

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; providing
28 legislative findings; creating ss. 679.5011,
29 679.5021, 679.5031, 679.5041, 679.5051,
30 679.5061, 679.5071, 679.508, 679.509, 679.510,
31 679.511, 679.512, 679.513, 679.524, 679.515,

1 679.516, 679.517, 679.518, 679.519, 679.520,
2 679.521, 679.522, 679.523, 679.524, 679.525,
3 679.526, 679.527, F.S.; prescribing filing
4 procedures for perfection of a security
5 interest; providing forms; providing duties and
6 operation of filing office; providing
7 definitions relating to the Florida Secured
8 Transaction Registry; requiring the Department
9 of State to cease operating as designated
10 filing officer and filing office for certain
11 purposes; providing duties and responsibilities
12 of the Department of State relating to
13 contracting for the administration, operation,
14 and maintenance of the registry; providing
15 criteria for the registry; operation of a
16 filing office; providing definitions relating
17 to the Florida Secured Transaction Registry;
18 requiring the Department of State to cease
19 operating as designated filing officer and
20 filing office for certain purposes; providing
21 duties and responsibilities of the Department
22 of State relating to contracting for the
23 administration, operation, and maintenance of
24 the registry; creating ss. 679.601, 679.602,
25 679.603, 679.604, 679.605, 679.606, 679.607,
26 679.608, 679.609, 679.610, 679.611, 679.612,
27 679.613, 679.614, 679.615, 679.616, 679.617,
28 679.618, 679.619, 679.620, 679.621, 679.622,
29 679.623, 679.624, 679.625, 679.626, 679.627,
30 F.S.; prescribing procedures for default and
31 enforcement of security interests; providing

1 for forms; creating ss. 679.701, 679.702,
 2 679.703, 679.704, 679.705, 679.706, 679.707,
 3 679.708, 679.709, F.S.; providing transitional
 4 effective dates and savings clause for
 5 perfected and unperfected security interests,
 6 specified actions, and financing statements;
 7 specifying priority of conflicting claims;
 8 amending s. 671.105, F.S.; specifying the
 9 precedence of law governing the perfection, the
 10 effect of perfection or nonperfection, and the
 11 priority of security interests and agricultural
 12 liens; amending s. 671.201, F.S.; revising
 13 definitions used in the Uniform Commercial
 14 Code; amending s. 672.103, F.S.; conforming a
 15 cross-reference; amending s. 672.210, F.S.;
 16 providing that the creation, attachment,
 17 perfection, or enforcement of a security
 18 interest in the seller's interest under a
 19 contract is not a transfer that materially
 20 affects the buyer unless the enforcement
 21 actually results in a delegation of material
 22 performance of the seller; amending s. 672.326,
 23 F.S.; eliminating provisions relating to
 24 consignment sales; amending s. 672.502, F.S.;
 25 modifying buyers' rights to goods on a seller's
 26 repudiation, failure to deliver, or insolvency;
 27 amending s. 672.716, F.S.; providing that, for
 28 goods bought for personal, family, or household
 29 purposes, the buyer's right of replevin vests
 30 upon acquisition of a special property;
 31 amending s. 674.2101, F.S.; conforming a

1 cross-reference; creating s. 675.1181, F.S.;
 2 specifying conditions under which an issuer or
 3 nominated person has a security interest in a
 4 document presented under a letter of credit;
 5 amending ss. 677.503, 678.1031, F.S.;
 6 conforming cross-references; amending s.
 7 678.1061, F.S.; specifying a condition under
 8 which a purchaser has control of a security
 9 entitlement; amending s. 678.1101, F.S.;
 10 modifying rules that determine a securities
 11 intermediary's jurisdiction; amending s.
 12 678.3011, F.S.; providing for delivery of a
 13 certificated security to a purchaser; amending
 14 s. 678.3021, F.S.; eliminating a requirement
 15 that a purchaser of a certificated or
 16 uncertificated security receive delivery prior
 17 to acquiring all rights in the security;
 18 amending s. 678.5101, F.S.; prescribing rights
 19 of a purchaser of a security entitlement from
 20 an entitlement holder; amending ss. 680.1031,
 21 680.303, 680.307, 680.309, F.S.; conforming
 22 cross-references; repealing ss. 679.101,
 23 679.102, 679.103, 679.104, 679.105, 679.106,
 24 679.107, 679.108, 679.109, 679.110, 679.112,
 25 679.113, 679.114, 679.115, 679.116, F.S.,
 26 relating to the short title, applicability, and
 27 definitions of ch. 679, F.S.; repealing ss.
 28 679.201, 679.202, 679.203, 679.204, 679.205,
 29 679.206, 679.207, 679.208, F.S., relating to
 30 the validity of security agreements and the
 31 rights of parties to such agreements; repealing

1 ss. 679.301, 679.302, 679.303, 679.304,
2 679.305, 679.306, 679.307, 679.308, 679.309,
3 679.310, 679.311, 679.312, 679.313, 679.314,
4 679.315, 679.316, 679.317, 679.318, F.S.,
5 relating to rights of third parties, perfected
6 and unperfected security interests, and rules
7 of priority; repealing ss. 679.401, 679.4011,
8 679.402, 679.403, 679.404, 679.405, 679.406,
9 679.407, 679.408, F.S., relating to filing of
10 security interests; repealing ss. 679.501,
11 679.502, 679.503, 679.504, 679.505, 679.506,
12 679.507, F.S., relating to rights of the
13 parties upon default under a security
14 agreement; providing effective dates.
15

16 Be It Enacted by the Legislature of the State of Florida:
17

18 Section 1. Part I of chapter 679, Florida Statutes,
19 consisting of sections 679.101, 679.102, 679.103, 679.104,
20 679.105, 679.106, 679.107, 679.108, 679.109, 679.110, 679.112,
21 679.113, 679.114, 679.115, and 679.116, Florida Statutes, is
22 repealed and a new part I of that chapter, consisting of
23 sections 679.1011, 679.1021, 679.1031, 679.1041, 679.1051,
24 679.1061, 679.1071, 679.1081, 679.1091, and 679.1101, Florida
25 Statutes, is created to read:

26 PART I

27 GENERAL PROVISIONS

28 679.1011 Short title.--This chapter may be cited as
29 Uniform Commercial Code-Secured Transactions.

30 679.1021 Definitions and index of definitions.--

31 (1) In this chapter, the term:

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

4 (b) "Account," except as used in "account for," means
5 a right to payment of a monetary obligation, whether or not
6 earned by performance, for property that has been or is to be
7 sold, leased, licensed, assigned, or otherwise disposed of;
8 for services rendered or to be rendered; for a policy of
9 insurance issued or to be issued; for a secondary obligation
10 incurred or to be incurred; for energy provided or to be
11 provided; for the use or hire of a vessel under a charter or
12 other contract; arising out of the use of a credit or charge
13 card or information contained on or for use with the card; or
14 as winnings in a lottery or other game of chance operated or
15 sponsored by a state, governmental unit of a state, or person
16 licensed or authorized to operate the game by a state or
17 governmental unit of a state. The term includes
18 health-care-insurance receivables. The term does not include
19 rights to payment evidenced by chattel paper or an instrument;
20 commercial tort claims; deposit accounts; investment property;
21 letter-of-credit rights or letters of credit; or rights to
22 payment for money or funds advanced or sold, other than rights
23 arising out of the use of a credit or charge card or
24 information contained on or for use with the card.

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

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

- 31 1. Authenticated by a secured party;

1 2. Indicating the aggregate unpaid secured obligations
2 as of a date not more than 35 days earlier or 35 days later
3 than the date of the record; and

4 3. Identifying the components of the obligations in
5 reasonable detail.

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

8 1. Which secures payment or performance of an
9 obligation for:

10 a. Goods or services furnished in connection with a
11 debtor's farming operation; or

12 b. Rent on real property leased by a debtor in
13 connection with the debtor's farming operation;

14 2. Which is created by statute in favor of a person
15 who:

16 a. In the ordinary course of the person's business
17 furnished goods or services to a debtor in connection with a
18 debtor's farming operation; or

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

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

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

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

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

28 b. Attaches to the minerals as extracted; or

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

1 (g) "Authenticate" means:
2 1. To sign; or
3 2. To execute or otherwise adopt a symbol, or encrypt
4 or similarly process a record in whole or in part, with the
5 present intent of the authenticating person to identify the
6 person and adopt or accept a record.

7 (h) "Bank" means an organization that is engaged in
8 the business of banking. The term includes savings banks,
9 savings and loan associations, credit unions, and trust
10 companies.

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

13 (j) "Certificate of title" means a certificate of
14 title with respect to which a statute provides for the
15 security interest in question to be indicated on the
16 certificate as a condition or result of the security
17 interest's obtaining priority over the rights of a lien
18 creditor with respect to the collateral.

19 (k) "Chattel paper" means a record or records that
20 evidence both a monetary obligation and a security interest in
21 specific goods, a security interest in specific goods and
22 software used in the goods, a security interest in specific
23 goods and license of software used in the goods, a lease of
24 specific goods, or a lease of specific goods and license of
25 software used in the goods. In this paragraph, "monetary
26 obligation" means a monetary obligation secured by the goods
27 or owed under a lease of the goods and includes a monetary
28 obligation with respect to software used in the goods. The
29 term does not include charters or other contracts involving
30 the use or hire of a vessel or records that evidence a right
31 to payment arising out of the use of a credit or charge card

1 or information contained on or for use with the card. If a
2 transaction is evidenced by records that include an instrument
3 or series of instruments, the group of records taken together
4 constitutes chattel paper.

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

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

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

- 13 1. The claimant is an organization; or
- 14 2. The claimant is an individual and the claim:
 - 15 a. Arose in the course of the claimant's business or
16 profession; and
 - 17 b. Does not include damages arising out of personal
18 injury to or the death of an individual.

19 (n) "Commodity account" means an account maintained by
20 a commodity intermediary in which a commodity contract is
21 carried for a commodity customer.

22 (o) "Commodity contract" means a commodity futures
23 contract, an option on a commodity futures contract, a
24 commodity option, or another contract if the contract or
25 option is:

- 26 1. Traded on or subject to the rules of a board of
27 trade that has been designated as a contract market for such a
28 contract pursuant to federal commodities laws; or
- 29 2. Traded on a foreign commodity board of trade,
30 exchange, or market, and is carried on the books of a
31 commodity intermediary for a commodity customer.

1 (p) "Commodity customer" means a person for which a
2 commodity intermediary carries a commodity contract on its
3 books.

4 (q) "Commodity intermediary" means a person who:

- 5 1. Is registered as a futures commission merchant
6 under federal commodities law; or
7 2. In the ordinary course of the person's business
8 provides clearance or settlement services for a board of trade
9 that has been designated as a contract market pursuant to
10 federal commodities law.

11 (r) "Communicate" means:

- 12 1. To send a written or other tangible record;
13 2. To transmit a record by any means agreed upon by
14 the persons sending and receiving the record; or
15 3. In the case of transmission of a record to or by a
16 filing office, to transmit a record by any means prescribed by
17 filing-office rule.

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

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

- 23 1. The merchant:
24 a. Deals in goods of that kind under a name other than
25 the name of the person making delivery;
26 b. Is not an auctioneer; and
27 c. Is not generally known by its creditors to be
28 substantially engaged in selling the goods of others;
29 2. With respect to each delivery, the aggregate value
30 of the goods is \$1,000 or more at the time of delivery;

31

1 3. The goods are not consumer goods immediately before
2 delivery; and

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

5 (u) "Consignor" means a person who delivers goods to a
6 consignee in a consignment.

7 (v) "Consumer debtor" means a debtor in a consumer
8 transaction.

9 (w) "Consumer goods" means goods that are used or
10 bought for use primarily for personal, family, or household
11 purposes.

12 (x) "Consumer-goods transaction" means a consumer
13 transaction in which:

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

16 2. A security interest in consumer goods secures the
17 obligation.

18 (y) "Consumer obligor" means an obligor who is an
19 individual and who incurred the obligation as part of a
20 transaction entered into primarily for personal, family, or
21 household purposes.

22 (z) "Consumer transaction" means a transaction in
23 which an individual incurs an obligation primarily for
24 personal, family, or household purposes; a security interest
25 secures the obligation; and the collateral is held or acquired
26 primarily for personal, family, or household purposes. The
27 term includes consumer-goods transactions.

28 (aa) "Continuation statement" means an amendment of a
29 financing statement which:

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

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

4 (bb) "Debtor" means:

5 1. A person having an interest, other than a security
6 interest or other lien, in the collateral, whether or not the
7 person is an obligor;

8 2. A seller of accounts, chattel paper, payment
9 intangibles, or promissory notes; or

10 3. A consignee.

11 (cc) "Deposit account" means a demand, time, savings,
12 passbook, or similar account maintained with a bank. The term
13 does not include investment property or accounts evidenced by
14 an instrument.

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

17 (ee) "Electronic chattel paper" means chattel paper
18 evidenced by a record or records consisting of information
19 stored in an electronic medium.

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

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

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

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

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

30 b. Aquatic goods produced in aquacultural operations;

31

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

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

5 4. Products of crops or livestock in their
6 unmanufactured states.

7 (ii) "Farming operation" means raising, cultivating,
8 propagating, fattening, grazing, or any other farming,
9 livestock, or aquacultural operation.

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

12 (kk) "Filing office" means an office designated in s.
13 679.5011 as the place to file a financing statement.

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

16 (mm) "Financing statement" means a record or records
17 composed of an initial financing statement and any filed
18 record relating to the initial financing statement.

19 (nn) "Fixture filing" means the filing of a financing
20 statement covering goods that are or are to become fixtures
21 and satisfying s. 679.502(1) and (2). The term includes the
22 filing of a financing statement covering goods of a
23 transmitting utility which are or are to become fixtures.

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

27 (pp) "General intangible" means any personal property,
28 including things in action, other than accounts, chattel
29 paper, commercial tort claims, deposit accounts, documents,
30 goods, instruments, investment property, letter-of-credit
31 rights, letters of credit, money, and oil, gas, or other

1 minerals before extraction. The term includes payment
2 intangibles and software.

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

5 (rr) "Goods" means all things that are movable when a
6 security interest attaches. The term includes fixtures;
7 standing timber that is to be cut and removed under a
8 conveyance or contract for sale; the unborn young of animals;
9 crops grown, growing, or to be grown, even if the crops are
10 produced on trees, vines, or bushes; and manufactured homes.
11 The term also includes a computer program embedded in goods
12 and any supporting information provided in connection with a
13 transaction relating to the program if the program is
14 associated with the goods in such a manner that it customarily
15 is considered part of the goods, or by becoming the owner of
16 the goods, a person acquires a right to use the program in
17 connection with the goods. The term does not include a
18 computer program embedded in goods that consist solely of the
19 medium in which the program is embedded. The term also does
20 not include accounts, chattel paper, commercial tort claims,
21 deposit accounts, documents, general intangibles, instruments,
22 investment property, letter-of-credit rights, letters of
23 credit, money, or oil, gas, or other minerals before
24 extraction.

25 (ss) "Governmental unit" means a subdivision, agency,
26 department, county, parish, municipality, or other unit of the
27 government of the United States, a state, or a foreign
28 country. The term includes an organization having a separate
29 corporate existence if the organization is eligible to issue
30 debt on which interest is exempt from income taxation under
31 the laws of the United States.

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

5 (uu) "Instrument" means a negotiable instrument or any
6 other writing that evidences a right to the payment of a
7 monetary obligation, is not itself a security agreement or
8 lease, and is of a type that in the ordinary course of
9 business is transferred by delivery with any necessary
10 indorsement or assignment. The term does not include
11 investment property, letters of credit, or writings that
12 evidence a right to payment arising out of the use of a credit
13 or charge card or information contained on or for use with the
14 card.

15 (vv) "Inventory" means goods, other than farm
16 products, which:

- 17 1. Are leased by a person as lessor;
- 18 2. Are held by a person for sale or lease or to be
19 furnished under a contract of service;
- 20 3. Are furnished by a person under a contract of
21 service; or
- 22 4. Consist of raw materials, work in process, or
23 materials used or consumed in a business.

24 (ww) "Investment property" means a security, whether
25 certificated or uncertificated, security entitlement,
26 securities account, commodity contract, or commodity account.

27 (xx) "Jurisdiction of organization," with respect to a
28 registered organization, means the jurisdiction under whose
29 law the organization is organized.

30 (yy) "Letter-of-credit right" means a right to payment
31 or performance under a letter of credit, whether or not the

1 beneficiary has demanded or is at the time entitled to demand
2 payment or performance. The term does not include the right
3 of a beneficiary to demand payment or performance under a
4 letter of credit.

5 (zz) "Lien creditor" means:

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

8 2. An assignee for benefit of creditors from the time
9 of assignment;

10 3. A trustee in bankruptcy from the date of the filing
11 of the petition; or

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

13 (aaa) "Manufactured home" means a structure,
14 transportable in one or more sections, which, in the traveling
15 mode, is eight body feet or more in width or 40 body feet or
16 more in length, or, when erected on site, is 320 or more
17 square feet, and which is built on a permanent chassis and
18 designed to be used as a dwelling with or without a permanent
19 foundation when connected to the required utilities, and
20 includes the plumbing, heating, air-conditioning, and
21 electrical systems contained therein. The term includes any
22 structure that meets all of the requirements of this paragraph
23 except the size requirements and with respect to which the
24 manufacturer voluntarily files a certification required by the
25 United States Secretary of Housing and Urban Development and
26 complies with the standards established under Title 42 of the
27 United States Code.

28 (bbb) "Manufactured-home transaction" means a secured
29 transaction:

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

4 2. In which a manufactured home, other than a
5 manufactured home held as inventory, is the primary
6 collateral.

7 (ccc) "Mortgage" means a consensual interest in real
8 property, including fixtures, which secures payment or
9 performance of an obligation, which interest was created or
10 derived from an instrument described in s. 697.01.

11 (ddd) "New debtor" means a person who becomes bound as
12 debtor under s. 679.2031(4) by a security agreement previously
13 entered into by another person.

14 (eee) "New value" means money; money's worth in
15 property, services, or new credit; or release by a transferee
16 of an interest in property previously transferred to the
17 transferee. The term does not include an obligation
18 substituted for another obligation.

19 (fff) "Noncash proceeds" means proceeds other than
20 cash proceeds.

21 (ggg) "Obligor" means a person who, with respect to an
22 obligation secured by a security interest in or an
23 agricultural lien on the collateral, owes payment or other
24 performance of the obligation, has provided property other
25 than the collateral to secure payment or other performance of
26 the obligation, or is otherwise accountable in whole or in
27 part for payment or other performance of the obligation. The
28 term does not include issuers or nominated persons under a
29 letter of credit.

30 (hhh) "Original debtor," except as used in s.
31 679.3101(3), means a person who, as debtor, entered into a

1 security agreement to which a new debtor has become bound
2 under s. 679.2031(4).

3 (iii) "Payment intangible" means a general intangible
4 under which the account debtor's principal obligation is a
5 monetary obligation.

6 (jjj) "Person related to," with respect to an
7 individual, means:

8 1. The spouse of the individual;

9 2. A brother, brother-in-law, sister, or sister-in-law
10 of the individual;

11 3. An ancestor or lineal descendant of the individual
12 or the individual's spouse; or

13 4. Any other relative, by blood or marriage, of the
14 individual or the individual's spouse who shares the same home
15 with the individual.

16 (kkk) "Person related to," with respect to an
17 organization, means:

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

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

22 3. An officer or director of, or a person performing
23 similar functions with respect to, a person described in
24 subparagraph 1.;

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

27 5. An individual who is related by blood or marriage
28 to an individual described in subparagraph 1., subparagraph
29 2., subparagraph 3., or subparagraph 4. and shares the same
30 home with the individual.

31

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

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

5 2. Whatever is collected on, or distributed on account
6 of, collateral;

7 3. Rights arising out of collateral;

8 4. To the extent of the value of collateral, claims
9 arising out of the loss, nonconformity, or interference with
10 the use of, defects or infringement of rights in, or damage
11 to, the collateral; or

12 5. To the extent of the value of collateral and to the
13 extent payable to the debtor or the secured party, insurance
14 payable by reason of the loss or nonconformity of, defects or
15 infringement of rights in, or damage to, the collateral.

