the item or give up
13 possession of the item or accompanying documents for purposes
14 other than collection, the security interest continues to that
15 extent and is subject to chapter 679, but:

16 (a) No security agreement is necessary to make the
17 security interest enforceable (s. 679.2031(2)(c)1.) ~~(s.~~
18 ~~679.203(1)(a))~~;

19 (b) No filing is required to perfect the security
20 interest; and

21 (c) The security interest has priority over
22 conflicting perfected security interests in the item,
23 accompanying documents, or proceeds.

24 Section 16. Section 675.1181, Florida Statutes, is
25 created to read:

26 675.1181 Security interest of issuer of nominated
27 person.--

28 (1) An issuer or nominated person has a security
29 interest in a document presented under a letter of credit to
30 the extent that the issuer or nominated person honors or gives
31 value for the presentation.

1 (2) As long as and to the extent that an issuer or
2 nominated person has not been reimbursed or has not otherwise
3 recovered the value given with respect to a security interest
4 in a document under subsection (1), the security interest
5 continues and is subject to chapter 679, but a security
6 agreement is not necessary to make the security interest
7 enforceable under s. 679.2031(2)(c):

8 (a) If the document is presented in a medium other
9 than a written or other tangible medium, the security interest
10 is perfected; and

11 (b) If the document is presented in a written or other
12 tangible medium and is not a certificated security, chattel
13 paper, a document of title, an instrument, or a letter of
14 credit, the security interest is perfected and has priority
15 over a conflicting security interest in the document so long
16 as the debtor does not have possession of the document.

17 Section 17. Subsection (1) of section 677.503, Florida
18 Statutes, is amended to read:

19 677.503 Document of title to goods defeated in certain
20 cases.--

21 (1) A document of title confers no right in goods
22 against a person who before issuance of the document had a
23 legal interest or a perfected security interest in them and
24 who neither:

25 (a) Delivered or entrusted them or any document of
26 title covering them to the bailor or the bailor's nominee with
27 actual or apparent authority to ship, store or sell or with
28 power to obtain delivery under this chapter (s. 677.403) or
29 with power of disposition under this code (ss. 672.403 and
30 679.320 ~~679.307~~) or other statute or rule of law; nor

31

1 (b) Acquiesced in the procurement by the bailor or the
2 bailor's nominee of any document of title.

3 Section 18. Subsection (6) of section 678.1031,
4 Florida Statutes, is amended to read:

5 678.1031 Rules for determining whether certain
6 obligations and interests are securities or financial
7 assets.--

8 (6) A commodity contract, as defined in s.
9 679.1021(1)(o)~~s. 679.115~~, is not a security or a financial
10 asset.

11 Section 19. Subsections (4) and (6) of section
12 678.1061, Florida Statutes, are amended to read:

13 678.1061 Control.--

14 (4) A purchaser has "control" of a security
15 entitlement if:

16 (a) The purchaser becomes the entitlement holder; ~~or~~

17 (b) The securities intermediary has agreed that it
18 will comply with entitlement orders originated by the
19 purchaser without further consent by the entitlement holder;
20 or;

21 (c) Another person has control of the security
22 entitlement on behalf of the purchaser or, having previously
23 acquired control of the security entitlement, acknowledges
24 that it has control on behalf of the purchaser.

25 (6) A purchaser who has satisfied the requirements of
26 subsection (3) paragraph (3)(b) or subsection (4) paragraph
27 (4)(b) has control, even if the registered owner in the case
28 of subsection (3) paragraph (3)(b) or the entitlement holder
29 in the case of subsection (4) paragraph (4)(b) retains the
30 right to make substitutions for the uncertificated security or
31 security entitlement, to originate instructions or entitlement

1 orders to the issuer or securities intermediary, or otherwise
2 to deal with the uncertificated security or security
3 entitlement.

4 Section 20. Subsection (5) of section 678.1101,
5 Florida Statutes, is amended to read:

6 678.1101 Applicability; choice of law.--

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

9 (a) If an agreement between the securities
10 intermediary and its entitlement holder governing the
11 securities account expressly provides that a particular
12 jurisdiction is the securities intermediary's jurisdiction for
13 purposes of this part, this chapter, or this code specifies
14 that it is governed by the law of a particular jurisdiction,
15 that jurisdiction is the securities intermediary's
16 jurisdiction.