16 (mmm) "Promissory note" means an instrument that
17 evidences a promise to pay a monetary obligation, does not
18 evidence an order to pay, and does not contain an
19 acknowledgment by a bank that the bank has received for
20 deposit a sum of money or funds.

21 (nnn) "Proposal" means a record authenticated by a
22 secured party which includes the terms on which the secured
23 party is willing to accept collateral in full or partial
24 satisfaction of the obligation it secures pursuant to ss.
25 679.620, 679.621, and 679.622.

26 (ooo) "Pursuant to commitment," with respect to an
27 advance made or other value given by a secured party, means
28 pursuant to the secured party's obligation, whether or not a
29 subsequent event of default or other event not within the
30 secured party's control has relieved or may relieve the
31 secured party from its obligation.

1 (ppp) "Record," except as used in the terms "for
2 record," "of record," "record or legal title," and "record
3 owner," means information that is inscribed on a tangible
4 medium or that is stored in an electronic or other medium and
5 is retrievable in perceivable form.

6 (qqq) "Registered organization" means an organization
7 organized solely under the law of a single state or the United
8 States and as to which the state or the United States must
9 maintain a public record showing the organization to have been
10 organized.

11 (rrr) "Secondary obligor" means an obligor to the
12 extent that:

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

17 (sss) "Secured party" means:

18 1. A person in whose favor a security interest is
19 created or provided for under a security agreement, whether or
20 not any obligation to be secured is outstanding;

21 2. A person who holds an agricultural lien;

22 3. A consignor;

23 4. A person to whom accounts, chattel paper, payment
24 intangibles, or promissory notes have been sold;

25 5. A trustee, indenture trustee, agent, collateral
26 agent, or other representative in whose favor a security
27 interest or agricultural lien is created or provided for; or

28 6. A person who holds a security interest arising
29 under s. 672.401, s. 672.505, s. 672.711(3), s. 680.508(5), s.
30 674.2101, or s. 675.118.

31

1 (ttt) "Security agreement" means an agreement that
2 creates or provides for a security interest.

3 (uuu) "Send," in connection with a record or
4 notification, means:

5 1. To deposit in the mail, deliver for transmission,
6 or transmit by any other usual means of communication, with
7 postage or cost of transmission provided for, addressed to any
8 address reasonable under the circumstances; or

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

12 (vvv) "Software" means a computer program and any
13 supporting information provided in connection with a
14 transaction relating to the program. The term does not include
15 a computer program that is included in the definition of
16 goods.

17 (www) "State" means a state of the United States, the
18 District of Columbia, Puerto Rico, the United States Virgin
19 Islands, or any territory or insular possession subject to the
20 jurisdiction of the United States.

21 (xxx) "Supporting obligation" means a letter-of-credit
22 right or secondary obligation that supports the payment or
23 performance of an account, chattel paper, a document, a
24 general intangible, an instrument, or investment property.

25 (yyy) "Tangible chattel paper" means chattel paper
26 evidenced by a record or records consisting of information
27 that is inscribed on a tangible medium.

28 (zzz) "Termination statement" means an amendment of a
29 financing statement which:

30
31

1 1. Identifies, by its file number, or if a fixture
2 filing, by the official records book and page number, the
3 initial financing statement to which it relates; and

4 2. Indicates either that it is a termination statement
5 or that the identified financing statement is no longer
6 effective.

7 (aaaa) "Transmitting utility" means a person primarily
8 engaged in the business of:

9 1. Operating a railroad, subway, street railway, or
10 trolley bus;

11 2. Transmitting communications electrically,
12 electromagnetically, or by light;

13 3. Transmitting goods by pipeline or sewer; or

14 4. Transmitting or producing and transmitting
15 electricity, steam, gas, or water.

16 (2) The following definitions in other chapters apply
17 to this chapter:

18 "Applicant" s. 675.103.

19 "Beneficiary" s. 675.103.

20 "Broker" s. 678.1021.

21 "Certificated security" s. 678.1021.

22 "Check" s. 673.1041.

23 "Clearing corporation" s. 678.1021.

24 "Contract for sale" s. 672.106.

25 "Customer" s. 674.104.

26 "Entitlement holder" s. 678.1021.

27 "Financial asset" s. 678.1021.

28 "Holder in due course" s. 673.3021.

29 "Issuer" (with respect to a letter of credit or
30 letter-of-credit right) s. 675.103.

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

1	<u>"Lease"</u>	s. 680.1031.
2	<u>"Lease agreement"</u>	s. 680.1031.
3	<u>"Lease contract"</u>	s. 680.1031.
4	<u>"Leasehold interest"</u>	s. 680.1031.
5	<u>"Lessee"</u>	s. 680.1031.
6	<u>"Lessee in ordinary course of business"</u>	s. 680.1031.
7	<u>"Lessor"</u>	s. 680.1031.
8	<u>"Lessor's residual interest"</u>	s. 680.1031.
9	<u>"Letter of credit"</u>	s. 675.103.
10	<u>"Merchant"</u>	s. 672.104.
11	<u>"Negotiable instrument"</u>	s. 673.1041.
12	<u>"Nominated person"</u>	s. 675.103.
13	<u>"Note"</u>	s. 673.1041.
14	<u>"Proceeds of a letter of credit"</u>	s. 675.114.
15	<u>"Prove"</u>	s. 673.1031.
16	<u>"Sale"</u>	s. 672.106.
17	<u>"Securities account"</u>	s. 678.5011.
18	<u>"Securities intermediary"</u>	s. 678.1021.
19	<u>"Security"</u>	s. 678.1021.
20	<u>"Security certificate"</u>	s. 678.1021.
21	<u>"Security entitlement"</u>	s. 678.1021.
22	<u>"Uncertificated security"</u>	s. 678.1021.

23 (3) Chapter 671 contains general definitions and
 24 principles of construction and interpretation applicable
 25 throughout this chapter.

26 679.1031 Purchase-money security interest; application
 27 of payments; burden of establishing.--

28 (1) In this section, the term:

29 (a) "Purchase-money collateral" means goods or
 30 software that secures a purchase-money obligation incurred
 31 with respect to that collateral.

1 (b) "Purchase-money obligation" means an obligation of
2 an obligor incurred as all or part of the price of the
3 collateral or for value given to enable the debtor to acquire
4 rights in or the use of the collateral if the value is in fact
5 so used.

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

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

10 (b) If the security interest is in inventory that is
11 or was purchase-money collateral, also to the extent that the
12 security interest secures a purchase-money obligation incurred
13 with respect to other inventory in which the secured party
14 holds or held a purchase-money security interest; and

15 (c) Also to the extent that the security interest
16 secures a purchase-money obligation incurred with respect to
17 software in which the secured party holds or held a
18 purchase-money security interest.

19 (3) A security interest in software is a
20 purchase-money security interest to the extent that the
21 security interest also secures a purchase-money obligation
22 incurred with respect to goods in which the secured party
23 holds or held a purchase-money security interest if:

24 (a) The debtor acquired interest in the software in an
25 integrated transaction in which the debtor acquired an
26 interest in the goods; and

27 (b) The debtor acquired interest in the software for
28 the principal purpose of using the software in the goods.

29 (4) The security interest of a consignor in goods that
30 are the subject of a consignment is a purchase-money security
31 interest in inventory.

1 (5) If the extent to which a security interest is a
2 purchase-money security interest depends on the application of
3 a payment to a particular obligation, the payment must be
4 applied:

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

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

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

13 1. To obligations that are not secured; and

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

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

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

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

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

25 (7) A secured party claiming a purchase-money security
26 interest has the burden of establishing the extent to which
27 the security interest is a purchase-money security interest.

28 679.1041 Control of deposit account.--

29 (1) A secured party has control of a deposit account
30 if:

31

1 (a) The secured party is the bank with which the
2 deposit account is maintained;

3 (b) The debtor, secured party, and bank have agreed in
4 an authenticated record that the bank will comply with
5 instructions originated by the secured party directing
6 disposition of the funds in the deposit account without
7 further consent by the debtor; or

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

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

13 679.1051 Control of electronic chattel paper.--A
14 secured party has control of electronic chattel paper if the
15 record or records comprising the chattel paper are created,
16 stored, and assigned in such a manner that:

17 (1) A single authoritative copy of the record or
18 records exists which is unique, identifiable and, except as
19 otherwise provided in subsections (4), (5), and (6),
20 unalterable;

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

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

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

28 (5) Each copy of the authoritative copy and any copy
29 of a copy is readily identifiable as a copy that is not the
30 authoritative copy; and

31

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

3 679.1061 Control of investment property.--

4 (1) A person has control of a certificated security,
5 uncertificated security, or security entitlement as provided
6 in s. 678.1061.

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

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

11 (b) The commodity customer, secured party, and
12 commodity intermediary have agreed that the commodity
13 intermediary will apply any value distributed on account of
14 the commodity contract as directed by the secured party
15 without further consent by the commodity customer.

16 (3) A secured party having control of all security
17 entitlements or commodity contracts carried in a securities
18 account or commodity account has control over the securities
19 account or commodity account.

20 679.1071 Control of letter-of-credit right.--A secured
21 party has control of a letter-of-credit right to the extent of
22 any right to payment or performance by the issuer or any
23 nominated person if the issuer or nominated person has
24 consented to an assignment of proceeds of the letter of credit
25 under s. 675.114(3) or otherwise applicable law or practice.

26 679.1081 Sufficiency of description.--

27 (1) Except as otherwise provided herein and in
28 subsections (3), (4), and (5), a description of personal or
29 real property is sufficient, whether or not it is specific, if
30 it reasonably identifies what is described. A description of
31 real estate in a record filed to perfect a security interest

1 in crops growing or to be grown or goods which are or are to
2 become fixtures shall be sufficient only if the filing or
3 recording of the same constitutes constructive notice under
4 the laws of this state, other than this chapter, which are
5 applicable to the filing or recording of a record of a
6 mortgage, and a mailing or street address alone shall not be
7 sufficient.

8 (2) Except as otherwise provided in subsection (4), a
9 description of collateral reasonably identifies the collateral
10 if it identifies the collateral by:

11 (a) Specific listing;

12 (b) Category;

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

15 (d) Quantity;

16 (e) Computational or allocational formula or
17 procedure; or

18 (f) Except as otherwise provided in subsection (3),
19 any other method, if the identity of the collateral is
20 objectively determinable.

21 (3) A description of collateral as "all the debtor's
22 assets" or "all the debtor's personal property" or using words
23 of similar import does not reasonably identify the collateral
24 for purposes of the security agreement.

25 (4) Except as otherwise provided in subsection (5), a
26 description of a security entitlement, securities account, or
27 commodity account is sufficient if it describes:

28 (a) The collateral by those terms or as investment
29 property; or

30 (b) The underlying financial asset or commodity
31 contract.

1 (5) A description only by type of collateral defined
2 in the Uniform Commercial Code is an insufficient description
3 of:

4 (a) A commercial tort claim; or

5 (b) In a consumer transaction, consumer goods, a
6 security entitlement, a securities account, or a commodity
7 account.

8 679.1091 Scope.--

9 (1) Except as otherwise provided in subsections (3)
10 and (4), this chapter applies to:

11 (a) A transaction, regardless of its form, that
12 creates a security interest in personal property or fixtures
13 by contract;

14 (b) An agricultural lien;

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

17 (d) A consignment;

18 (e) A security interest arising under s. 672.401, s.
19 672.502, s. 672.711, or s. 680.508(5), as provided in s.
20 679.1101; and

21 (f) A security interest arising under s. 674.2101 or
22 s. 675.118.

23 (2) The application of this chapter to a security
24 interest in a secured obligation is not affected by the fact
25 that the obligation is itself secured by a transaction or
26 interest to which this chapter does not apply.

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

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

30
31

1 (b) The rights of a transferee beneficiary or
2 nominated person under a letter of credit are independent and
3 superior under s. 675.114.

4 (4) This chapter does not apply to:

5 (a) A landlord's lien, other than an agricultural
6 lien;

7 (b) A lien, other than an agricultural lien, given by
8 statute or other rule of law for services or materials, but s.
9 679.333 applies with respect to priority of the lien;

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

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

15 (e) An assignment of accounts, chattel paper, payment
16 intangibles, or promissory notes which is for the purpose of
17 collection only;

18 (f) An assignment of a right to payment under a
19 contract to an assignee that is also obligated to perform
20 under the contract;

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

24 (h) A transfer of an interest in or an assignment of a
25 claim under a policy of insurance, other than an assignment by
26 or to a health-care provider of a health-care-insurance
27 receivable and any subsequent assignment of the right to
28 payment, but ss. 679.3151 and 679.322 apply with respect to
29 proceeds and priorities in proceeds;

30
31

1 (i) An assignment of a right represented by a
2 judgment, other than a judgment taken on a right to payment
3 that was collateral;

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

5 1. Section 679.340 applies with respect to the
6 effectiveness of rights of recoupment or set-off against
7 deposit accounts; and

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

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

13 1. Liens on real property in ss. 679.2031 and
14 679.3081;

15 2. Fixtures in s. 679.334;

16 3. Fixture filings in ss. 679.5011, 679.5021, 679.512,
17 679.516, and 679.519; and

18 4. Security agreements covering personal and real
19 property in s. 679.604;

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

23 (m) An assignment of a deposit account, other than a
24 non-negotiable certificate of deposit, in a consumer
25 transaction, but ss. 679.3151 and 679.322 apply with respect
26 to proceeds and priorities in proceeds; or

27 (n) Any transfer by a government or governmental unit.

28 679.1101 Security interests arising under chapter 672
29 or chapter 680.--A security interest arising under s. 672.401,
30 s. 672.505, s. 672.711(3), or s. 680.508(5) is subject to this
31

1 chapter. However, until the debtor obtains possession of the
2 goods:

3 (1) The security interest is enforceable, even if s.
4 679.2031(2)(c) has not been satisfied;

5 (2) Filing is not required to perfect the security
6 interest;

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

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

11 Section 2. Part II of chapter 679, Florida Statutes,
12 consisting of sections 679.201, 679.202, 679.203, 679.204,
13 679.205, 679.206, 679.207, and 679.208, Florida Statutes, is
14 repealed and a new part II of that chapter, consisting of
15 sections 679.2011, 679.2021, 679.2031, 679.2041, 679.2051,
16 679.2061, 679.2071, 679.2081, 679.209, and 679.210, Florida
17 Statutes, is created to read:

18 PART II

19 EFFECTIVENESS OF SECURITY AGREEMENT;

20 ATTACHMENT OF SECURITY INTEREST;

21 RIGHTS OF PARTIES TO SECURITY AGREEMENT

22 679.2011 General effectiveness of security
23 agreement.--

24 (1) Except as otherwise provided in the Uniform
25 Commercial Code, a security agreement is effective according
26 to its terms between the parties, against purchasers of the
27 collateral, and against creditors.

28 (2) Nothing in this chapter validates any charge or
29 practice illegal under any statute or regulation thereunder
30 governing usury, small loans, retail installment sales, or the
31 like, or extends the application of any such statute or

1 regulation to any transaction not otherwise subject thereto.
2 A transaction, although subject to this chapter, is also
3 subject to chapters 516 and 520, and in the case of conflict
4 between the provisions of this chapter and any such statute,
5 the provisions of such statute shall control. Failure to
6 comply with any applicable statute has only the effect which
7 is specified therein.

8 679.2021 Title to collateral immaterial.--Except as
9 otherwise provided with respect to consignments or sales of
10 accounts, chattel paper, payment intangibles, or promissory
11 notes, the provisions of this chapter with regard to rights
12 and obligations apply whether title to collateral is in the
13 secured party or the debtor.

14 679.2031 Attachment and enforceability of security
15 interest; proceeds; supporting obligations; formal
16 requisites.--

17 (1) A security interest attaches to collateral when it
18 becomes enforceable against the debtor with respect to the
19 collateral, unless an agreement expressly postpones the time
20 of attachment.

21 (2) Except as otherwise provided in subsections (3)
22 through (9), a security interest is enforceable against the
23 debtor and third parties with respect to the collateral only
24 if:

25 (a) Value has been given;

26 (b) The debtor has rights in the collateral or the
27 power to transfer rights in the collateral to a secured party;
28 and

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

30 1. The debtor has authenticated a security agreement
31 that provides a description of the collateral and, if the

1 security interest covers timber to be cut, a description of
2 the land concerned;

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

6 3. The collateral is a certificated security in
7 registered form and the security certificate has been
8 delivered to the secured party under S. 678.3011 pursuant to
9 the debtor's security agreement; or

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

15 (3) Subsection (2) is subject to s. 674.2101 on the
16 security interest of a collecting bank, s. 675.118 on the
17 security interest of a letter-of-credit issuer or nominated
18 person, s. 679.1101 on a security interest arising under
19 chapter 672 or chapter 680, and s. 679.2061 on security
20 interests in investment property.

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

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

26 (b) The person becomes generally obligated for the
27 obligations of the other person, including the obligation
28 secured under the security agreement, and acquires or succeeds
29 to all or substantially all of the assets of the other person.

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

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

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

7 (6) The attachment of a security interest in
8 collateral gives the secured party the rights to proceeds
9 provided by s. 679.3151 and is also attachment of a security
10 interest in a supporting obligation for the collateral.

11 (7) The attachment of a security interest in a right
12 to payment or performance secured by a security interest or
13 other lien on personal or real property is also attachment of
14 a security interest in the security interest, mortgage, or
15 other lien.

16 (8) The attachment of a security interest in a
17 securities account is also attachment of a security interest
18 in the security entitlements carried in the securities
19 account.

20 (9) The attachment of a security interest in a
21 commodity account is also attachment of a security interest in
22 the commodity contracts carried in the commodity account.

23 679.2041 After-acquired property; future advances.--

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

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

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

1 (b) A commercial tort claim.

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

7 679.2051 Use or disposition of collateral
8 permissible.--

9 (1) A security interest is not invalid or fraudulent
10 against creditors solely because:

11 (a) The debtor has the right or ability to:

12 1. Use, commingle, or dispose of all or part of the
13 collateral, including returned or repossessed goods;

14 2. Collect, compromise, enforce, or otherwise deal
15 with collateral;

16 3. Accept the return of collateral or make
17 repossessions; or

18 4. Use, commingle, or dispose of proceeds; or

19 (b) The secured party fails to require the debtor to
20 account for proceeds or replace collateral.

21 (2) This section does not relax the requirements of
22 possession if attachment, perfection, or enforcement of a
23 security interest depends upon possession of the collateral by
24 the secured party.

25 679.2061 Security interest arising in purchase or
26 delivery of financial asset.--

27 (1) A security interest in favor of a securities
28 intermediary attaches to a person's security entitlement if:

29 (a) The person buys a financial asset through the
30 securities intermediary in a transaction in which the person
31

1 is obligated to pay the purchase price to the securities
2 intermediary at the time of the purchase; and
3 (b) The securities intermediary credits the financial
4 asset to the buyer's securities account before the buyer pays
5 the securities intermediary.
6 (2) The security interest described in subsection (1)
7 secures the person's obligation to pay for the financial
8 asset.
9 (3) A security interest in favor of a person who
10 delivers a certificated security or other financial asset
11 represented by a writing attaches to the security or other
12 financial asset if:
13 (a) The security or other financial asset:
14 1. In the ordinary course of business is transferred
15 by delivery with any necessary indorsement or assignment; and
16 2. Is delivered under an agreement between persons in
17 the business of dealing with such securities or financial
18 assets; and
19 (b) The agreement calls for delivery against payment.
20 (4) The security interest described in subsection (3)
21 secures the obligation to make payment for the delivery.
22 679.2071 Rights and duties of secured party having
23 possession or control of collateral.--
24 (1) Except as otherwise provided in subsection (4), a
25 secured party shall use reasonable care in the custody and
26 preservation of collateral in the secured party's possession.
27 In the case of chattel paper or an instrument, reasonable care
28 includes taking necessary steps to preserve rights against
29 prior parties unless otherwise agreed.
30 (2) Except as otherwise provided in subsection (4), if
31 a secured party has possession of collateral:

1 (a) Reasonable expenses, including the cost of
2 insurance and payment of taxes or other charges, incurred in
3 the custody, preservation, use, or operation of the collateral
4 are chargeable to the debtor and are secured by the
5 collateral;

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

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

11 (d) The secured party may use or operate the
12 collateral:

13 1. For the purpose of preserving the collateral or its
14 value;

15 2. As permitted by an order of a court having
16 competent jurisdiction; or

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

19 (3) Except as otherwise provided in subsection (4), a
20 secured party having possession of collateral or control of
21 collateral under s. 679.1041, s. 679.1051, s. 679.1061, or s.
22 679.1071:

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

25 (b) Shall apply money or funds received from the
26 collateral to reduce the secured obligation, unless remitted
27 to the debtor; and

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

29 (4) If the secured party is a buyer of accounts,
30 chattel paper, payment intangibles, or promissory notes or a
31 consignor:

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

- 3 1. To charge back uncollected collateral; or
4 2. Otherwise to full or limited recourse against the
5 debtor or a secondary obligor based on the nonpayment or other
6 default of an account debtor or other obligor on the
7 collateral; and

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

9 679.2081 Additional duties of secured party having
10 control of collateral.--

11 (1) This section applies to cases in which there is no
12 outstanding secured obligation and the secured party is not
13 committed to make advances, incur obligations, or otherwise
14 give value.

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

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

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

24 1. Pay the debtor the balance on deposit in the
25 deposit account; or

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

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

30
31

1 1. Communicate the authoritative copy of the
2 electronic chattel paper to the debtor or its designated
3 custodian;

4 2. If the debtor designates a custodian that is the
5 designated custodian with which the authoritative copy of the
6 electronic chattel paper is maintained for the secured party,
7 communicate to the custodian an authenticated record releasing
8 the designated custodian from any further obligation to comply
9 with instructions originated by the secured party and
10 instructing the custodian to comply with instructions
11 originated by the debtor; and

12 3. Take appropriate action to enable the debtor or the
13 debtor's designated custodian to make copies of or revisions
14 to the authoritative copy which add or change an identified
15 assignee of the authoritative copy without the consent of the
16 secured party;

17 (d) A secured party having control of investment
18 property under s. 678.1061(4)(b) or s. 679.1061(2) shall send
19 to the securities intermediary or commodity intermediary with
20 which the security entitlement or commodity contract is
21 maintained an authenticated record that releases the
22 securities intermediary or commodity intermediary from any
23 further obligation to comply with entitlement orders or
24 directions originated by the secured party; and

25 (e) A secured party having control of a
26 letter-of-credit right under s. 679.1071 shall send to each
27 person having an unfulfilled obligation to pay or deliver
28 proceeds of the letter of credit to the secured party an
29 authenticated release from any further obligation to pay or
30 deliver proceeds of the letter of credit to the secured party.

31

1 679.209 Duties of secured party if account debtor has
2 been notified of assignment.--

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

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

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

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

14 (3) This section does not apply to an assignment
15 constituting the sale of an account, chattel paper, or payment
16 intangible.

17 679.210 Request for accounting; request regarding list
18 of collateral or statement of account.--

19 (1) In this section, the term:

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

22 (b) "Request for an accounting" means a record
23 authenticated by a debtor requesting that the recipient
24 provide an accounting of the unpaid obligations secured by
25 collateral and reasonably identifying the transaction or
26 relationship that is the subject of the request.

27 (c) "Request regarding a list of collateral" means a
28 record authenticated by a debtor requesting that the recipient
29 approve or correct a list of what the debtor believes to be
30 the collateral securing an obligation and reasonably

31

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

3 (d) "Request regarding a statement of account" means a
4 record authenticated by a debtor requesting that the recipient
5 approve or correct a statement indicating what the debtor
6 believes to be the aggregate amount of unpaid obligations
7 secured by collateral as of a specified date and reasonably
8 identifying the transaction or relationship that is the
9 subject of the request.

10 (e) "Reasonably identifying the transaction or
11 relationship" means that the request provides information
12 sufficient for the person to identify the transaction or
13 relationship and respond to the request. Pursuant to s.
14 679.603(1), a secured party and debtor may determine by
15 agreement the standards for measuring fulfillment of this
16 duty.

17 (f) "Person" means a person or entity that is or was a
18 secured party or otherwise claims or has claimed an interest
19 in the collateral.

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

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

26 (b) In the case of a request regarding a list of
27 collateral or a request regarding a statement of account, by
28 authenticating and sending to the debtor an approval or
29 correction.

30 (3) A secured party that claims a security interest in
31 all of a particular type of collateral owned by the debtor may

1 comply with a request regarding a list of collateral by
2 sending to the debtor an authenticated record including a
3 statement to that effect within 14 days after receipt.

4 (4) A person who receives a request regarding a list
5 of collateral, claims no interest in the collateral when the
6 request is received, and claimed an interest in the collateral
7 at an earlier time shall comply with the request within 14
8 days after receipt by sending to the debtor an authenticated
9 record:

10 (a) Disclaiming any interest in the collateral; and

11 (b) If known to the recipient, providing the name and
12 mailing address of any assignee of or successor to the
13 recipient's interest in the collateral.

14 (5) A person who receives a request for an accounting
15 or a request regarding a statement of account, claims no
16 interest in the obligations when the request is received, and
17 claimed an interest in the obligations at an earlier time
18 shall comply with the request within 14 days after receipt by
19 sending to the debtor an authenticated record:

20 (a) Disclaiming any interest in the obligations; and

21 (b) If known to the recipient, providing the name and
22 mailing address of any assignee of or successor to the
23 recipient's interest in the obligations.

24 (6) A debtor is entitled under this section without
25 charge to one response to a request for an accounting or a
26 request regarding a statement of account for each secured
27 obligation during any 6-month period. A debtor in a consumer
28 transaction is entitled to a single response to a request
29 regarding a list of collateral, for a transaction other than a
30 consumer transaction, without charge during any 6-month
31 period. The secured party may require payment of a charge not

1 exceeding \$25 for each additional response to a request for an
 2 accounting, a request regarding a statement of account, or a
 3 request regarding a list of collateral for a consumer
 4 transaction. To the extent provided in an authenticated
 5 record, the secured party may require the payment of
 6 reasonable expenses, including attorney's fees, reasonably
 7 incurred in providing a response to a request regarding a list
 8 of collateral for a transaction other than a consumer
 9 transaction under this section; otherwise, the secured party
 10 may not charge more than \$25 for each request regarding a list
 11 of collateral. Excluding a request related to a proposed
 12 satisfaction of the secured obligation, a secured party is not
 13 required to respond to more than 12 of each of the permitted
 14 requests in any 12-month period.

15 Section 3. Part III of chapter 679, Florida Statutes,
 16 consisting of sections 679.301, 679.302, 679.303, 679.304,
 17 690.305, 679.306, 679.307, 679.308, 679.309, 679.310, 679.311,
 18 679.312, 679.313, 679.314, 679.315, 679.316, 679.317, and
 19 679.318, Florida Statutes, is repealed and a new part III of
 20 that chapter, consisting of sections 679.3011, 679.3021,
 21 679.3031, 679.3041, 690.3051, 679.3061, 679.3071, 679.3081,
 22 679.3091, 679.3101, 679.3111, 679.3121, 679.3131, 679.3141,
 23 679.3151, 679.3161, 679.3171, 679.3181, 679.319, 679.320,
 24 679.321, 679.322, 679.323, 679.324, 679.325, 679.326, 679.327,
 25 679.328, 679.329, 679.330, 679.331, 679.332, 679.333, 679.334,
 26 679.335, 679.336, 679.337, 679.3381, 679.339, 679.340,
 27 679.341, and 679.342, Florida Statutes, is created to read:

28 PART III

29 PERFECTION AND PRIORITY

30 679.3011 Law governing perfection and priority of
 31 security interests.--Except as otherwise provided in ss.

1 679.1091, 679.3031, 679.3041, 679.3051, and 679.3061, the
2 following rules determine the law governing perfection, the
3 effect of perfection or nonperfection, and the priority of a
4 security interest in collateral:

5 (1) Except as otherwise provided in this section,
6 while a debtor is located in a jurisdiction, the local law of
7 that jurisdiction governs perfection, the effect of perfection
8 or nonperfection, and the priority of a security interest in
9 collateral.

10 (2) While collateral is located in a jurisdiction, the
11 local law of that jurisdiction governs perfection, the effect
12 of perfection or nonperfection, and the priority of a
13 possessory security interest in that collateral.

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

18 (a) Perfection of a security interest in the goods by
19 filing a fixture filing;

20 (b) Perfection of a security interest in timber to be
21 cut; and

22 (c) The effect of perfection or nonperfection and the
23 priority of a nonpossessory security interest in the
24 collateral.

25 (4) The local law of the jurisdiction in which the
26 wellhead or minehead is located governs perfection, the effect
27 of perfection or nonperfection, and the priority of a security
28 interest in as-extracted collateral.

29 679.3021 Law governing perfection and priority of
30 agricultural liens.--While farm products are located in a
31 jurisdiction, the local law of that jurisdiction governs

1 perfection, the effect of perfection or nonperfection, and the
2 priority of an agricultural lien on the farm products.

3 679.3031 Law governing perfection and priority of
4 security interests in goods covered by a certificate of
5 title.--

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

10 (2) Goods become covered by a certificate of title
11 when a valid application for the certificate of title and the
12 applicable fee are delivered to the appropriate authority.
13 Goods cease to be covered by a certificate of title at the
14 earlier of the time the certificate of title ceases to be
15 effective under the law of the issuing jurisdiction or the
16 time the goods become covered subsequently by a certificate of
17 title issued by another jurisdiction.

18 (3) The local law of the jurisdiction under whose
19 certificate of title the goods are covered governs perfection,
20 the effect of perfection or nonperfection, and the priority of
21 a security interest in goods covered by a certificate of title
22 from the time the goods become covered by the certificate of
23 title until the goods cease to be covered by the certificate
24 of title.

25 679.3041 Law governing perfection and priority of
26 security interests in deposit accounts.--

27 (1) The local law of a bank's jurisdiction governs
28 perfection, the effect of perfection or nonperfection, and the
29 priority of a security interest in a deposit account
30 maintained with that bank.

31

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

3 (a) If an agreement between the bank and the debtor
4 governing the deposit account expressly provides that a
5 particular jurisdiction is the bank's jurisdiction for
6 purposes of this part, this chapter, or the Uniform Commercial
7 Code, that jurisdiction is the bank's jurisdiction.

8 (b) If paragraph (a) does not apply and an agreement
9 between the bank and its customer governing the deposit
10 account expressly provides that the agreement is governed by
11 the law of a particular jurisdiction, that jurisdiction is the
12 bank's jurisdiction.

13 (c) If neither paragraph (a) nor paragraph (b) applies
14 and an agreement between the bank and its customer governing
15 the deposit account expressly provides that the deposit
16 account is maintained at an office in a particular
17 jurisdiction, that jurisdiction is the bank's jurisdiction.

18 (d) If none of the preceding paragraphs applies, the
19 bank's jurisdiction is the jurisdiction in which the office
20 identified in an account statement as the office serving the
21 customer's account is located.

22 (e) If none of the preceding paragraphs applies, the
23 bank's jurisdiction is the jurisdiction in which the chief
24 executive office of the bank is located.

25 679.3051 Law governing perfection and priority of
26 security interests in investment property.--

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

29 (a) While a security certificate is located in a
30 jurisdiction, the local law of that jurisdiction governs
31 perfection, the effect of perfection or nonperfection, and the

1 priority of a security interest in the certificated security
2 represented thereby.

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

7 (c) The local law of the securities intermediary's
8 jurisdiction as specified in s. 678.1101(5) governs
9 perfection, the effect of perfection or nonperfection, and the
10 priority of a security interest in a security entitlement or
11 securities account.

12 (d) The local law of the commodity intermediary's
13 jurisdiction governs perfection, the effect of perfection or
14 nonperfection, and the priority of a security interest in a
15 commodity contract or commodity account.

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

18 (a) If an agreement between the commodity intermediary
19 and commodity customer governing the commodity account
20 expressly provides that a particular jurisdiction is the
21 commodity intermediary's jurisdiction for purposes of this
22 part, this chapter, or the Uniform Commercial Code, that
23 jurisdiction is the commodity intermediary's jurisdiction.

24 (b) If paragraph (a) does not apply and an agreement
25 between the commodity intermediary and commodity customer
26 governing the commodity account expressly provides that the
27 agreement is governed by the law of a particular jurisdiction,
28 that jurisdiction is the commodity intermediary's
29 jurisdiction.

30 (c) If neither paragraph (a) nor paragraph (b) applies
31 and an agreement between the commodity intermediary and

1 commodity customer governing the commodity account expressly
2 provides that the commodity account is maintained at an office
3 in a particular jurisdiction, that jurisdiction is the
4 commodity intermediary's jurisdiction.

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

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

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

15 (a) Perfection of a security interest in investment
16 property by filing;

17 (b) Automatic perfection of a security interest in
18 investment property created by a broker or securities
19 intermediary; and

20 (c) Automatic perfection of a security interest in a
21 commodity contract or commodity account created by a commodity
22 intermediary.

23 679.3061 Law governing perfection and priority of
24 security interests in letter-of-credit rights.--

25 (1) Subject to subsection (3), the local law of the
26 issuer's jurisdiction or a nominated person's jurisdiction
27 governs perfection, the effect of perfection or nonperfection,
28 and the priority of a security interest in a letter-of-credit
29 right if the issuer's jurisdiction or nominated person's
30 jurisdiction is a state.

31

1 (2) For purposes of this part, an issuer's
2 jurisdiction or nominated person's jurisdiction is the
3 jurisdiction whose law governs the liability of the issuer or
4 nominated person with respect to the letter-of-credit right as
5 provided in s. 675.116.

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

8 679.3071 Location of debtor.--

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

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

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

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

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

20 (3) Subsection (2) applies only if a debtor's
21 residence, place of business, or chief executive office, as
22 applicable, is located in a jurisdiction whose law generally
23 requires information concerning the existence of a
24 nonpossessory security interest to be made generally available
25 in a filing, recording, or registration system as a condition
26 or result of the security interest's obtaining priority over
27 the rights of a lien creditor with respect to the collateral.
28 If subsection (2) does not apply, the debtor is located in the
29 District of Columbia.

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

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

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

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

13 (b) In the state that the registered organization,
14 branch, or agency designates, if the law of the United States
15 authorizes the registered organization, branch, or agency to
16 designate its state of location; or

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

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

22 (a) The suspension, revocation, forfeiture, or lapse
23 of the registered organization's status as such in its
24 jurisdiction of organization; or

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

27 (8) The United States is located in the District of
28 Columbia.

29 (9) A branch or agency of a bank that is not organized
30 under the law of the United States or a state is located in
31 the state in which the branch or agency is licensed, if all

1 branches and agencies of the bank are licensed in only one
2 state.

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

7 (11) This section applies only for purposes of this
8 part.

9 679.3081 When security interest or agricultural lien
10 is perfected; continuity of perfection.--

11 (1) Except as otherwise provided in this section and
12 s. 679.3091, a security interest is perfected if it has
13 attached and all of the applicable requirements for perfection
14 in ss. 679.3101-679.3161 have been satisfied. A security
15 interest is perfected when it attaches if the applicable
16 requirements are satisfied before the security interest
17 attaches.

18 (2) An agricultural lien is perfected if it has become
19 effective and all of the applicable requirements for
20 perfection in s. 679.3101 have been satisfied. An
21 agricultural lien is perfected when it becomes effective if
22 the applicable requirements are satisfied before the
23 agricultural lien becomes effective.

24 (3) A security interest or agricultural lien is
25 perfected continuously if it is originally perfected by one
26 method under this chapter and is later perfected by another
27 method under this chapter, without an intermediate period
28 during which it was unperfected.

29 (4) Perfection of a security interest in collateral
30 also perfects a security interest in a supporting obligation
31 for the collateral.

1 (5) Perfection of a security interest in a right to
2 payment or performance also perfects a security interest in a
3 security interest, mortgage, or other lien on personal or real
4 property securing the right.

5 (6) Perfection of a security interest in a securities
6 account also perfects a security interest in the security
7 entitlements carried in the securities account.

8 (7) Perfection of a security interest in a commodity
9 account also perfects a security interest in the commodity
10 contracts carried in the commodity account.

11 679.3091 Security interest perfected upon
12 attachment.--The following security interests are perfected
13 when they attach:

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

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

22 (3) A sale of a payment intangible;

23 (4) A sale of a promissory note;

24 (5) A security interest created by the assignment of a
25 health-care-insurance receivable to the provider of the
26 health-care goods or services;

27 (6) A security interest arising under s. 672.401, s.
28 672.505, s. 672.711(3), or s. 680.508(5), until the debtor
29 obtains possession of the collateral;

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

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

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

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

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

9 (12) An assignment for the benefit of all creditors of
10 the transferor and subsequent transfers by the assignee
11 thereunder; and

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

14 679.3101 When filing required to perfect security
15 interest or agricultural lien; security interests and
16 agricultural liens to which filing provisions do not apply.--

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

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

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

24 (b) That is perfected under s. 679.3091 when it
25 attaches;

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

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

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31

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

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

6 (g) In a certificated security which is perfected by
7 delivery of the security certificate to the secured party
8 under s. 679.3131;

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

12 (i) In proceeds which is perfected under s. 679.3151;
13 or

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

15 (3) If a secured party assigns a perfected security
16 interest or agricultural lien, a filing under this chapter is
17 not required to continue the perfected status of the security
18 interest against creditors of and transferees from the
19 original debtor.

20 679.3111 Perfection of security interests in property
21 subject to certain statutes, regulations, and treaties.--

22 (1) Except as otherwise provided in subsection (4),
23 the filing of a financing statement is not necessary or
24 effective to perfect a security interest in property subject
25 to:

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

30 (b) A statute covering automobiles, trailers, mobile
31 homes, boats, farm tractors, or the like, which provides for a

1 security interest to be indicated on a certificate of title of
2 such property as a condition or result of perfection, and any
3 non-Uniform Commercial Code central filing statute; or

4 (c) A certificate-of-title statute of another
5 jurisdiction which provides for a security interest to be
6 indicated on the certificate as a condition or result of the
7 security interest's obtaining priority over the rights of a
8 lien creditor with respect to the property.

9 (2) Compliance with the requirements of a statute,
10 regulation, or treaty described in paragraph (1) for obtaining
11 priority over the rights of a lien creditor is equivalent to
12 the filing of a financing statement under this chapter.

13 Except as otherwise provided in subsection (4) and ss.
14 679.3131 and 679.3161(4) and (5) for goods covered by a
15 certificate of title, a security interest in property subject
16 to a statute, regulation, or treaty described in subsection
17 (1) may be perfected only by compliance with those
18 requirements, and a security interest so perfected remains
19 perfected notwithstanding a change in the use or transfer of
20 possession of the collateral.

21 (3) Except as otherwise provided in subsection (4) and
22 s. 679.3161(4) and (5), duration and renewal of perfection of
23 a security interest perfected by compliance with the
24 requirements prescribed by a statute, regulation, or treaty
25 described in subsection (1) are governed by the statute,
26 regulation, or treaty. In other respects, the security
27 interest is subject to this chapter.

28 (4) During any period in which collateral subject to a
29 statute specified in paragraph (1)(b) is inventory held for
30 sale or lease by a person or leased by that person as lessor
31 and that person is in the business of selling goods of that

1 kind, this section does not apply to a security interest in
2 that collateral created by that person.

3 679.3121 Perfection of security interests in chattel
4 paper, deposit accounts, documents, goods covered by
5 documents, instruments, investment property, letter-of-credit
6 rights, and money; perfection by permissive filing; temporary
7 perfection without filing or transfer of possession.--

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

11 (2) Except as otherwise provided in s. 679.3151(3) and
12 (4) for proceeds:

13 (a) A security interest in a deposit account may be
14 perfected only by control under s. 679.3141.

15 (b) And except as otherwise provided in s.
16 679.3081(4), a security interest in a letter-of-credit right
17 may be perfected only by control under s. 679.3141.

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

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

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

24 (b) A security interest perfected in the document has
25 priority over any security interest that becomes perfected in
26 the goods by another method during that time.