17 (b) If paragraph (a) does not apply and an agreement
18 between the securities intermediary and its entitlement holder
19 governing the securities account expressly provides that the
20 agreement is governed by the law of a particular jurisdiction,
21 that jurisdiction is the securities intermediary's
22 jurisdiction.

23 (c) ~~(b)~~ If neither paragraph (a) nor paragraph (b)
24 applies and an agreement between the securities intermediary
25 and its entitlement holder governing the securities account
26 ~~does not specify the governing law as provided in paragraph~~
27 ~~(a), but expressly provides specifies~~ that the securities
28 account is maintained at an office in a particular
29 jurisdiction, that jurisdiction is the securities
30 intermediary's jurisdiction.

31

1 ~~(d)~~(e) If none of the preceding paragraphs applies an
2 ~~agreement between the securities intermediary and its~~
3 ~~entitlement holder does not specify a jurisdiction as provided~~
4 ~~in paragraph (a) or paragraph (b)~~, the securities
5 intermediary's jurisdiction is the jurisdiction in which ~~is~~
6 ~~located~~ the office identified in an account statement as the
7 office serving the entitlement holder's account is located.

8 ~~(e)~~(d) If none of the preceding paragraphs applies an
9 ~~agreement between the securities intermediary and its~~
10 ~~entitlement holder does not specify a jurisdiction as provided~~
11 ~~in paragraph (a) or paragraph (b) and an account statement~~
12 ~~does not identify an office serving the entitlement holder's~~
13 ~~account as provided in paragraph (c)~~, the securities
14 intermediary's jurisdiction is the jurisdiction in which ~~is~~
15 ~~located~~ the chief executive office of the securities
16 intermediary is located.

17 Section 21. Subsection (1) of section 678.3011,
18 Florida Statutes, is amended to read:

19 678.3011 Delivery.--

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

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

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

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

1 registered in the name of the purchaser, payable to the order
2 of the purchaser, or ~~has been~~ specially indorsed to the
3 purchaser by an effective indorsement and has not been
4 endorsed to the securities intermediary or in blank.

5 Section 22. Section 678.3021, Florida Statutes, is
6 amended to read:

7 678.3021 Rights of purchaser.--

8 (1) Except as otherwise provided in subsections (2)
9 and (3), a purchaser upon delivery of a certificated or
10 uncertificated security ~~to a purchaser, the purchaser~~ acquires
11 all rights in the security that the transferor had or had
12 power to transfer.

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

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

18 Section 23. Section 678.5101, Florida Statutes, is
19 amended to read:

20 678.5101 Rights of purchaser of security entitlement
21 from entitlement holder.--

22 (1) In a case not covered by the priority rules in
23 chapter 679 or the rules stated in subsection (3), an action
24 based on an adverse claim to a financial asset or security
25 entitlement, whether framed in conversion, replevin,
26 constructive trust, equitable lien, or other theory, may not
27 be asserted against a person who purchases a security
28 entitlement, or an interest therein, from an entitlement
29 holder if the purchaser gives value, does not have notice of
30 the adverse claim, and obtains control.

31

1 (2) If an adverse claim could not have been asserted
2 against an entitlement holder under s. 678.5021, the adverse
3 claim cannot be asserted against a person who purchases a
4 security entitlement, or an interest therein, from the
5 entitlement holder.

6 (3) In a case not covered by the priority rules in
7 chapter 679, a purchaser for value of a security entitlement,
8 or an interest therein, who obtains control has priority over
9 a purchaser of a security entitlement, or an interest therein,
10 who does not obtain control. Except as otherwise provided in
11 subsection (4), purchasers who have control rank according to
12 priority in time of:

13 (a) The purchaser's becoming the person for whom the
14 securities account, in which the security entitlement is
15 carried, is maintained, if the purchaser obtained control
16 under s. 678.1061(4)(a);

17 (b) The securities intermediary's agreement to comply
18 with the purchaser's entitlement orders with respect to
19 security entitlements carried or to be carried in the
20 securities account in which the security entitlement is
21 carried, if the purchaser obtained control under s.
22 678.1061(4)(b); or

23 (c) If the purchaser obtained control through another
24 person under s. 678.1061(4)(c), the time on which priority
25 would be based under this subsection if the other person were
26 the secured party. ~~equally, except that~~

27 (4) A securities intermediary as purchaser has
28 priority over a conflicting purchaser who has control unless
29 otherwise agreed by the securities intermediary.