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

30 (a) Issuance of a document in the name of the secured
31 party;

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

3 (c) Filing as to the goods.

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

9 (6) A perfected security interest in a negotiable
10 document or goods in possession of a bailee, other than one
11 that has issued a negotiable document for the goods, remains
12 perfected for 20 days without filing if the secured party
13 makes available to the debtor the goods or documents
14 representing the goods for the purpose of:

15 (a) Ultimate sale or exchange; or

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

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

23 (a) Ultimate sale or exchange; or

24 (b) Presentation, collection, enforcement, renewal, or
25 registration of transfer.

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

29 679.3131 When possession by or delivery to secured
30 party perfects security interest without filing.--

31

1 (1) Except as otherwise provided in subsection (2), a
2 secured party may perfect a security interest in negotiable
3 documents, goods, instruments, money, or tangible chattel
4 paper by taking possession of the collateral. A secured party
5 may perfect a security interest in certificated securities by
6 taking delivery of the certificated securities under s.
7 678.3011.

8 (2) With respect to goods covered by a certificate of
9 title issued by this state, a secured party may perfect a
10 security interest in the goods by taking possession of the
11 goods only in the circumstances described in s. 679.3161(4).

12 (3) With respect to collateral other than certificated
13 securities and goods covered by a document, a secured party
14 takes possession of collateral in the possession of a person
15 other than the debtor, the secured party, or a lessee of the
16 collateral from the debtor in the ordinary course of the
17 debtor's business, when:

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

21 (b) The person takes possession of the collateral
22 after having authenticated a record acknowledging that the
23 person will hold possession of collateral for the secured
24 party's benefit.

25 (4) If perfection of a security interest depends upon
26 possession of the collateral by a secured party, perfection
27 occurs no earlier than the time the secured party takes
28 possession and continues only while the secured party retains
29 possession.

30 (5) A security interest in a certificated security in
31 registered form is perfected by delivery when delivery of the

1 certificated security occurs under s. 678.3011 and remains
2 perfected by delivery until the debtor obtains possession of
3 the security certificate.

4 (6) A person in possession of collateral is not
5 required to acknowledge that the person holds possession for a
6 secured party's benefit.

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

9 (a) The acknowledgment is effective under subsection
10 (3) or s. 678.3011(1), even if the acknowledgment violates the
11 rights of a debtor; and

12 (b) Unless the person otherwise agrees or law other
13 than this chapter otherwise provides, the person does not owe
14 any duty to the secured party and is not required to confirm
15 the acknowledgment to another person.

16 (8) A secured party having possession of collateral
17 does not relinquish possession by delivering the collateral to
18 a person other than the debtor or a lessee of the collateral
19 from the debtor in the ordinary course of the debtor's
20 business if the person was instructed before the delivery or
21 is instructed contemporaneously with the delivery:

22 (a) To hold possession of the collateral for the
23 secured party's benefit; or

24 (b) To redeliver the collateral to the secured party.

25 (9) A secured party does not relinquish possession,
26 even if a delivery under subsection (8) violates the rights of
27 a debtor. A person to whom collateral is delivered under
28 subsection (8) does not owe any duty to the secured party and
29 is not required to confirm the delivery to another person
30 unless the person otherwise agrees or law other than this
31 chapter otherwise provides.

1 679.3141 Perfection by control.--
2 (1) A security interest in investment property,
3 deposit accounts, letter-of-credit rights, or electronic
4 chattel paper may be perfected by control of the collateral
5 under s. 679.1041, s. 679.1051, s. 679.1061, or s. 679.1071.

6 (2) A security interest in deposit accounts,
7 electronic chattel paper, or letter-of-credit rights is
8 perfected by control under s. 679.1041, s. 679.1051, or s.
9 679.1071 when the secured party obtains control and remains
10 perfected by control only while the secured party retains
11 control.

12 (3) A security interest in investment property is
13 perfected by control under s. 679.1061 from the time the
14 secured party obtains control and remains perfected by control
15 until:

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

17 (b) One of the following occurs:

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

20 2. If the collateral is an uncertificated security,
21 the issuer has registered or registers the debtor as the
22 registered owner; or

23 3. If the collateral is a security entitlement, the
24 debtor is or becomes the entitlement holder.

25 679.3151 Secured party's rights on disposition of
26 collateral and in proceeds.--

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

29 (a) A security interest or agricultural lien continues
30 in collateral notwithstanding sale, lease, license, exchange,
31 or other disposition thereof unless the secured party

1 authorized the disposition free of the security interest or
2 agricultural lien; and

3 (b) A security interest attaches to any identifiable
4 proceeds of collateral.

5 (2) Proceeds that are commingled with other property
6 are identifiable proceeds:

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

9 (b) If the proceeds are not goods, to the extent that
10 the secured party identifies the proceeds by a method of
11 tracing, including application of equitable principles, that
12 is permitted under law other than this chapter with respect to
13 commingled property of the type involved.

14 (3) A security interest in proceeds is a perfected
15 security interest if the security interest in the original
16 collateral was perfected.

17 (4) A perfected security interest in proceeds becomes
18 unperfected on the 21st day after the security interest
19 attaches to the proceeds unless:

20 (a) The following conditions are satisfied:

21 1. A filed financing statement covers the original
22 collateral;

23 2. The proceeds are collateral in which a security
24 interest may be perfected by filing in the office in which the
25 financing statement has been filed; and

26 3. The proceeds are not acquired with cash proceeds;

27 (b) The proceeds are identifiable cash proceeds; or

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

31

1 (5) If a filed financing statement covers the original
2 collateral, a security interest in proceeds which remains
3 perfected under paragraph (4)(a) becomes unperfected at the
4 later of:

5 (a) When the effectiveness of the filed financing
6 statement lapses under s. 679.515 or is terminated under s.
7 679.513; or

8 (b) The 21st day after the security interest attaches
9 to the proceeds.

10 679.3161 Continued perfection of security interest
11 following change in governing law.--

12 (1) A security interest perfected pursuant to the law
13 of the jurisdiction designated in s. 679.3011(1) or s.
14 679.3051(3) remains perfected until the earliest of:

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

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

19 (c) The expiration of 1 year after a transfer of
20 collateral to a person who thereby becomes a debtor and is
21 located in another jurisdiction.

22 (2) If a security interest described in subsection (1)
23 becomes perfected under the law of the other jurisdiction
24 before the earliest time or event described in that
25 subsection, it remains perfected thereafter. If the security
26 interest does not become perfected under the law of the other
27 jurisdiction before the earliest time or event, it becomes
28 unperfected and is deemed never to have been perfected as
29 against a purchaser of the collateral for value.

30 (3) A possessory security interest in collateral,
31 other than goods covered by a certificate of title and

1 as-extracted collateral consisting of goods, remains
2 continuously perfected if:

3 (a) The collateral is located in one jurisdiction and
4 subject to a security interest perfected under the law of that
5 jurisdiction;

6 (b) Thereafter the collateral is brought into another
7 jurisdiction; and

8 (c) Upon entry into the other jurisdiction, the
9 security interest is perfected under the law of the other
10 jurisdiction.

11 (4) Except as otherwise provided in subsection (5), a
12 security interest in goods covered by a certificate of title
13 which is perfected by any method under the law of another
14 jurisdiction when the goods become covered by a certificate of
15 title from this state remains perfected until the security
16 interest would have become unperfected under the law of the
17 other jurisdiction had the goods not become so covered.

18 (5) A security interest described in subsection (4)
19 becomes unperfected as against a purchaser of the goods for
20 value and is deemed never to have been perfected as against a
21 purchaser of the goods for value if the applicable
22 requirements for perfection under s. 679.3111(2) or s.
23 679.3131 are not satisfied before the earlier of:

24 (a) The time the security interest would have become
25 unperfected under the law of the other jurisdiction had the
26 goods not become covered by a certificate of title from this
27 state; or

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

30 (6) A security interest in deposit accounts,
31 letter-of-credit rights, or investment property which is

1 perfected under the law of the bank's jurisdiction, the
2 issuer's jurisdiction, a nominated person's jurisdiction, the
3 securities intermediary's jurisdiction, or the commodity
4 intermediary's jurisdiction, as applicable, remains perfected
5 until the earlier of:

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

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

10 (7) If a security interest described in subsection (6)
11 becomes perfected under the law of the other jurisdiction
12 before the earlier of the time or the end of the period
13 described in that subsection, it remains perfected thereafter.

14 If the security interest does not become perfected under the
15 law of the other jurisdiction before the earlier of that time
16 or the end of that period, it becomes unperfected and is
17 deemed never to have been perfected as against a purchaser of
18 the collateral for value.

19 679.3171 Interests that take priority over or take
20 free of security interest or agricultural lien.--

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

23 (a) A person entitled to priority under s. 679.322;
24 and

25 (b) Except as otherwise provided in subsection (5), a
26 person who becomes a lien creditor before the earlier of the
27 time:

28 1. The security interest or agricultural lien is
29 perfected; or
30
31

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

4 (2) Except as otherwise provided in subsection (5), a
5 buyer, other than a secured party, of tangible chattel paper,
6 documents, goods, instruments, or a security certificate takes
7 free of a security interest or agricultural lien if the buyer
8 gives value and receives delivery of the collateral without
9 knowledge of the security interest or agricultural lien and
10 before it is perfected.

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

16 (4) A licensee of a general intangible or a buyer,
17 other than a secured party, of accounts, electronic chattel
18 paper, general intangibles, or investment property other than
19 a certificated security takes free of a security interest if
20 the licensee or buyer gives value without knowledge of the
21 security interest and before it is perfected.

22 (5) Except as otherwise provided in ss. 679.320 and
23 679.321, if a person files a financing statement with respect
24 to a purchase-money security interest before or within 20 days
25 after the debtor receives delivery of the collateral, the
26 security interest takes priority over the rights of a buyer,
27 lessee, or lien creditor which arise between the time the
28 security interest attaches and the time of filing.

29 679.3181 No interest retained in right to payment that
30 is sold; rights and title of seller of account or chattel
31 paper with respect to creditors and purchasers.--

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

4 (2) For purposes of determining the rights of
5 creditors of, and purchasers for value of an account or
6 chattel paper from, a debtor who has sold an account or
7 chattel paper, while the buyer's security interest is
8 unperfected, the debtor is deemed to have rights and title to
9 the account or chattel paper identical to those the debtor
10 sold.

11 679.319 Rights and title of consignee with respect to
12 creditors and purchasers.--

13 (1) Except as otherwise provided in subsection (2),
14 for purposes of determining the rights of creditors of, and
15 purchasers for value of goods from, a consignee, while the
16 goods are in the possession of the consignee, the consignee is
17 deemed to have rights and title to the goods identical to
18 those the consignor had or had power to transfer.

19 (2) For purposes of determining the rights of a
20 creditor of a consignee, law other than this chapter
21 determines the rights and title of a consignee while goods are
22 in the consignee's possession if, under this part, a perfected
23 security interest held by the consignor would have priority
24 over the rights of the creditor.

25 679.320 Buyer of goods.--

26 (1) Except as otherwise provided in subsection (5), a
27 buyer in ordinary course of business, other than a person
28 buying farm products from a person engaged in farming
29 operations, takes free of a security interest created by the
30 buyer's seller, even if the security interest is perfected and
31 the buyer knows of its existence.

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

6 (a) Without knowledge of the security interest;

7 (b) For value;

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

10 (d) Before the filing of a financing statement
11 covering the goods.

12 (3) To the extent that it affects the priority of a
13 security interest over a buyer of goods under subsection (2),
14 the period of effectiveness of a filing made in the
15 jurisdiction in which the seller is located is governed by s.
16 679.3161(1) and (2).

17 (4) A buyer in ordinary course of business buying oil,
18 gas, or other minerals at the wellhead or minehead or after
19 extraction takes free of an interest arising out of an
20 encumbrance.

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

24 679.321 Licensee of general intangible and lessee of
25 goods in ordinary course of business.--

26 (1) In this section, the term "licensee in ordinary
27 course of business" means a person who becomes a licensee of a
28 general intangible in good faith, without knowledge that the
29 license violates the rights of another person in the general
30 intangible, and in the ordinary course from a person in the
31 business of licensing general intangibles of that kind. A

1 person becomes a licensee in the ordinary course if the
2 license to the person comports with the usual or customary
3 practices in the kind of business in which the licensor is
4 engaged or with the licensor's own usual or customary
5 practices.

6 (2) A licensee in ordinary course of business takes
7 its rights under a nonexclusive license free of a security
8 interest in the general intangible created by the licensor,
9 even if the security interest is perfected and the licensee
10 knows of its existence.

11 (3) A lessee in ordinary course of business takes its
12 leasehold interest free of a security interest in the goods
13 created by the lessor, even if the security interest is
14 perfected and the lessee knows of its existence.

15 679.322 Priorities among conflicting security
16 interests in and agricultural liens on same collateral.--

17 (1) Except as otherwise provided in this section,
18 priority among conflicting security interests and agricultural
19 liens in the same collateral is determined according to the
20 following rules:

21 (a) Conflicting perfected security interests and
22 agricultural liens rank according to priority in time of
23 filing or perfection. Priority dates from the earlier of the
24 time a filing covering the collateral is first made or the
25 security interest or agricultural lien is first perfected, if
26 there is no period thereafter during which is neither filing
27 nor perfection.

28 (b) A perfected security interest or agricultural lien
29 has priority over a conflicting unperfected security interest
30 or agricultural lien.

31

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

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

5 (a) The time of filing or perfection as to a security
6 interest in collateral is also the time of filing or
7 perfection as to a security interest in proceeds; and

8 (b) The time of filing or perfection as to a security
9 interest in collateral supported by a supporting obligation is
10 also the time of filing or perfection as to a security
11 interest in the supporting obligation.

12 (3) Except as otherwise provided in subsection (6), a
13 security interest in collateral which qualifies for priority
14 over a conflicting security interest under s. 679.327, s.
15 679.328, s. 679.329, s. 679.330, or s. 679.331 also has
16 priority over a conflicting security interest in:

17 (a) Any supporting obligation for the collateral; and

18 (b) Proceeds of the collateral if:

19 1. The security interest in proceeds is perfected;

20 2. The proceeds are cash proceeds or of the same type
21 as the collateral; and

22 3. In the case of proceeds that are proceeds of
23 proceeds, all intervening proceeds are cash proceeds, proceeds
24 of the same type as the collateral, or an account relating to
25 the collateral.

26 (4) Subject to subsection (5) and except as otherwise
27 provided in subsection (6), if a security interest in chattel
28 paper, deposit accounts, negotiable documents, instruments,
29 investment property, or letter-of-credit rights is perfected
30 by a method other than filing, conflicting perfected security

31

1 interests in proceeds of the collateral rank according to
2 priority in time of filing.

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

7 (6) Subsections (1) through (5) are subject to:

8 (a) Subsection (7) and the other provisions of this
9 part;

10 (b) Section 674.2101 with respect to a security
11 interest of a collecting bank;

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

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

16 (7) A perfected agricultural lien on collateral has
17 priority over a conflicting security interest in or
18 agricultural lien on the same collateral if the statute
19 creating the agricultural lien so provides.

20 679.323 Future advances.--

21 (1) Except as otherwise provided in subsection (3),
22 for purposes of determining the priority of a perfected
23 security interest under s. 679.322(1)(a), perfection of the
24 security interest dates from the time an advance is made to
25 the extent that the security interest secures an advance that:

26 (a) Is made while the security interest is perfected
27 only:

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

29 2. Temporarily under s. 679.3121(5), (6), or (7); and
30
31

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

4 (2) Except as otherwise provided in subsection (3), a
5 security interest is subordinate to the rights of a person who
6 becomes a lien creditor to the extent that the security
7 interest secures an advance made more than 45 days after the
8 person becomes a lien creditor unless the advance is made:

9 (a) Without knowledge of the lien; or

10 (b) Pursuant to a commitment entered into without
11 knowledge of the lien.

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

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

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

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

23 (5) Subsection (4) does not apply if the advance is
24 made pursuant to a commitment entered into without knowledge
25 of the buyer's purchase and before the expiration of the
26 45-day period.

27 (6) Except as otherwise provided in subsection (7), a
28 lessee of goods, other than a lessee in ordinary course of
29 business, takes the leasehold interest free of a security
30 interest to the extent that it secures advances made after the
31 earlier of:

1 (a) The time the secured party acquires knowledge of
2 the lease; or

3 (b) Forty-five days after the lease contract becomes
4 enforceable.

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

8 679.324 Priority of purchase-money security
9 interests.--

10 (1) Except as otherwise provided in subsection (7), a
11 perfected purchase-money security interest in goods other than
12 inventory or livestock has priority over a conflicting
13 security interest in the same goods, and, except as otherwise
14 provided in s. 679.327, a perfected security interest in its
15 identifiable proceeds also has priority, if the purchase-money
16 security interest is perfected when the debtor receives
17 possession of the collateral or within 20 days thereafter.

18 (2) Subject to subsection (3) and except as otherwise
19 provided in subsection (7), a perfected purchase-money
20 security interest in inventory has priority over a conflicting
21 security interest in the same inventory, has priority over a
22 conflicting security interest in chattel paper or an
23 instrument constituting proceeds of the inventory and in
24 proceeds of the chattel paper, if so provided in s. 679.330,
25 and, except as otherwise provided in s. 679.327, also has
26 priority in identifiable cash proceeds of the inventory to the
27 extent the identifiable cash proceeds are received on or
28 before the delivery of the inventory to a buyer, if:

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

31

1 (b) The purchase-money secured party sends an
2 authenticated notification to the holder of the conflicting
3 security interest;

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

7 (d) The notification states that the person sending
8 the notification has or expects to acquire a purchase-money
9 security interest in inventory of the debtor and describes the
10 inventory.

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

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

16 (b) If the purchase-money security interest is
17 temporarily perfected without filing or possession under s.
18 679.3121(6), before the beginning of the 20-day period
19 thereunder.

20 (4) Subject to subsection (5) and except as otherwise
21 provided in subsection (7), a perfected purchase-money
22 security interest in livestock that are farm products has
23 priority over a conflicting security interest in the same
24 livestock, and, except as otherwise provided in s. 679.327, a
25 perfected security interest in their identifiable proceeds and
26 identifiable products in their unmanufactured states also has
27 priority, if:

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

1 (b) The purchase-money secured party sends an
2 authenticated notification to the holder of the conflicting
3 security interest;

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

7 (d) The notification states that the person sending
8 the notification has or expects to acquire a purchase-money
9 security interest in livestock of the debtor and describes the
10 livestock.

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

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

16 (b) If the purchase-money security interest is
17 temporarily perfected without filing or possession under s.
18 679.3121(6), before the beginning of the 20-day period
19 thereunder.

20 (6) Except as otherwise provided in subsection (7), a
21 perfected purchase-money security interest in software has
22 priority over a conflicting security interest in the same
23 collateral, and, except as otherwise provided in s. 679.327, a
24 perfected security interest in its identifiable proceeds also
25 has priority, to the extent that the purchase-money security
26 interest in the goods in which the software was acquired for
27 use has priority in the goods and proceeds of the goods under
28 this section.

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

1 (a) A security interest securing an obligation
2 incurred as all or part of the price of the collateral has
3 priority over a security interest securing an obligation
4 incurred for value given to enable the debtor to acquire
5 rights in or the use of collateral; and

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

8 679.325 Priority of security interests in transferred
9 collateral.--

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

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

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

18 (c) There is no period thereafter during which the
19 security interest is unperfected.

20 (2) Subsection (1) subordinates a security interest
21 only if the security interest:

22 (a) Otherwise would have priority solely under s.
23 679.322(1) or s. 679.324; or

24 (b) Arose solely under s. 672.711(3) or s. 680.508(5).

25 679.326 Priority of security interests created by new
26 debtor.--

27 (1) Subject to subsection (2), a security interest
28 created by a new debtor which is perfected by a filed
29 financing statement that is effective solely under s. 679.508
30 in collateral in which a new debtor has or acquires rights is
31 subordinate to a security interest in the same collateral

1 which is perfected other than by a filed financing statement
2 that is effective solely under s. 679.508.

3 (2) The other provisions of this part determine the
4 priority among conflicting security interests in the same
5 collateral perfected by filed financing statements that are
6 effective solely under s. 679.508. However, if the security
7 agreements to which a new debtor became bound as debtor were
8 not entered into by the same original debtor, the conflicting
9 security interests rank according to priority in time of the
10 new debtor's having become bound.

11 679.327 Priority of security interests in deposit
12 account.--The following rules govern priority among
13 conflicting security interests in the same deposit account:

14 (1) A security interest held by a secured party having
15 control of the deposit account under s. 679.1041 has priority
16 over a conflicting security interest held by a secured party
17 that does not have control.

18 (2) Except as otherwise provided in subsections (3)
19 and (4), security interests perfected by control under s.
20 679.3141 rank according to priority in time of obtaining
21 control.

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

26 (4) A security interest perfected by control under s.
27 679.1041(1)(c) has priority over a security interest held by
28 the bank with which the deposit account is maintained.

29 679.328 Priority of security interests in investment
30 property.--The following rules govern priority among

31

1 conflicting security interests in the same investment
2 property:

3 (1) A security interest held by a secured party having
4 control of investment property under s. 679.1061 has priority
5 over a security interest held by a secured party that does not
6 have control of the investment property.

7 (2) Except as otherwise provided in subsections (3)
8 and (4), conflicting security interests held by secured
9 parties each of which has control under s. 679.1061 rank
10 according to priority in time of:

11 (a) If the collateral is a security, obtaining
12 control;

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

15 1. If the secured party obtained control under s.
16 678.1061(4)(a), the secured party's becoming the person for
17 which the securities account is maintained;

18 2. If the secured party obtained control under s.
19 678.1061(4)(b), the securities intermediary's agreement to
20 comply with the secured party's entitlement orders with
21 respect to security entitlements carried or to be carried in
22 the securities account; or

23 3. If the secured party obtained control through
24 another person under s. 678.1061(4)(c), the time on which
25 priority would be based under this paragraph if the other
26 person were the secured party; or

27 (c) If the collateral is a commodity contract carried
28 with a commodity intermediary, the satisfaction of the
29 requirement for control specified in s. 679.1061(2)(b) with
30 respect to commodity contracts carried or to be carried with
31 the commodity intermediary.

1 (3) A security interest held by a securities
2 intermediary in a security entitlement or a securities account
3 maintained with the securities intermediary has priority over
4 a conflicting security interest held by another secured party.

5 (4) A security interest held by a commodity
6 intermediary in a commodity contract or a commodity account
7 maintained with the commodity intermediary has priority over a
8 conflicting security interest held by another secured party.

9 (5) A security interest in a certificated security in
10 registered form which is perfected by taking delivery under s.
11 679.3131(1) and not by control under s. 679.3141 has priority
12 over a conflicting security interest perfected by a method
13 other than control.

14 (6) Conflicting security interests created by a
15 broker, securities intermediary, or commodity intermediary
16 which are perfected without control under s. 679.1061 rank
17 equally.

18 (7) In all other cases, priority among conflicting
19 security interests in investment property is governed by ss.
20 679.322 and 679.323.

21 679.329 Priority of security interests in
22 letter-of-credit right.--The following rules govern priority
23 among conflicting security interests in the same
24 letter-of-credit right:

25 (1) A security interest held by a secured party having
26 control of the letter-of-credit right under s. 679.1071 has
27 priority to the extent of its control over a conflicting
28 security interest held by a secured party that does not have
29 control.

30
31

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

4 679.330 Priority of purchaser of chattel paper or
5 instrument.--

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

9 (a) In good faith and in the ordinary course of the
10 purchaser's business, the purchaser gives new value and takes
11 possession of the chattel paper or obtains control of the
12 chattel paper under s. 679.1051; and

13 (b) The chattel paper does not indicate that it has
14 been assigned to an identified assignee other than the
15 purchaser.

16 (2) A purchaser of chattel paper has priority over a
17 security interest in the chattel paper which is claimed other
18 than merely as proceeds of inventory subject to a security
19 interest if the purchaser gives new value and takes possession
20 of the chattel paper or obtains control of the chattel paper
21 under s. 679.1051 in good faith, in the ordinary course of the
22 purchaser's business, and without knowledge that the purchase
23 violates the rights of the secured party.

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

28 (a) Section 679.322 provides for priority in the
29 proceeds; or

30 (b) The proceeds consist of the specific goods covered
31 by the chattel paper or cash proceeds of the specific goods,

1 even if the purchaser's security interest in the proceeds is
2 unperfected.

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

9 (5) For purposes of subsections (1) and (2), the
10 holder of a purchase-money security interest in inventory
11 gives new value for chattel paper constituting proceeds of the
12 inventory.

13 (6) For purposes of subsections (2) and (4), if
14 chattel paper or an instrument indicates that it has been
15 assigned to an identified secured party other than the
16 purchaser, a purchaser of the chattel paper or instrument has
17 knowledge that the purchase violates the rights of the secured
18 party.

19 679.331 Priority of rights of purchasers of
20 instruments, documents, and securities under other articles;
21 priority of interests in financial assets and security
22 entitlements under chapter 678.--

23 (1) This chapter does not limit the rights of a holder
24 in due course of a negotiable instrument, a holder to which a
25 negotiable document of title has been duly negotiated, or a
26 protected purchaser of a security. These holders or
27 purchasers take priority over an earlier security interest,
28 even if perfected, to the extent provided in chapters 673,
29 677, and 678.

30 (2) This chapter does not limit the rights of or
31 impose liability on a person to the extent that the person is

1 protected against the assertion of an adverse claim under
2 chapter 678.

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

6 679.332 Transfer of money; transfer of funds from
7 deposit account.--

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

11 (2) A transferee of funds from a deposit account takes
12 the funds free of a security interest in the deposit account
13 unless the transferee acts in collusion with the debtor in
14 violating the rights of the secured party.

15 679.333 Priority of certain liens arising by operation
16 of law.--

17 (1) In this section, the term "possessory lien" means
18 an interest, other than a security interest or an agricultural
19 lien:

20 (a) Which secures payment or performance of an
21 obligation for services or materials furnished with respect to
22 goods by a person in the ordinary course of the person's
23 business;

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

26 (c) The effectiveness of which depends on the person's
27 possession of the goods.

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

31

1 679.334 Priority of security interests in fixtures and
2 crops.--

3 (1) A security interest under this chapter may be
4 created in goods that are fixtures or may continue in goods
5 that become fixtures. A security interest does not exist
6 under this chapter in ordinary building materials incorporated
7 into an improvement on land.

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

10 (3) A security interest in goods which are or become
11 fixtures is invalid against any person with an interest in the
12 real property at the time the security interest in the goods
13 is perfected or at the time the goods are affixed to the real
14 property, whichever occurs later, unless such person has
15 consented to the security interest or disclaimed an interest
16 in the goods as fixtures.

17 (4) A security interest in goods which are or become
18 fixtures takes priority as to the goods over the claims of all
19 persons acquiring an interest in the real property subsequent
20 to the perfection of such security interest or the affixing of
21 the goods to the real property, whichever occurs later.

22 (5) A perfected security interest in fixtures has
23 priority over a conflicting interest of an encumbrancer or
24 owner of the real property if the security interest is:

25 (a) Created in a manufactured home in a
26 manufactured-home transaction; and

27 (b) Perfected pursuant to a statute described in s.
28 679.3111(1)(b).

29 (6) A perfected security interest in crops growing on
30 real property has priority over a conflicting interest of an
31 encumbrancer or owner of the real property if the debtor has

1 an interest of record in or is in possession of the real
2 property.
3 (7) Subsection (6) prevails over any inconsistent
4 provisions of the statutes.
5 679.335 Accessions.--
6 (1) A security interest may be created in an accession
7 and continues in collateral that becomes an accession.
8 (2) If a security interest is perfected when the
9 collateral becomes an accession, the security interest remains
10 perfected in the collateral.
11 (3) Except as otherwise provided in subsection (4),
12 the other provisions of this part determine the priority of a
13 security interest in an accession.
14 (4) A security interest in an accession is subordinate
15 to a security interest in the whole which is perfected by
16 compliance with the requirements of a certificate-of-title
17 statute under s. 679.3111(2).
18 (5) After default, subject to part VI, a secured party
19 may remove an accession from other goods if the security
20 interest in the accession has priority over the claims of
21 every person having an interest in the whole.
22 (6) A secured party that removes an accession from
23 other goods under subsection (5) shall promptly reimburse any
24 holder of a security interest or other lien on, or owner of,
25 the whole or of the other goods, other than the debtor, for
26 the cost of repair of any physical injury to the whole or the
27 other goods. The secured party need not reimburse the holder
28 or owner for any diminution in value of the whole or the other
29 goods caused by the absence of the accession removed or by any
30 necessity for replacing it. A person entitled to
31 reimbursement may refuse permission to remove until the

1 secured party gives adequate assurance for the performance of
2 the obligation to reimburse.

3 679.336 Commingled goods.--

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

7 (2) A security interest does not exist in commingled
8 goods as such. However, a security interest may attach to a
9 product or mass that results when goods become commingled
10 goods.

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

13 (4) If a security interest in collateral is perfected
14 before the collateral becomes commingled goods, the security
15 interest that attaches to the product or mass under subsection
16 (3) is perfected.

17 (5) Except as otherwise provided in subsection (6),
18 the other provisions of this part determine the priority of a
19 security interest that attaches to the product or mass under
20 subsection (3).

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

24 (a) A security interest that is perfected under
25 subsection (4) has priority over a security interest that is
26 unperfected at the time the collateral becomes commingled
27 goods.

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

1 679.337 Priority of security interests in goods
2 covered by certificate of title.--If, while a security
3 interest in goods is perfected by any method under the law of
4 another jurisdiction, this state issues a certificate of title
5 that does not show that the goods are subject to the security
6 interest or contain a statement that they may be subject to
7 security interests not shown on the certificate:

8 (1) A buyer of the goods, other than a person in the
9 business of selling goods of that kind, takes free of the
10 security interest if the buyer gives value and receives
11 delivery of the goods after issuance of the certificate and
12 without knowledge of the security interest; and

13 (2) The security interest is subordinate to a
14 conflicting security interest in the goods that attaches, and
15 is perfected under s. 679.3111(2), after issuance of the
16 certificate and without the conflicting secured party's
17 knowledge of the security interest.

18 679.338 Priority of security interest or agricultural
19 lien perfected by filed financing statement providing certain
20 incorrect information.--If a security interest or agricultural
21 lien is perfected by a filed financing statement providing
22 information described in s. 679.516(2)(e) which is incorrect
23 at the time the financing statement is filed:

24 (1) The security interest or agricultural lien is
25 subordinate to a conflicting perfected security interest in
26 the collateral to the extent that the holder of the
27 conflicting security interest gives value in reasonable
28 reliance upon the incorrect information; and

29 (2) A purchaser, other than a secured party, of the
30 collateral takes free of the security interest or agricultural
31 lien to the extent that, in reasonable reliance upon the

1 incorrect information, the purchaser gives value and, in the
2 case of chattel paper, documents, goods, instruments, or a
3 security certificate, receives delivery of the collateral.

4 679.339 Priority subject to subordination.--This
5 chapter does not preclude subordination by agreement by a
6 person entitled to priority.

7 679.340 Effectiveness of right of recoupment or
8 set-off against deposit account.--

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

13 (2) Except as otherwise provided in subsection (3),
14 the application of this chapter to a security interest in a
15 deposit account does not affect a right of recoupment or
16 set-off of the secured party as to a deposit account
17 maintained with the secured party.

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

23 679.341 Bank's rights and duties with respect to
24 deposit account.--Except as otherwise provided in s.
25 679.340(3), and unless the bank otherwise agrees in an
26 authenticated record, a bank's rights and duties with respect
27 to a deposit account maintained with the bank are not
28 terminated, suspended, or modified by:

29 (1) The creation, attachment, or perfection of a
30 security interest in the deposit account;

31 (2) The bank's knowledge of the security interest; or

1 agricultural lien, or authority given to a debtor to dispose
2 of or use collateral, without more, does not subject a secured
3 party to liability in contract or tort for the debtor's acts
4 or omissions.

5 679.4031 Agreement not to assert defenses against
6 assignee.--

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

9 (2) Except as otherwise provided in this section, an
10 agreement between an account debtor and an assignor not to
11 assert against an assignee any claim or defense that the
12 account debtor may have against the assignor is enforceable by
13 an assignee that takes an assignment:

14 (a) For value;

15 (b) In good faith;

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

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

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

24 (4) In a consumer transaction, if a record evidences
25 the account debtor's obligation, law other than this chapter
26 requires that the record include a statement to the effect
27 that the rights of an assignee are subject to claims or
28 defenses that the account debtor could assert against the
29 original obligee, and the record does not include such a
30 statement:

31

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

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

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

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

14 679.4041 Rights acquired by assignee; claims and
15 defenses against assignee.--

16 (1) Unless an account debtor has made an enforceable
17 agreement not to assert defenses or claims, and subject to
18 subsections (2) through (5), the rights of an assignee are
19 subject to:

20 (a) All terms of the agreement between the account
21 debtor and assignor and any defense or claim in recoupment
22 arising from the transaction that gave rise to the contract;
23 and

24 (b) Any other defense or claim of the account debtor
25 against the assignor which accrues before the account debtor
26 receives a notification of the assignment authenticated by the
27 assignor or the assignee.

28 (2) Subject to subsection (3) and except as otherwise
29 provided in subsection (4), the claim of an account debtor
30 against an assignor may be asserted against an assignee under
31

1 subsection (1) only to reduce the amount the account debtor
2 owes.

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

7 (4) In a consumer transaction, if a record evidences
8 the account debtor's obligation, law other than this chapter
9 requires that the record include a statement to the effect
10 that the account debtor's recovery against an assignee with
11 respect to claims and defenses against the assignor may not
12 exceed amounts paid by the account debtor under the record,
13 and the record does not include such a statement, the extent
14 to which a claim of an account debtor against the assignor may
15 be asserted against an assignee is determined as if the record
16 included such a statement.

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

19 679.4051 Modification of assigned contract.--

20 (1) A modification of or substitution for an assigned
21 contract is effective against an assignee if made in good
22 faith. The assignee acquires corresponding rights under the
23 modified or substituted contract. The assignment may provide
24 that the modification or substitution is a breach of contract
25 by the assignor. This subsection is subject to subsections
26 (2) through (4).

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

28 (a) The right to payment or a part thereof under an
29 assigned contract has not been fully earned by performance; or
30
31

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

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

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

10 679.4061 Discharge of account debtor; notification of
11 assignment; identification and proof of assignment;
12 restrictions on assignment of accounts, chattel paper, payment
13 intangibles, and promissory notes ineffective.--

14 (1) Subject to subsections (2) through (9), an account
15 debtor on an account, chattel paper, or a payment intangible
16 may discharge its obligation by paying the assignor until, but
17 not after, the account debtor receives a notification,
18 authenticated by the assignor or the assignee, that the amount
19 due or to become due has been assigned and that payment is to
20 be made to the assignee. After receipt of the notification,
21 the account debtor may discharge its obligation by paying the
22 assignee and may not discharge the obligation by paying the
23 assignor.

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

26 (a) If it does not reasonably identify the rights
27 assigned;

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

1 (c) At the option of an account debtor, if the
2 notification notifies the account debtor to make less than the
3 full amount of any installment or other periodic payment to
4 the assignee, even if:

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

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

8 3. The account debtor knows that the assignment to
9 that assignee is limited.

10 (3) Subject to subsection (8), if requested by the
11 account debtor, an assignee shall seasonably furnish
12 reasonable proof that the assignment has been made. Unless
13 the assignee complies, the account debtor may discharge its
14 obligation by paying the assignor, even if the account debtor
15 has received a notification under subsection (1).

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

20 (a) Prohibits, restricts, or requires the consent of
21 the account debtor or person obligated on the promissory note
22 to the assignment or transfer of, or the creation, attachment,
23 perfection, or enforcement of a security interest in, the
24 account, chattel paper, payment intangible, or promissory
25 note; or

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

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

3 (6) Except as otherwise provided in ss. 680.303 and
4 679.4071 and subject to subsections (8) and (9), a rule of
5 law, statute, or regulation that prohibits, restricts, or
6 requires the consent of a government, governmental body or
7 official, or account debtor to the assignment or transfer of,
8 or creation of a security interest in, an account or chattel
9 paper is ineffective to the extent that the rule of law,
10 statute, or regulation:

11 (a) Prohibits, restricts, or requires the consent of
12 the government, governmental body or official, or account
13 debtor to the assignment or transfer of, or the creation,
14 attachment, perfection, or enforcement of a security interest
15 in the account or chattel paper; or

16 (b) Provides that the assignment or transfer or the
17 creation, attachment, perfection, or enforcement of the
18 security interest may give rise to a default, breach, right of
19 recoupment, claim, defense, termination, right of termination,
20 or remedy under the account or chattel paper.

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

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

27 Subsection (6) does not apply to the creation, attachment,
28 perfection, or enforcement of a security interest in:

29 (a) A claim or right to receive compensation for
30 injuries or sickness as described in 26 U.S.C. subsection
31 104(a)(1) or (2).

1 (b) A claim or right to receive benefits under a
2 special needs trust as described in 42 U.S.C. subsection
3 1396p(d)(4).

4 (c) The interest of a debtor who is a natural person
5 in unemployment, alimony, disability, pension, or retirement
6 benefits or victim compensation funds.

7 (d) The interest of a debtor who is a natural person
8 in other benefits which are designated solely for his or her
9 maintenance, support, or education, the assignability of which
10 is expressly prohibited or restricted by any statute.

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

13 (10) This section prevails over any inconsistent
14 statute, rule, or regulation.

15 679.4071 Restrictions on creation or enforcement of
16 security interest in leasehold interest or in lessor's
17 residual interest.--

18 (1) Except as otherwise provided in subsection (2), a
19 term in a lease agreement is ineffective to the extent that
20 it:

21 (a) Prohibits, restricts, or requires the consent of a
22 party to the lease to the assignment or transfer of, or the
23 creation, attachment, perfection, or enforcement of a security
24 interest in, an interest of a party under the lease contract
25 or in the lessor's residual interest in the goods; or

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

31

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

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

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

8 (3) The creation, attachment, perfection, or
9 enforcement of a security interest in the lessor's interest
10 under the lease contract or the lessor's residual interest in
11 the goods is not a transfer that materially impairs the
12 lessee's prospect of obtaining return performance or
13 materially changes the duty of or materially increases the
14 burden or risk imposed on the lessee within the purview of s.
15 680.303(4) unless, and then only to the extent that,
16 enforcement actually results in a delegation of material
17 performance of the lessor.

18 679.4081 Restrictions on assignment of promissory
19 notes, health-care-insurance receivables, and certain general
20 intangibles ineffective.--

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

1 (a) Would impair the creation, attachment, or
2 perfection of a security interest; or

3 (b) Provides that the assignment or transfer or the
4 creation, attachment, or perfection of the security interest
5 may give rise to a default, breach, right of recoupment,
6 claim, defense, termination, right of termination, or remedy
7 under the promissory note, health-care-insurance receivable,
8 or general intangible.

9 (2) Subsection (1) applies to a security interest in a
10 payment intangible or promissory note only if the security
11 interest arises out of a sale of the payment intangible or
12 promissory note.

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

23 (a) Would impair the creation, attachment, or
24 perfection of a security interest; or

25 (b) Provides that the assignment or transfer or the
26 creation, attachment, or perfection of the security interest
27 may give rise to a default, breach, right of recoupment,
28 claim, defense, termination, right of termination, or remedy
29 under the promissory note, health-care-insurance receivable,
30 or general intangible.

31

1 (4) To the extent that a term in a promissory note or
2 in an agreement between an account debtor and a debtor which
3 relates to a health-care-insurance receivable or general
4 intangible or a rule of law, statute, or regulation described
5 in subsection (3) would be effective under law other than this
6 chapter but is ineffective under subsection (1) or subsection
7 (3), the creation, attachment, or perfection of a security
8 interest in the promissory note, health-care-insurance
9 receivable, or general intangible:

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

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

14 (c) Does not require the person obligated on the
15 promissory note or the account debtor to recognize the
16 security interest, pay or render performance to the secured
17 party, or accept payment or performance from the secured
18 party;

19 (d) Does not entitle the secured party to use or
20 assign the debtor's rights under the promissory note,
21 health-care-insurance receivable, or general intangible,
22 including any related information or materials furnished to
23 the debtor in the transaction giving rise to the promissory
24 note, health-care-insurance receivable, or general intangible;

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

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

1 (5) This section prevails over any inconsistent
2 statute, rule, or regulation.