30 Section 24. Subsection (3) of section 680.1031,
31 Florida Statutes, is amended to read:

- 1 680.1031 Definitions and index of definitions.--
2 (3) The following definitions in other chapters of
3 this code apply to this chapter:
4 (a) "Account," s. 679.1021(1)(b)~~s. 679.106~~.
5 (b) "Between merchants," s. 672.104(3).
6 (c) "Buyer," s. 672.103(1)(a).
7 (d) "Chattel paper," s. 679.1021(1)(k)~~s.~~
8 ~~679.105(1)(b)~~.
9 (e) "Consumer goods," s. 679.1021(1)(w)~~s. 679.109(1)~~.
10 (f) "Document," s. 679.1021(1)(dd)~~s. 679.105(1)(f)~~.
11 (g) "Entrusting," s. 672.403(3).
12 (h) "General intangible," s. 679.1021(1)(pp)~~"General~~
13 ~~intangibles," s. 679.106~~.
14 (i) "Good faith," s. 672.103(1)(b).
15 (j) "Instrument," s. 679.1021(1)(uu)~~s. 679.105(1)(i)~~.
16 (k) "Merchant," s. 672.104(1).
17 (l) "Mortgage," s. 679.1021(1)(ccc)~~s. 679.105(1)(j)~~.
18 (m) "Pursuant to a commitment," s. 679.1021(1)(ppp)~~s.~~
19 ~~679.105(1)(k)~~.
20 (n) "Receipt," s. 672.103(1)(c).
21 (o) "Sale," s. 672.106(1).
22 (p) "Sale on approval," s. 672.326(1).
23 (q) "Sale or return," s. 672.326(1).
24 (r) "Seller," s. 672.103(1)(d).

25 Section 25. Section 680.303, Florida Statutes, is
26 amended to read:

27 680.303 Alienability of party's interest under lease
28 contract or of lessor's residual interest in goods; delegation
29 of performance; transfer of rights.--
30
31

1 (1) As used in this section, "creation of a security
2 interest" includes the sale of a lease contract that is
3 subject to chapter 679 by reason of s. 679.1091(1)(c).

4 (2) Except as provided in subsection (3) and s.
5 679.4071 ~~subsections (3) and (4)~~, a provision in a lease
6 agreement which:

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

13 (b) Makes such a transfer an event of default, gives
14 rise to the rights and remedies provided in subsection (4)
15 ~~subsection (5)~~, but a transfer that is prohibited or is an
16 event of default under the lease agreement is otherwise
17 effective.

18 ~~(3) A provision in a lease agreement which:~~

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

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

28 ~~Neither the granting nor the enforcement of a security~~
29 ~~interest in the lessor's interest under the lease contract or~~
30 ~~the lessor's residual interest in the goods is a transfer that~~
31 ~~materially impairs the prospect of obtaining return~~

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

6 (3)~~(4)~~ A provision in a lease agreement which:

7 (a) Prohibits a transfer of a right to damages for
8 default with respect to the whole lease contract or of a right
9 to payment arising out of the transferor's due performance of
10 the transferor's entire obligation; or

11 (b) Makes such a transfer an event of default, is not
12 enforceable, and such a transfer is not a transfer that
13 materially impairs the prospect of obtaining return
14 performance by, materially changes the duty of, or materially
15 increases the burden or risk imposed on, the other party to
16 the lease contract within the purview of subsection (4)
17 ~~subsection (5)~~.