3 (6) Subsection (3) does not apply to the creation,
4 attachment, perfection, or enforcement of a security interest
5 in:

6 (a) A claim or right to receive compensation for
7 injuries or sickness as described in 26 U.S.C. subsection
8 104(a)(1) or (2).

9 (b) A claim or right to receive benefits under a
10 special needs trust as described in 42 U.S.C. subsection
11 1396p(d)(4).

12 (c) The interest of a debtor who is a natural person
13 in unemployment, alimony, disability, pension, or retirement
14 benefits or victim compensation funds.

15 (d) The interest of a debtor who is a natural person
16 in other benefits which are designated solely for his or her
17 maintenance, support, or education, the assignability of which
18 is expressly prohibited or restricted by any statute.

19 679.409 Restrictions on assignment of letter-of-credit
20 rights ineffective.--

21 (1) A term in a letter of credit or a rule of law,
22 statute, regulation, custom, or practice applicable to the
23 letter of credit which prohibits, restricts, or requires the
24 consent of an applicant, issuer, or nominated person to a
25 beneficiary's assignment of or creation of a security interest
26 in a letter-of-credit right is ineffective to the extent that
27 the term or rule of law, statute, regulation, custom, or
28 practice:

29 (a) Would impair the creation, attachment, or
30 perfection of a security interest in the letter-of-credit
31 right; or

1 (b) Provides that the assignment or the creation,
2 attachment, or perfection of the security interest may give
3 rise to a default, breach, right of recoupment, claim,
4 defense, termination, right of termination, or remedy under
5 the letter-of-credit right.

6 (2) To the extent that a term in a letter of credit is
7 ineffective under subsection (1) but would be effective under
8 law other than this chapter or a custom or practice applicable
9 to the letter of credit, to the transfer of a right to draw or
10 otherwise demand performance under the letter of credit, or to
11 the assignment of a right to proceeds of the letter of credit,
12 the creation, attachment, or perfection of a security interest
13 in the letter-of-credit right:

14 (a) Is not enforceable against the applicant, issuer,
15 nominated person, or transferee beneficiary;

16 (b) Imposes no duties or obligations on the applicant,
17 issuer, nominated person, or transferee beneficiary; and

18 (c) Does not require the applicant, issuer, nominated
19 person, or transferee beneficiary to recognize the security
20 interest, pay or render performance to the secured party, or
21 accept payment or other performance from the secured party.

22 Section 5. (1) The Legislature finds that it is in
23 the best interest of the citizens and businesses of this state
24 to adopt Part V of Revised Article 9 of the Uniform Commercial
25 Code as proposed by the National Conference of Commissioners
26 on Uniform State Law, "revised Article 9," subject to specific
27 modifications, as revised chapter 679, Florida Statutes. Such
28 revised Article 9 almost exclusively affects secured
29 transactions and the relationships between and among secured
30 creditors, debtors, other creditors, and purchasers of
31 personal property subject to a security interest. Both

1 individuals and business entities are intended to benefit from
 2 the enactment of revised Article 9.

3 (2) The Legislature also finds that, among other
 4 things, revised Article 9 contemplates a more straightforward
 5 and efficient system for documenting the perfection,
 6 amendment, continuance, termination, assignment, and transfer
 7 of security interests and requires less governmental
 8 involvement than necessary under existing law. Revised
 9 Article 9 suggests the possibility that states may delegate
 10 their historical administrative and operational
 11 responsibilities over financing statement filings to a
 12 nongovernmental entity. This principle complements the
 13 legislative policy of reducing government's detailed
 14 regulation and involvement with private commerce and business
 15 transactions. Consistent with other revisions to current
 16 chapter 679, Florida Statutes, being adopted by this act, the
 17 requirement for exclusive administration and operation by this
 18 state of the system of filing and maintaining documents
 19 evidencing secured transactions no longer exists. However, the
 20 carrying out of the duties of the filing office and filing
 21 officer are very important to the uninterrupted flow of
 22 secured transactions and the Secretary of State shall retain
 23 oversight over the private filing agency to which the filing
 24 office and filing officer duties under revised Article 9, as
 25 revised chapter 679, Florida Statutes, may be delegated.

26 Section 6. Part V of chapter 679, Florida Statutes,
 27 consisting of sections 679.501, 679.502, 679.503, 679.504,
 28 679.505, 679.506, and 679.507, Florida Statutes, is repealed
 29 and a new part V, consisting of sections 679.5011, 679.5021,
 30 679.5031, 679.5041, 679.5051, 679.5061, 679.5071, 679.508,
 31 679.509, 679.510, 679.511, 679.512, 679.513, 671.514, 679.515,

1 679.516, 679.517, 679.518, 679.519, 679.520, 679.521, 679.522,
2 679.523, 679.524, 679.525, 679.526, and 679.527, Florida
3 Statutes, is created to read:

4 PART V

5 FILING

6 679.5011 Filing office.--

7 (1) Except as otherwise provided in subsection (2),
8 the office in which to file a financing statement to perfect a
9 security interest or agricultural lien is:

10 (a) The office of the clerk of the circuit court, if:

11 1. The collateral is as-extracted collateral or timber
12 to be cut; or

13 2. The collateral is goods that are or are to become
14 fixtures in this state, in which event the financing statement
15 shall be filed as a fixture filing.

16 (b) The Florida Secured Transaction Registry, in
17 accordance with ss. 679.3011-679.3071, and in all other cases.

18 (2) The office in which to file a financing statement
19 to perfect a security interest in collateral, including
20 fixtures, of a transmitting utility is the Office of the
21 Secretary of State, or the filing office authorized by s.
22 697.527 to accept filings for the Florida Secured Transaction
23 Registry. The financing statement also constitutes a fixture
24 filing as to the collateral indicated in the financing
25 statement which is or is to become fixtures.

26 679.5021 Contents of financing statement; record of
27 mortgage as financing statement; time of filing financing
28 statement.--

29 (1) Subject to subsection (2), a financing statement
30 is sufficient only if it:

31 (a) Provides the name of the debtor;

1 (b) Provides the name of the secured party or a
2 representative of the secured party; and

3 (c) Indicates the collateral covered by the financing
4 statement.

5 (2) Except as otherwise provided in s. 679.5011(2), to
6 be sufficient, a financing statement that covers as-extracted
7 collateral or timber to be cut, or that is filed as a fixture
8 filing and covers goods that are or are to become fixtures,
9 must comply with the requirements of subsection (1) and also:

10 (a) Indicate that it covers this type of collateral;

11 (b) Indicate that it is to be filed in the real
12 property records;

13 (c) Provide a description of the real property to
14 which the collateral is related; and

15 (d) If the debtor does not have an interest of record
16 in the real property, provide the name of a record owner.

17 (3) A record of a mortgage satisfying the requirements
18 of chapter 697 is effective, from the date of recording, as a
19 financing statement filed as a fixture filing or as a
20 financing statement covering as-extracted collateral or timber
21 to be cut only if:

22 (a) The record of a mortgage indicates the goods or
23 accounts that it covers;

24 (b) The goods are or are to become fixtures related to
25 the real property described in the record of a mortgage or the
26 collateral is related to the real property described in the
27 mortgage and is as-extracted collateral or timber to be cut;

28 (c) The record of a mortgage complies with the
29 requirements for a financing statement in this section other
30 than an indication that it is to be filed in the real property
31 records; and

1 (d) The record of a mortgage is recorded as required
2 by chapter 697.

3 (4) A financing statement may be filed before a
4 security agreement is made or a security interest otherwise
5 attaches.

6 679.5031 Name of debtor and secured party.--

7 (1) A financing statement sufficiently provides the
8 name of the debtor:

9 (a) If the debtor is a registered organization, only
10 if the financing statement provides the name of the debtor
11 indicated on the public record of the debtor's jurisdiction of
12 organization which shows the debtor to have been organized;

13 (b) If the debtor is a decedent's estate, only if the
14 financing statement provides the name of the decedent and
15 indicates that the debtor is an estate;

16 (c) If the debtor is a trust or a trustee acting with
17 respect to property held in trust, only if the financing
18 statement:

19 1. Provides the name, if any, specified for the trust
20 in its organic documents or, if no name is specified, provides
21 the name of the settlor and additional information sufficient
22 to distinguish a debtor from other trusts having one or more
23 of the same settlors; and

24 2. Indicates, in the debtor's name or otherwise, that
25 the debtor is a trust or is a trustee acting with respect to
26 property held in trust; and

27 (d) In other cases:

28 1. If the debtor has a name, only if it provides the
29 individual or organizational name of the debtor; and
30
31

1 2. If the debtor does not have a name, only if it
2 provides the names of the partners, members, associates, or
3 other persons comprising the debtor.

4 (2) A financing statement that provides the name of
5 the debtor in accordance with subsection (1) is not rendered
6 ineffective by the absence of:

7 (a) A trade name or other name of the debtor; or

8 (b) Unless required under subparagraph (1)(d)2., names
9 of partners, members, associates, or other persons comprising
10 the debtor.

11 (3) A financing statement that provides only the
12 debtor's trade name does not sufficiently provide the name of
13 the debtor.

14 (4) Failure to indicate the representative capacity of
15 a secured party or representative of a secured party does not
16 affect the sufficiency of a financing statement.

17 (5) A financing statement may provide the name of more
18 than one debtor and the name of more than one secured party.

19 679.5041 Indication of collateral.--A financing
20 statement sufficiently indicates the collateral that it covers
21 if the financing statement provides:

22 (1) A description of the collateral pursuant to s.
23 679.1081; or

24 (2) If the security agreement grants a security
25 interest in all of the debtor's personal property and such
26 property is reasonably identified in the security agreement,
27 as permitted by s. 679.1081, an indication that the financing
28 statement covers all assets or all personal property.

29 679.5051 Filing and compliance with other statutes and
30 treaties for consignments, leases, bailments, and other
31 transactions.--

1 (1) A consignor, lessor, or bailor of goods, a
2 licensor, or a buyer of a payment intangible or promissory
3 note may file a financing statement, or may comply with a
4 statute or treaty described in s. 679.3111(1), using the terms
5 "consignor," "consignee," "lessor," "lessee," "bailor,"
6 "bailee," "licensor," "licensee," "owner," "registered owner,"
7 "buyer," "seller," or words of similar import, instead of the
8 terms "secured party" and "debtor."

9 (2) This part applies to the filing of a financing
10 statement under subsection (1) and, as appropriate, to
11 compliance that is equivalent to filing a financing statement
12 under s. 679.3111(2), but the filing or compliance is not of
13 itself a factor in determining whether the collateral secures
14 an obligation. If it is determined for another reason that the
15 collateral secures an obligation, a security interest held by
16 the consignor, lessor, bailor, licensor, owner, or buyer which
17 attaches to the collateral is perfected by the filing or
18 compliance.

19 679.5061 Effect of errors or omissions.--

20 (1) A financing statement substantially complying with
21 the requirements of this part is effective, even if it has
22 minor errors or omissions, unless the errors or omissions make
23 the financing statement seriously misleading.

24 (2) Except as otherwise provided in subsection (3), a
25 financing statement that fails sufficiently to provide the
26 name of the debtor in accordance with s. 679.5031(1) is
27 seriously misleading.

28 (3) If a search of the records of the filing office
29 under the debtor's correct name, using the filing office's
30 standard search logic, if any, would disclose a financing
31 statement that fails sufficiently to provide the name of the

1 debtor in accordance with s. 679.5031(1), the name provided
2 does not make the financing statement seriously misleading.

3 (4) For purposes of s. 679.508(2), the term "debtor's
4 correct name" as used in subsection (3) means the correct name
5 of the new debtor.

6 679.5071 Effect of certain events on effectiveness of
7 financing statement.--

8 (1) A filed financing statement remains effective with
9 respect to collateral that is sold, exchanged, leased,
10 licensed, or otherwise disposed of and in which a security
11 interest or agricultural lien continues, even if the secured
12 party knows of or consents to the disposition.

13 (2) Except as otherwise provided in subsection (3) and
14 s. 679.508, a financing statement is not rendered ineffective
15 if, after the financing statement is filed, the information
16 provided in the financing statement becomes seriously
17 misleading under the standard set forth in s. 679.5061.

18 (3) If a debtor so changes its name that a filed
19 financing statement becomes seriously misleading under the
20 standard set forth in s. 679.5061:

21 (a) The financing statement is effective to perfect a
22 security interest in collateral acquired by the debtor before,
23 or within 4 months after, the change; and

24 (b) The financing statement is not effective to
25 perfect a security interest in collateral acquired by the
26 debtor more than 4 months after the change, unless an
27 amendment to the financing statement which renders the
28 financing statement not seriously misleading is filed within 4
29 months after the change.

30 679.508 Effectiveness of financing statement if new
31 debtor becomes bound by security agreement.--

1 (1) Except as otherwise provided in this section, a
2 filed financing statement naming an original debtor is
3 effective to perfect a security interest in collateral in
4 which a new debtor has or acquires rights to the extent that
5 the financing statement would have been effective had the
6 original debtor acquired rights in the collateral.

7 (2) If the difference between the name of the original
8 debtor and that of the new debtor causes a filed financing
9 statement that is effective under subsection (1) to be
10 seriously misleading under the standard set forth in s.
11 679.5061:

12 (a) The financing statement is effective to perfect a
13 security interest in collateral acquired by the new debtor
14 before, and within 4 months after, the new debtor becomes
15 bound under s. 679.2031(4); and

16 (b) The financing statement is not effective to
17 perfect a security interest in collateral acquired by the new
18 debtor more than 4 months after the new debtor becomes bound
19 under s. 679.2031(4) unless an initial financing statement
20 providing the name of the new debtor is filed before the
21 expiration of that time.

22 (3) This section does not apply to collateral as to
23 which a filed financing statement remains effective against
24 the new debtor under s. 679.5071(1).

25 679.509 Persons entitled to file a record.--

26 (1) A person may file an initial financing statement,
27 amendment that adds collateral covered by a financing
28 statement, or amendment that adds a debtor to a financing
29 statement only if:

1 (a) The debtor authorizes the filing in an
2 authenticated record or pursuant to subsection (2) or
3 subsection (3); or

4 (b) The person holds an agricultural lien that has
5 become effective at the time of filing and the financing
6 statement covers only collateral in which the person holds an
7 agricultural lien.

8 (2) By authenticating or becoming bound as a debtor by
9 a security agreement, a debtor or new debtor authorizes the
10 filing of an initial financing statement, and an amendment,
11 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 (5) By acquiring collateral in which a security
31 interest or agricultural lien continues under s. 679.3151(1),

1 a debtor authorizes the filing of an initial financing, and an
2 amendment, covering the collateral and property that become
3 collateral under s. 679.3151(1)(b).

4 679.510 Effectiveness of filed record.--

5 (1) Subject to subsection (3), a filed record is
6 effective only to the extent that it was filed by a person who
7 may file it under s. 679.509.

8 (2) A record authorized by one secured party of record
9 does not affect the financing statement with respect to
10 another secured party of record.

11 (3) If a person may file a termination statement only
12 under s. 679.509(3)(b), the filed termination statement is
13 effective only if the debtor authorizes the filing and the
14 termination statement indicates that the debtor authorized it
15 to be filed.

16 (4) A continuation statement that is not filed within
17 the 6-month period prescribed by s. 679.515(4) is ineffective.

18 679.511 Secured party of record.--

19 (1) A secured party of record with respect to a
20 financing statement is a person whose name is provided as the
21 name of the secured party or a representative of the secured
22 party in an initial financing statement that has been filed.
23 If an initial financing statement is filed under s.
24 679.514(1), the assignee named in the initial financing
25 statement is the secured party of record with respect to the
26 financing statement.

27 (2) If an amendment of a financing statement which
28 provides the name of a person as a secured party or a
29 representative of a secured party is filed, the person named
30 in the amendment is a secured party of record. If an
31

1 amendment is filed under s. 679.514(2), the assignee named in
2 the amendment is a secured party of record.

3 (3) A person remains a secured party of record until
4 the filing of an amendment of the financing statement which
5 deletes the person.

6 679.512 Amendment of financing statement.--

7 (1) Subject to s. 679.509, a person may add or delete
8 collateral covered by, continue or terminate the effectiveness
9 of, or, subject to subsection (5), otherwise amend the
10 information provided in, a financing statement by filing an
11 amendment that:

12 (a) Identifies, by its correct file number, if any,
13 the initial financing statement to which the amendment
14 relates, and the name of the debtor and the secured party of
15 record; and

16 (b) If the amendment relates to an initial financing
17 statement filed or recorded in a filing office described in s.
18 679.5011(1)(a), provides the information specified in s.
19 679.5021(2), the official records book and page number of the
20 initial financing statement to which the amendment relates,
21 and the name of the debtor and secured party of record.

22 (2) Except as otherwise provided in s. 679.515, the
23 filing of an amendment does not extend the period of
24 effectiveness of the financing statement.

25 (3) A financing statement that is amended by an
26 amendment that adds collateral is effective as to the added
27 collateral only from the date of the filing of the amendment.

28 (4) A financing statement that is amended by an
29 amendment that adds a debtor is effective as to the added
30 debtor only from the date of the filing of the amendment.

31 (5) An amendment is ineffective to the extent it:

1 (a) Purports to delete all debtors and fails to
2 provide the name of a debtor to be covered by the financing
3 statement; or

4 (b) Purports to delete all secured parties of record
5 and fails to provide the name of a new secured party of
6 record.

7 679.513 Termination statement.--

8 (1) A secured party shall cause the secured party of
9 record for a financing statement to file a termination
10 statement for the financing statement if the financing
11 statement covers consumer goods and:

12 (a) There is no obligation secured by the collateral
13 covered by the financing statement and no commitment to make
14 an advance, incur an obligation, or otherwise give value; or

15 (b) The debtor did not authorize the filing of the
16 initial financing statement.

17 (2) To comply with subsection (1), a secured party
18 shall cause the secured party of record to file the
19 termination statement:

20 (a) Within 1 month after there is no obligation
21 secured by the collateral covered by the financing statement
22 and no commitment to make an advance, incur an obligation, or
23 otherwise give value; or

24 (b) If earlier, within 20 days after the secured party
25 receives an authenticated demand from a debtor.

26 (3) In cases not governed by subsection (1), within 20
27 days after a secured party receives an authenticated demand
28 from a debtor, the secured party shall cause the secured party
29 of record for a financing statement to send to the debtor a
30 termination statement for the financing statement or file the
31 termination statement in the filing office if:

1 (a) Except in the case of a financing statement
2 covering accounts or chattel paper that has been sold or goods
3 that are the subject of a consignment, there is no obligation
4 secured by the collateral covered by the financing statement
5 and no commitment to make an advance, incur an obligation, or
6 otherwise give value;

7 (b) The financing statement covers accounts or chattel
8 paper that has been sold but as to which the account debtor or
9 other person obligated has discharged its obligation;

10 (c) The financing statement covers goods that were the
11 subject of a consignment to the debtor but are not in the
12 debtor's possession; or

13 (d) The debtor did not authorize the filing of the
14 initial financing statement.

15 (4) Except as otherwise provided in s. 679.510, upon
16 the filing of a termination statement with the filing office,
17 the financing statement to which the termination statement
18 relates ceases to be effective. Except as otherwise provided
19 in s. 679.510, for purposes of ss. 679.519(7) and 679.522(1),
20 the filing with the filing office of a termination statement
21 relating to a financing statement that indicates that the
22 debtor is a transmitting utility also causes the effectiveness
23 of the financing statement to lapse.

24 679.514 Assignment of powers of secured party of
25 record.--

26 (1) Except as otherwise provided in subsection (3), an
27 initial financing statement may reflect an assignment of all
28 of the secured party's power to authorize an amendment to the
29 financing statement by providing the name and mailing address
30 of the assignee as the name and address of the secured party.

31

1 (2) Except as otherwise provided in subsection (3), a
2 secured party of record may assign of record all or part of
3 its power to authorize an amendment to a financing statement
4 by filing in the filing office an amendment of the financing
5 statement which:

6 (a) Identifies, by its correct file number and the
7 secured party of record, the initial financing statement to
8 which it relates;

9 (b) Provides the names of the assignor and debtor; and

10 (c) Provides the name and mailing address of the
11 assignee.

12 (3) An assignment of record of a security interest in
13 a fixture covered by a real property mortgage that is
14 effective as a fixture filing under s. 679.5021(3) may be made
15 only by an assignment of record of the mortgage in the manner
16 provided by s. 701.02.

17 679.515 Duration and effectiveness of financing
18 statement; effect of lapsed financing statement.--

19 (1) Except as otherwise provided in subsections (2),
20 (5), (6), and (7), a filed financing statement is effective
21 for a period of 5 years after the date of filing.

22 (2) Except as otherwise provided in subsections (5),
23 (6), and (7), an initial financing statement filed in
24 connection with a manufactured-home transaction is effective
25 for a period of 30 years after the date of filing if it
26 indicates that it is filed in connection with a
27 manufactured-home transaction.

28 (3) The effectiveness of a filed financing statement
29 lapses on the expiration of the period of its effectiveness
30 unless, before the lapse, a continuation statement is filed
31 pursuant to subsection (4). Upon lapse, a financing statement

1 ceases to be effective and any security interest or
2 agricultural lien that was perfected by the financing
3 statement becomes unperfected, unless the security interest is
4 perfected without filing. If the security interest or
5 agricultural lien becomes unperfected upon lapse, it is deemed
6 never to have been perfected as against a purchaser of the
7 collateral for value.

8 (4) A continuation statement may be filed only within
9 6 months before the expiration of the 5-year period specified
10 in subsection (1) or the 30-year period specified in
11 subsection (2), whichever is applicable.

12 (5) Except as otherwise provided in s. 679.510, upon
13 timely filing of a continuation statement, the effectiveness
14 of the initial financing statement continues for a period of 5
15 years commencing on the day on which the financing statement
16 would have become ineffective in the absence of the filing.
17 Upon the expiration of the 5-year period, the financing
18 statement lapses in the same manner as provided in subsection
19 (3), unless, before the lapse, another continuation statement
20 is filed pursuant to subsection (4). Succeeding continuation
21 statements may be filed in the same manner to continue the
22 effectiveness of the initial financing statement.

23 (6) If a debtor is a transmitting utility and a filed
24 financing statement so indicates, the financing statement is
25 effective until a termination statement is filed.

26 (7) A record of a mortgage satisfying the requirements
27 of chapter 697 that is effective as a fixture filing under s.
28 679.5021(3) remains effective as a financing statement filed
29 as a fixture filing until the mortgage is released or
30 satisfied of record or its effectiveness otherwise terminates
31 as to the real property.

1 679.516 What constitutes filing; effectiveness of
2 filing.--

3 (1) Except as otherwise provided in subsection (2),
4 communication of a record to a filing office, tender of the
5 processing fee, or acceptance of the record by the filing
6 office constitutes filing.

7 (2) Filing does not occur with respect to a record
8 that a filing office refuses to accept because:

9 (a) The record is not communicated by a method or
10 medium of communication authorized by the filing office;

11 (b) An amount equal to or greater than the applicable
12 processing fee is not tendered;

13 (c) The record does not include the notation required
14 by s. 201.22 indicating that the excise tax required by
15 chapter 201 had been paid or is not required;

16 (d) The filing office is unable to index the record
17 because:

18 1. In the case of an initial financing statement, the
19 record does not provide an organization's name or, if an
20 individual, the individual's last name and first name or
21 initial;

22 2. In the case of an amendment or correction
23 statement, the record:

24 a. Does not correctly identify the initial financing
25 statement as required by s. 679.512 or s. 679.518, as
26 applicable; or

27 b. Identifies an initial financing statement the
28 effectiveness of which has lapsed under s. 679.515;

29 3. In the case of an initial financing statement that
30 provides the name of a debtor identified as an individual or
31 an amendment that provides a name of a debtor identified as an

1 individual which was not previously provided in the financing
2 statement to which the record relates, the record does not
3 identify the debtor's last name and first name or initial; or

4 4. In the case of a record filed or recorded in the
5 filing office described in s. 679.5011(1)(a), the record does
6 not provide a sufficient description of the real property to
7 which it relates;

8 (e) In the case of an initial financing statement or
9 an amendment that adds a secured party of record, the record
10 does not provide an organization's name or, if an individual,
11 the individual's last name and first name or initial and
12 mailing address for the secured party of record;

13 (f) In the case of an initial financing statement or
14 an amendment that provides a name of a debtor which was not
15 previously provided in the financing statement to which the
16 amendment relates, the record does not:

17 1. Provide a mailing address for the debtor;
18 2. Indicate whether the debtor is an individual or an
19 organization; or

20 3. If the financing statement indicates that the
21 debtor is an organization, provide:

22 a. A type of organization for the debtor;
23 b. A jurisdiction of organization for the debtor; or
24 c. An organizational identification number for the
25 debtor or indicate that the debtor has none;

26 (g) In the case of an assignment reflected in an
27 initial financing statement under s. 679.514(1) or an
28 amendment filed under s. 679.514(2), the record does not
29 provide an organization's name or, if an individual, the
30 individual's last name and first name or initial and mailing
31 address for the assignee;

1 (h) In the case of a continuation statement, the
2 record is not filed within the 6-month period prescribed by s.
3 679.515(4);

4 (i) In the case of an initial financing statement or
5 an amendment, which amendment requires the inclusion of a
6 collateral statement but the record does not provide any, the
7 record does not provide a statement of collateral; or

8 (3) For purposes of subsection (2):

9 (a) A record does not provide information if the
10 filing office is unable to read or decipher the information;
11 and

12 (b) A record that does not indicate that it is an
13 amendment or identify an initial financing statement to which
14 it relates, as required by s. 679.512, s. 679.514, or s.
15 679.518, is an initial financing statement.

16 (4) A record that is communicated to the filing office
17 with tender of the filing fee, but that the filing office
18 refuses to accept for a reason other than one set forth in
19 subsection (2), is effective as a filed record except as
20 against a purchaser of the collateral which gives value in
21 reasonable reliance upon the absence of the record from the
22 files.

23 679.517 Effect of indexing errors.--The failure of the
24 filing office to index a record correctly does not affect the
25 effectiveness of the filed record.

26 679.518 Claim concerning inaccurate or wrongfully
27 filed record.--

28 (1) A person may file in the filing office a
29 correction statement with respect to a record indexed there
30 under the person's name if the person believes that the record
31 is inaccurate or was wrongfully filed.

- 1 (2) A correction statement must:
2 (a) Identify the record to which it relates by the
3 file number assigned to the initial financing statement, the
4 debtor, and the secured party of record to which the record
5 relates;
6 (b) Indicate that it is a correction statement; and
7 (c) Provide the basis for the person's belief that the
8 record is inaccurate and indicate the manner in which the
9 person believes the record should be amended to cure any
10 inaccuracy or provide the basis for the person's belief that
11 the record was wrongfully filed.
12 (3) The filing of a correction statement does not
13 affect the effectiveness of an initial financing statement or
14 other filed record.
15 679.519 Numbering, maintaining, and indexing records;
16 communicating information provided in records.--
17 (1) For each record filed in a filing office, the
18 filing office shall, in accordance with such other laws
19 applicable to the recording of instruments by a filing office
20 described in s. 679.5011(1)(a):
21 (a) Assign a unique number to the filed record;
22 (b) Create a record that bears the number assigned to
23 the filed record and the date and time of filing;
24 (c) Maintain the filed record for public inspection;
25 and
26 (d) Index the filed record in accordance with
27 subsections (3), (4), and (5).
28 (2) Except as otherwise provided in subsection (9), a
29 file number assigned after January 1, 2002, must include a
30 digit that:
31

1 (a) Is mathematically derived from or related to the
2 other digits of the file number; and

3 (b) Enables the filing office to detect whether a
4 number communicated as the file number includes a single-digit
5 or transpositional error.

6 (3) Except as otherwise provided in subsections (4)
7 and (5), the filing office shall:

8 (a) Index an initial financing statement according to
9 the name of the debtor and shall index all filed records
10 relating to the initial financing statement in a manner that
11 associates with one another an initial financing statement and
12 all filed records relating to the initial financing statement;
13 and

14 (b) Index a record that provides a name of a debtor
15 which was not previously provided in the financing statement
16 to which the record relates also according to the name that
17 was not previously provided.

18 (4) If a financing statement is filed as a fixture
19 filing or covers as-extracted collateral or timber to be cut,
20 the filing office shall index it:

21 (a) Under the names of the debtor and of each owner of
22 record shown on the financing statement as if they were the
23 mortgagors under a mortgage of the real property described;
24 and

25 (b) To the extent that the law of this state provides
26 for indexing of mortgages under the name of the mortgagee,
27 under the name of the secured party as if the secured party
28 were the mortgagee thereunder, or, if indexing is by
29 description, as if the financing statement were a mortgage of
30 the real property described.

31

1 (5) If a financing statement is filed as a fixture
2 filing or covers as-extracted collateral or timber to be cut,
3 the filing office shall index an assignment filed under s.
4 679.514(1) or an amendment filed under s. 679.514(2):

5 (a) Under the name of the assignor as grantor; and

6 (b) To the extent that the law of this state provides
7 for indexing the assignment of a real property mortgage under
8 the name of the assignee, under the name of the assignee.

9 (6) The filing office shall maintain a capability for:

10 (a) Retrieving a record by the name of the debtor and
11 by the file number assigned to the initial financing statement
12 to which the record relates; and

13 (b) Associating and retrieving with one another an
14 initial financing statement and each filed record relating to
15 the initial financing statement.

16 (7) The filing office may not remove a debtor's name
17 from the index until 1 year after the effectiveness of a
18 financing statement naming the debtor lapses under s. 679.515
19 with respect to all secured parties of record.

20 (8) Except as otherwise provided in subsection (9),
21 the filing office shall perform the acts required by
22 subsections (1) through (5) at the time and in the manner
23 prescribed by any filing-office rule, but not later than 3
24 business days after the filing office receives the record in
25 question, if practical.

26 (9) Subsections (1), (2), and (8) do not apply to a
27 filing office described in s. 679.5011(1)(a).

28 679.520 Acceptance and refusal to accept record.--

29 (1) A filing office shall refuse to accept a record
30 for filing for a reason set forth in s. 679.516(2) and may
31

1 refuse to accept a record for filing only for a reason set
2 forth in s. 679.516(2).

3 (2) If a filing office refuses to accept a record for
4 filing, it shall communicate to the person that presented the
5 record the fact of and reason for the refusal and the date and
6 time the record would have been filed had the filing office
7 accepted it. The communication must be made at the time and
8 in the manner prescribed by any filing-office rule but, in the
9 case of a filing office described in s. 679.5011(1)(b), in no
10 event more than 3 business days after the filing office
11 receives the record, if practical.

12 (3) A filed financing statement satisfying s.
13 679.5021(1) and (2) is effective, even if the filing office is
14 required to refuse to accept it for filing under subsection
15 (1). However, s. 679.338 applies to a filed financing
16 statement providing information described in s. 679.516(2)(e)
17 which is incorrect at the time the financing statement is
18 filed.

19 (4) If a record communicated to a filing office
20 provides information that relates to more than one debtor,
21 this part applies as to each debtor separately.

22 679.521 Uniform form of written financing statement
23 and amendment.--The Secretary of State shall develop or
24 approve acceptable forms for use in filing under this chapter.
25 Such forms must be in accord with the requirements of Florida
26 law, including s. 201.22. The secretary may, if he or she
27 finds that such forms meet these requirements, approve the use
28 of a standard national form for this purpose.

29 679.522 Maintenance and destruction of records.--

30 (1) The filing office shall maintain a record of the
31 information provided in a filed financing statement for at

1 least 1 year after the effectiveness of the financing
2 statement has lapsed under s. 679.515 with respect to all
3 secured parties of record. The record must be retrievable by
4 using the name of the debtor and by using the file number, or
5 official records book and page number if a fixture filing,
6 assigned to the initial financing statement to which the
7 record relates.

8 (2) Except to the extent that chapter 119 governing
9 disposition of public records provides otherwise, the filing
10 office immediately may destroy any written record evidencing a
11 financing statement. However, if the filing office destroys a
12 written record, it shall maintain another record of the
13 financing statement which complies with subsection (1).

14 679.523 Information from filing office; sale or
15 license of records.--

16 (1) If a person files a written record, the filing
17 office shall make available, on the database, an image of the
18 record showing the number assigned to the record pursuant to
19 s. 679.519(1)(a) and the date of the filing of the record or,
20 if requested, send to the person a separate printed
21 acknowledgement indicating the debtor's name, the number
22 assigned to the record pursuant to s. 679.519(1)(a), and the
23 date of the filing of the record.

24 (2) If a person files a record other than a written
25 record, the filing office described in s. 679.5011(1)(b) shall
26 communicate to the person an image that provides:

27 (a) The information in the record;

28 (b) The number assigned to the record pursuant to s.
29 679.519(1)(a); and

30 (c) The date and time of the filing of the record.

31

1 (3) In complying with its duty under this chapter, the
2 filing office described in s. 679.5011(1)(b) may communicate
3 information in any medium. However, if requested, the filing
4 office shall communicate information by issuing its written
5 certificate or a record that can be admitted into evidence in
6 the courts of the state without extrinsic evidence of its
7 authenticity.

8 (4) The filing office described in s. 679.5011(1)(b)
9 shall perform the acts required by subsections (1) and (2) at
10 the time and in the manner prescribed by any filing-office
11 rule, but not later than 3 business days after the filing
12 office receives the request, if practical.

13 679.524 Delay by filing office.--Delay by the filing
14 office beyond a time limit prescribed by this part is excused
15 if:

16 (1) The delay is caused by interruption of
17 communication or computer facilities, war, emergency
18 conditions, failure of equipment, or other circumstances
19 beyond control of the filing office; and

20 (2) The filing office exercises reasonable diligence
21 under the circumstances.

22 679.525 Processing fees.--

23 (1) Except as otherwise provided in subsection (3),
24 the nonrefundable processing fee for filing and indexing a
25 record under this part, other than an initial financing
26 statement of the kind described in s. 679.5021(3), is:

27 (a) For filing an initial financing statement, \$28 for
28 the first page, and second page, if any, which shall include
29 the cost of filing a termination statement for the financing
30 statement;

31 (b) For filing an amendment, \$12 for the first page;

1 (c) For indexing by additional debtor, secured party,
2 or assignee, \$3 per additional name indexed;

3 (d) For use of a nonapproved form, \$5;

4 (e) For each additional page attached to a record, \$3;

5 (f) For filing a financing statement communicated by
6 an electronic filing process authorized by the filing office,
7 \$15 with no additional fees for multiple names or attached
8 pages;

9 (g) For filing an amendment communicated by an
10 electronic filing process authorized by the filing office, \$5
11 with no additional fees for multiple names or attached pages;

12 (h) For a certified copy of a financing statement and
13 any and all associated amendments, \$30; and

14 (i) For a photocopy of a filed record, \$1 per page.

15 (2) Except as otherwise provided in subsection (3),
16 the fee for filing and indexing an initial financing statement
17 of the kind described in s. 679.5021(3) is the amount
18 specified in chapter 28.

19 (3) This section does not require a fee with respect
20 to a mortgage that is effective as a financing statement filed
21 as a fixture filing or as a financing statement covering
22 as-extracted collateral or timber to be cut under s.
23 679.5021(3). However, the recording and satisfaction fees
24 that otherwise would be applicable to the mortgage apply.

25 679.526 Filing-office rules.--The Department of State
26 may adopt and publish rules to administer this chapter. The
27 filing-office rules must be:

28 (1) Consistent with this chapter.

29 (2) Adopted and published in accordance with the
30 Administrative Procedure Act.

31 679.527 Florida Secured Transaction Registry.--

1 (1) As used in this section, the term:

2 (a) The "Florida Secured Transaction Registry" or
3 "registry" means the centralized database in which all initial
4 financing statements, amendments, assignments, and other
5 statements of change authorized to be filed under this chapter
6 are filed, maintained, and retrieved. The term does not apply
7 to documents that are filed under this chapter with the clerk
8 of a circuit court.

9 (b) "Department" means the Department of State.

10 (c) "Materials and records" includes, but is not
11 limited to data bases, source or object codes, and any
12 software relating to the Florida Secured Transaction Registry
13 or system for centralized filing under this part, regardless
14 of the original source of its creation or maintenance.

15 (2) The Department of State may contract for the
16 performance of the administrative and operational functions
17 under this part of the filing office and filing officer for
18 the Florida Secured Transaction Registry, provided that any
19 such contract shall not be assignable or otherwise
20 transferable without the express written consent of the
21 department, notwithstanding any limitations imposed by ss.
22 679.4061 or 679.4081.

23 (3) The department shall perform the administrative
24 and operational functions, as filing officer and filing
25 office, for the Florida Secured Transaction Registry until
26 October 1, 2001, or upon the effective date of a contract
27 executed by the department to administer and operate the
28 registry, whichever occurs later. At such time, the
29 department shall cease serving as the designated filing
30 officer and filing office for the registry under this part,
31 and thereafter, except to the extent it reclaims such

1 responsibilities as provided below, shall not be responsible
 2 for the duties of the filing office and officer under this
 3 part, including determining whether documents tendered for
 4 filing under this part satisfy the requirements of law. The
 5 department shall retain authority under this part to approve
 6 the forms required to be filed under this part. If authorized
 7 by the contract, the entity performing the duties of the
 8 filing office may certify a copy of a financing statement or
 9 amendment thereto which shall be admissible in a state or
 10 federal court or other tribunal proceeding.

11 (4) Notwithstanding the terms and conditions of any
 12 contract to perform the administrative and operational
 13 functions of the filing office or filing officer under this
 14 part for the Florida Secured Transaction Registry, the
 15 department and the state shall retain sole and exclusive
 16 ownership of the materials and records of the registry, shall
 17 have the right to inspect and make copies of the materials and
 18 records of the registry, and shall have the right to
 19 immediately reclaim and take possession and control of the
 20 original materials and records of the registry if any entity
 21 under contract with the department to administer and operate
 22 the registry does not, or cannot, perform the terms and
 23 conditions of the contract for any reason or commences or
 24 consents to an insolvency proceeding. If the department
 25 reclaims control of the materials and records of the registry,
 26 the department shall provide for the uninterrupted fulfillment
 27 of the duties of the filing office and filing officer by
 28 administration and operation by the department until a
 29 subsequent contract for such duties can be executed. The
 30 department shall be entitled to injunctive relief if the
 31 entity fails to turn over the materials and records upon

1 demand, and the Circuit Court for Leon County, Florida shall
2 have exclusive original jurisdiction to adjudicate any
3 disputes pertaining to this section or any contract entered
4 into under this section.

5 (5) The Department of State shall immediately develop
6 and issue a Request for Qualifications seeking capable parties
7 to perform both the administrative and operational functions
8 currently being performed by the department as a filing
9 officer and filing office under the Uniform Commercial Code.

10 (a) The qualifications shall, at a minimum, provide
11 for the organization and maintenance of the Florida Secured
12 Transaction Registry as the centralized Uniform Commercial
13 Code filing and retrieval system, which:

14 1. Is comparable and compatible with the existing
15 filing system.

16 2. Is open to the public and accessible through the
17 Internet, to permit the review of all existing filings of the
18 department and all future filings, in compliance with chapter
19 119.

20 3. Provides for oversight and compliance audits by the
21 department.

22 4. Requires records maintenance in compliance with
23 this part and chapter 119.

24 5. Maintains the current level of filing fees and
25 procedures for the deposit of revenues with the department as
26 specified in chapter 15, net of operating costs, for a period
27 of 5 years.

28 (b) The Department of State shall develop performance
29 standards to ensure that the filing system is accurate and
30 complete and that the users thereof are being well-served.
31 Periodically, the department shall verify that these

1 performance standards are being met or modified as may be
2 needed from time to time.