18 (4)~~(5)~~ Subject to subsection (3) and s. 679.4071
19 ~~subsections (3) and (4)~~:

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

25 (b) If paragraph (a) is not applicable and if a
26 transfer is made that is prohibited under a lease agreement or
27 materially impairs the prospect of obtaining return
28 performance by, materially changes the duty of, or materially
29 increases the burden or risk imposed on, the other party to
30 the lease contract, unless the party not making the transfer
31 agrees at any time to the transfer in the lease contract or

1 otherwise, then, except as limited by contract, the transferor
2 is liable to the party not making the transfer for damages
3 caused by the transfer to the extent that the damages could
4 not reasonably be prevented by the party not making the
5 transfer and a court having jurisdiction may grant other
6 appropriate relief, including cancellation of the lease
7 contract or an injunction against the transfer.

8 (5)~~(6)~~ A transfer of "the lease" or of "all my rights
9 under the lease" or a transfer in similar general terms is a
10 transfer of rights, and unless the language or the
11 circumstances, as in a transfer for security, indicate the
12 contrary, the transfer is a delegation of duties by the
13 transferor to the transferee. Acceptance by the transferee
14 constitutes a promise by the transferee to perform those
15 duties. The promise is enforceable by either the transferor or
16 the other party to the lease contract.

17 (6)~~(7)~~ Unless otherwise agreed by the lessor and the
18 lessee, a delegation of performance does not relieve the
19 transferor as against the other party of any duty to perform
20 or of any liability for default.

21 (7)~~(8)~~ In a consumer lease, to prohibit the transfer
22 of an interest of a party under the lease contract or to make
23 a transfer an event of default, the language must be specific,
24 by a writing, and conspicuous.

25 Section 26. Section 680.307, Florida Statutes, is
26 amended to read:

27 680.307 Priority of liens arising by attachment or
28 levy on, security interests in, and other claims to goods.--

29 (1) Except as otherwise provided in s. 680.306, a
30 creditor of a lessee takes subject to the lease contract.

31

1 (2) Except as otherwise provided in subsection (3)
2 ~~subsections (3) and (4)~~ and in ss. 680.306 and 680.308, a
3 creditor of a lessor takes subject to the lease contract
4 unless:

5 (a) the creditor holds a lien that attached to the
6 goods before the lease contract became enforceable.†

7 (b) ~~The creditor holds a security interest in the~~
8 ~~goods and the lessee did not give value and receive delivery~~
9 ~~of the goods without knowledge of the security interests; or~~

10 (c) ~~The creditor holds a security interest in the~~
11 ~~goods which was perfected (s. 679.303) before the lease~~
12 ~~contract became enforceable.~~

13 (3) Except as otherwise provided in ss. 679.3171,
14 679.321, and 679.323, a lessee takes a leasehold interest
15 subject to a security interest held by a creditor or lessor.‡
16 ~~lessee in the ordinary course of business takes the leasehold~~
17 ~~interest free of a security interest in the goods created by~~
18 ~~the lessor even though the security interest is perfected (s.~~
19 ~~679.303) and the lessee knows of its existence.~~

20 (4) ~~A lessee other than a lessee in the ordinary~~
21 ~~course of business takes the leasehold interest free of a~~
22 ~~security interest to the extent that it secures future~~
23 ~~advances made after the secured party acquires knowledge of~~
24 ~~the lease or more than 45 days after the lease contract~~
25 ~~becomes enforceable, whichever first occurs, unless the future~~
26 ~~advances are made pursuant to a commitment entered into~~
27 ~~without knowledge of the lease and before the expiration of~~
28 ~~the 45-day period.~~

29 Section 27. Paragraph (b) of subsection (1) of section
30 680.309, Florida Statutes, is amended to read:

31

1 680.309 Lessor's and lessee's rights when goods become
2 fixtures.--

3 (1) In this section:

4 (b) A "fixture filing" is the filing, in the office
5 where a mortgage on the real estate would be filed or
6 recorded, of a financing statement covering goods that are or
7 are to become fixtures and conforming to the requirements of
8 s. 679.5021(1) and (2)~~s. 679.402(5)~~.

9 Section 28. This act shall take effect July 1, 2001.

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SENATE SUMMARY

Substantially revises chapter 679, Florida Statutes,
Uniform Commercial Code: Secured Transactions. (See bill
for details.)