3 Section 7. Part VI of chapter 679, Florida Statutes,
4 consisting of sections 679.601, 679.602, 679.603, 679.604,
5 679.605, 679.606, 679.607, 679.608, 679.609, 679.610, 679.611,
6 679.612, 679.613, 679.614, 679.615, 679.616, 679.617, 679.618,
7 679.619, 679.620, 679.621, 679.622, 679.623, 679.624, 679.625,
8 679.626, 679.627, and 679.628, Florida Statutes, is created to
9 read:

10 PART VI

11 DEFAULT

12 679.601 Rights after default; judicial enforcement;
13 consignor or buyer of accounts, chattel paper, payment
14 intangibles, or promissory notes.--

15 (1) After default, a secured party has the rights
16 provided in this part and, except as otherwise provided in s.
17 679.602, those provided by agreement of the parties. A secured
18 party:

19 (a) May reduce a claim to judgment, foreclose, or
20 otherwise enforce the claim, security interest, or
21 agricultural lien by any available judicial procedure; and

22 (b) If the collateral is documents, may proceed either
23 as to the documents or as to the goods they cover.

24 (2) A secured party in possession of collateral or
25 control of collateral under s. 679.1041, s. 679.1051, s.
26 679.1061, or s. 679.1071 has the rights and duties provided in
27 s. 679.2071.

28 (3) The rights under subsections (1) and (2) are
29 cumulative and may be exercised simultaneously.

30
31

1 (4) Except as otherwise provided in subsection (7) and
2 s. 679.605, after default, a debtor and an obligor have the
3 rights provided in this part and by agreement of the parties.

4 (5) If a secured party has reduced its claim to
5 judgment, the lien of any levy that may be made upon the
6 collateral by virtue of an execution based upon the judgment
7 relates back to the earliest of:

8 (a) The date of perfection of the security interest or
9 agricultural lien in the collateral;

10 (b) The date of filing a financing statement covering
11 the collateral; or

12 (c) Any date specified in a statute under which the
13 agricultural lien was created.

14 (6) A sale pursuant to an execution is a foreclosure
15 of the security interest or agricultural lien by judicial
16 procedure within the meaning of this section. A secured party
17 may purchase at the sale and thereafter hold the collateral
18 free of any other requirements of this chapter.

19 (7) Except as otherwise provided in s. 679.607(3),
20 this part imposes no duties upon a secured party that is a
21 consignor or is a buyer of accounts, chattel paper, payment
22 intangibles, or promissory notes.

23 679.602 Waiver and variance of rights and
24 duties.--Except as otherwise provided in s. 679.624, to the
25 extent that they give rights to a debtor or obligor and impose
26 duties on a secured party, the debtor or obligor may not waive
27 or vary the rules stated in the following listed sections:

28 (1) Section 679.2071(2)(d)3., which deals with use and
29 operation of the collateral by the secured party;

30
31

1 (2) Section 679.210, which deals with requests for an
2 accounting and requests concerning a list of collateral and
3 statement of account;

4 (3) Section 679.607(3), which deals with collection
5 and enforcement of collateral;

6 (4) Sections 679.608(1) and 679.615(3) to the extent
7 that they deal with application or payment of noncash proceeds
8 of collection, enforcement, or disposition;

9 (5) Sections 679.608(1) and 679.615(4) to the extent
10 that they require accounting for or payment of surplus
11 proceeds of collateral;

12 (6) Section 679.609 to the extent that it imposes upon
13 a secured party that takes possession of collateral without
14 judicial process the duty to do so without breach of the
15 peace;

16 (7) Sections 679.610(2), 679.611, 679.613, and
17 679.614, which deal with disposition of collateral;

18 (8) Section 679.615(6), which deals with calculation
19 of a deficiency or surplus when a disposition is made to the
20 secured party, a person related to the secured party, or a
21 secondary obligor;

22 (9) Section 679.616, which deals with explanation of
23 the calculation of a surplus or deficiency;

24 (10) Sections 679.620, 679.621, and 679.622, which
25 deal with acceptance of collateral in satisfaction of
26 obligation;

27 (11) Section 679.623, which deals with redemption of
28 collateral;

29 (12) Section 679.624, which deals with permissible
30 waivers; and

31

1 (13) Sections 679.625 and 679.626, which deal with the
2 secured party's liability for failure to comply with this
3 article.

4 679.603 Agreement on standards concerning rights and
5 duties.--

6 (1) The parties may determine by agreement the
7 standards measuring the fulfillment of the rights of a debtor
8 or obligor and the duties of a secured party under a rule
9 stated in s. 679.602 if the standards are not manifestly
10 unreasonable.

11 (2) Subsection (1) does not apply to the duty under s.
12 679.609 to refrain from breaching the peace.

13 679.604 Procedure if security agreement covers real
14 property or fixtures.--

15 (1) If a security agreement covers both personal and
16 real property, a secured party may proceed:

17 (a) Under this part as to the personal property
18 without prejudicing any rights with respect to the real
19 property; or

20 (b) As to both the personal property and the real
21 property in accordance with the rights with respect to the
22 real property, in which case the other provisions of this part
23 do not apply.

24 (2) Subject to subsection (3), if a security agreement
25 covers goods that are or become fixtures, a secured party may
26 proceed:

27 (a) Under this part; or

28 (b) In accordance with the rights with respect to real
29 property, in which case the other provisions of this part do
30 not apply.

31

1 (3) Subject to the other provisions of this part, if a
2 secured party holding a security interest in fixtures has
3 priority over all owners and encumbrancers of the real
4 property, the secured party, after default, may remove the
5 collateral from the real property. The secured party shall
6 give reasonable notification of its intent to remove the
7 collateral to all persons entitled to reimbursement under
8 subsection (4).

9 (4) A secured party that removes collateral shall
10 promptly reimburse any encumbrancer or owner of the real
11 property, other than the debtor, for the cost of repair of any
12 physical injury caused by the removal. The secured party need
13 not reimburse the encumbrancer or owner for any diminution in
14 value of the real property caused by the absence of the goods
15 removed or by any necessity of replacing them. A person
16 entitled to reimbursement may refuse permission to remove
17 until the secured party gives adequate assurance for the
18 performance of the obligation to reimburse. This subsection
19 does not prohibit a secured party and the person entitled to
20 reimbursement from entering into an authenticated record
21 providing for the removal of fixtures and reimbursement for
22 any damage caused thereby.

23 679.605 Unknown debtor or secondary obligor.--A
24 secured party does not owe a duty based on its status as
25 secured party:

26 (1) To a person who is a debtor or obligor, unless the
27 secured party knows:

28 (a) That the person is a debtor or obligor;

29 (b) The identity of the person; and

30 (c) How to communicate with the person; or

31

1 (2) To a secured party or lienholder that has filed a
2 financing statement against a person, unless the secured party
3 knows:

4 (a) That the person is a debtor; and

5 (b) The identity of the person.

6 679.606 Time of default for agricultural lien.--For
7 purposes of this part, a default occurs in connection with an
8 agricultural lien at the time the secured party becomes
9 entitled to enforce the lien in accordance with the statute
10 under which it was created.

11 679.607 Collection and enforcement by secured party.--

12 (1) If so agreed, and in any event after default, a
13 secured party:

14 (a) May notify an account debtor or other person
15 obligated on collateral to make payment or otherwise render
16 performance to or for the benefit of the secured party;

17 (b) May take any proceeds to which the secured party
18 is entitled under s. 679.3151;

19 (c) May enforce the obligations of an account debtor
20 or other person obligated on collateral and exercise the
21 rights of the debtor with respect to the obligation of the
22 account debtor or other person obligated on collateral to make
23 payment or otherwise render performance to the debtor, and
24 with respect to any property that secures the obligations of
25 the account debtor or other person obligated on the
26 collateral;

27 (d) If it holds a security interest in a deposit
28 account perfected by control under s. 679.1041(1)(a), may
29 apply the balance of the deposit account to the obligation
30 secured by the deposit account; and

31

1 (e) If it holds a security interest in a deposit
2 account perfected by control under s. 679.1041(1)(b) or (c),
3 may instruct the bank to pay the balance of the deposit
4 account to or for the benefit of the secured party.

5 (2) If necessary to enable a secured party to exercise
6 under paragraph (1)(c) the right of a debtor to enforce a
7 mortgage nonjudicially outside this state, the secured party
8 may record in the office in which a record of the mortgage is
9 recorded:

10 (a) A copy of the security agreement that creates or
11 provides for a security interest in the obligation secured by
12 the mortgage; and

13 (b) The secured party's sworn affidavit in recordable
14 form stating that:

15 1. A default has occurred; and

16 2. The secured party is entitled to enforce the
17 mortgage nonjudicially outside this state.

18 (3) A secured party shall proceed in a commercially
19 reasonable manner if the secured party:

20 (a) Undertakes to collect from or enforce an
21 obligation of an account debtor or other person obligated on
22 collateral; and

23 (b) Is entitled to charge back uncollected collateral
24 or otherwise to full or limited recourse against the debtor or
25 a secondary obligor.

26 (4) A secured party may deduct from the collections
27 made pursuant to subsection (3) reasonable expenses of
28 collection and enforcement, including reasonable attorney's
29 fees and legal expenses incurred by the secured party.

30
31

1 (5) This section does not determine whether an account
2 debtor, bank, or other person obligated on collateral owes a
3 duty to a secured party.

4 (6) Nothing in subsection (2) is intended to create a
5 right of nonjudicial foreclosure in this state.

6 679.608 Application of proceeds of collection or
7 enforcement; liability for deficiency and right to surplus.--

8 (1) If a security interest or agricultural lien
9 secures payment or performance of an obligation, the following
10 rules apply:

11 (a) A secured party shall apply or pay over for
12 application the cash proceeds of collection or enforcement
13 under s. 679.607 in the following order to:

14 1. The reasonable expenses of collection and
15 enforcement and, to the extent provided for by agreement and
16 not prohibited by law, reasonable attorney's fees and legal
17 expenses incurred by the secured party;

18 2. The satisfaction of obligations secured by the
19 security interest or agricultural lien under which the
20 collection or enforcement is made; and

21 3. The satisfaction of obligations secured by any
22 subordinate security interest in or other lien on the
23 collateral subject to the security interest or agricultural
24 lien under which the collection or enforcement is made if the
25 secured party receives an authenticated demand for proceeds
26 before distribution of the proceeds is completed.

27 (b) If requested by a secured party, a holder of a
28 subordinate security interest or other lien shall furnish
29 reasonable proof of the interest or lien within a reasonable
30 time and agree to indemnify the secured party on reasonable
31 terms acceptable to the secured party for damages, including

1 reasonable attorney's fees and costs, incurred or suffered by
2 the secured party if the subordinate holder did not have the
3 right to receive the amounts to be paid to it. Unless the
4 holder complies, the secured party need not comply with the
5 holder's demand under subparagraph (a)3.

6 (c) A secured party need not apply or pay over for
7 application noncash proceeds of collection and enforcement
8 under s. 679.607 unless the failure to do so would be
9 commercially unreasonable. A secured party that applies or
10 pays over for application noncash proceeds shall do so in a
11 commercially reasonable manner.

12 (d) A secured party shall account to and pay a debtor
13 for any surplus, and the obligor is liable for any deficiency.

14 (2) If the underlying transaction is a sale of
15 accounts, chattel paper, payment intangibles, or promissory
16 notes, the debtor is not entitled to any surplus, and the
17 obligor is not liable for any deficiency.

18 (3) If the secured party in good faith cannot
19 determine the validity, extent, or priority of a subordinate
20 security interest or other lien or there are conflicting
21 claims of subordinate interests or liens, the secured party
22 may commence an interpleader action with respect to remaining
23 proceeds in excess of \$2,500 in the circuit or county court,
24 as applicable based upon the amount to be deposited, where the
25 collateral was located or collected or in the county where the
26 debtor has its chief executive office or principal residence
27 in this state, as applicable. If authorized in an
28 authenticated record, the interpleading secured party is
29 entitled to be paid from the remaining proceeds the actual
30 costs of the filing fee and an attorney's fee in the amount of
31 \$250 incurred in connection with filing the interpleader

1 action and obtaining an order approving the interpleader of
 2 funds. The debtor in a consumer transaction may not be
 3 assessed for the attorney's fees and costs incurred in the
 4 interpleader action by the holders of subordinate security
 5 interests or other liens based upon disputes among said
 6 holders, and a debtor in a transaction other than a consumer
 7 transaction may only recover such fees and costs to the extent
 8 provided for in an authenticated record. If authorized in an
 9 authenticated record, the court in the interpleader action may
 10 award reasonable attorney's fees and costs to the prevailing
 11 party in a dispute between the debtor and a holder of a
 12 security interest or lien which claims an interest in the
 13 remaining interplead proceeds, but only if the debtor
 14 challenges the validity, priority, or extent of said security
 15 interest or lien. Except as provided in this subsection, a
 16 debtor may not be assessed attorney's fees and costs incurred
 17 by any party in an interpleader action commenced under this
 18 section.

19 679.609 Secured party's right to take possession after
 20 default.--

21 (1) After default, a secured party:
 22 (a) May take possession of the collateral; and
 23 (b) Without removal, may render equipment unusable and
 24 dispose of collateral on a debtor's premises under s. 679.610.

25 (2) A secured party may proceed under subsection (1):
 26 (a) Pursuant to judicial process; or
 27 (b) Without judicial process, if it proceeds without
 28 breach of the peace.

29 (3) If so agreed, and in any event after default, a
 30 secured party may require the debtor to assemble the
 31 collateral and make it available to the secured party at a

1 place to be designated by the secured party which is
2 reasonably convenient to both parties.

3 679.610 Disposition of collateral after default.--

4 (1) After default, a secured party may sell, lease,
5 license, or otherwise dispose of any or all of the collateral
6 in its present condition or following any commercially
7 reasonable preparation or processing.

8 (2) Every aspect of a disposition of collateral,
9 including the method, manner, time, place, and other terms,
10 must be commercially reasonable. If commercially reasonable,
11 a secured party may dispose of collateral by public or private
12 proceedings, by one or more contracts, as a unit or in
13 parcels, and at any time and place and on any terms.

14 (3) A secured party may purchase collateral:

15 (a) At a public disposition; or

16 (b) At a private disposition only if the collateral is
17 of a kind that is customarily sold on a recognized market or
18 the subject of widely distributed standard price quotations.

19 (4) A contract for sale, lease, license, or other
20 disposition includes the warranties relating to title,
21 possession, quiet enjoyment, and the like which by operation
22 of law accompany a voluntary disposition of property of the
23 kind subject to the contract.

24 (5) A secured party may disclaim or modify warranties
25 under subsection (4):

26 (a) In a manner that would be effective to disclaim or
27 modify the warranties in a voluntary disposition of property
28 of the kind subject to the contract of disposition; or

29 (b) By communicating to the purchaser a record
30 evidencing the contract for disposition and including an
31 express disclaimer or modification of the warranties.

1 (6) A record is sufficient to disclaim warranties
2 under subsection (5) if it indicates that "there is no
3 warranty relating to title, possession, quiet enjoyment, or
4 the like in this disposition" or uses words of similar import.

5 679.611 Notification before disposition of
6 collateral.--

7 (1) In this section, the term "notification date"
8 means the earlier of the date on which:

9 (a) A secured party sends to the debtor and any
10 secondary obligor an authenticated notification of
11 disposition; or

12 (b) The debtor and any secondary obligor waive the
13 right to notification.

14 (2) Except as otherwise provided in subsection (4), a
15 secured party that disposes of collateral under s. 679.610
16 shall send to the persons specified in subsection (3) a
17 reasonable authenticated notification of disposition.

18 (3) To comply with subsection (2), the secured party
19 shall send an authenticated notification of disposition to:

20 (a) The debtor;

21 (b) Any secondary obligor; and

22 (c) If the collateral is other than consumer goods:

23 1. Any other person from whom the secured party has
24 received, before the notification date, an authenticated
25 notification of a claim of an interest in the collateral;

26 2. Any other secured party or lienholder that, 10 days
27 before the notification date, held a security interest in or
28 other lien on the collateral perfected by the filing of a
29 financing statement that:

30 a. Identified the collateral;

31

1 b. Was indexed under the debtor's name as of that
2 date; and

3 c. Was filed in the office in which to file a
4 financing statement against the debtor covering the collateral
5 as of that date; and

6 3. Any other secured party that, 10 days before the
7 notification date, held a security interest in the collateral
8 perfected by compliance with a statute, regulation, or treaty
9 described in s. 679.3111(1).

10 (4) Subsection (2) does not apply if the collateral is
11 perishable or threatens to decline speedily in value or is of
12 a type customarily sold on a recognized market.

13 (5) A secured party complies with the requirement for
14 notification prescribed by subparagraph (3)(c)2. if:

15 (a) Not later than 20 days or earlier than 30 days
16 before the notification date, the secured party requests, in a
17 commercially reasonable manner, information concerning
18 financing statements indexed under the debtor's name in the
19 office indicated in subparagraph (3)(c)2.; and

20 (b) Before the notification date, the secured party:

21 1. Did not receive a response to the request for
22 information; or

23 2. Received a response to the request for information
24 and sent an authenticated notification of disposition to each
25 secured party or other lienholder named in that response whose
26 financing statement covered the collateral.

27 (6) For purposes of subsection (3), the secured party
28 may send the authenticated notification as follows:

29 (a) If the collateral is other than consumer goods, to
30 the debtor at the address in the financing statement, unless
31 the secured party has received an authenticated record from

1 the debtor notifying the secured party of a different address
2 for such notification purposes or the secured party has actual
3 knowledge of the address of the debtor's chief executive
4 office or principal residence, as applicable, at the time the
5 notification is sent;

6 (b) If the collateral is other than consumer goods, to
7 any secondary obligor at the address, if any, in the
8 authenticated agreement, unless the secured party has received
9 an authenticated record from the secondary obligor notifying
10 the secured party of a different address for such notification
11 purposes or the secured party has actual knowledge of the
12 address of the secondary obligor's chief executive office or
13 principal residence, as applicable, at the time the
14 notification is sent; and

15 (c) If the collateral is other than consumer goods:

16 1. To the person described in subparagraph (3)(c)1.,
17 at the address stated in the notification;

18 2. To the person described in subparagraph (3)(c)2.,
19 at the address stated in the financing statement;

20 3. To the person described in subparagraph (3)(c)3.,
21 at the address stated in the official records of the recording
22 or registration agency.

23 679.612 Timeliness of notification before disposition
24 of collateral.--

25 (1) Except as otherwise provided in subsection (2),
26 whether a notification is sent within a reasonable time is a
27 question of fact.

28 (2) A notification of disposition sent after default
29 and 10 days or more before the earliest time of disposition
30 set forth in the notification is sent within a reasonable time
31 before the disposition.

1 679.613 Contents and form of notification before
2 disposition of collateral; general.--Except in a
3 consumer-goods transaction, the following rules apply:

4 (1) The contents of a notification of disposition are
5 sufficient if the notification:

6 (a) Describes the debtor and the secured party;

7 (b) Describes the collateral that is the subject of
8 the intended disposition;

9 (c) States the method of intended disposition;

10 (d) States that the debtor is entitled to an
11 accounting of the unpaid indebtedness and states the charge,
12 if any, for an accounting; and

13 (e) States the time and place of a public disposition
14 or the time after which any other disposition is to be made.

15 (2) Whether the contents of a notification that lacks
16 any of the information specified in subsection (1) are
17 nevertheless sufficient is a question of fact.

18 (3) The contents of a notification providing
19 substantially the information specified in subsection (1) are
20 sufficient, even if the notification includes:

21 (a) Information not specified by that paragraph; or

22 (b) Minor errors that are not seriously misleading.

23 (4) A particular phrasing of the notification is not
24 required.

25 (5) The following form of notification and the form
26 appearing in s. 679.614(3), when completed, each provides
27 sufficient information:

28 NOTIFICATION OF DISPOSITION OF COLLATERAL

29 To:....(Name of debtor, obligor, or other person to which the
30 notification is sent)....

31

1 From:....(Name, address, and telephone number of secured
2 party)....
3 Name of Debtor(s):....(Include only if debtor(s) are not an
4 addressee)....
5 [For a public disposition:]
6 We will sell [or lease or license, as applicable] the
7(describe collateral)....to the highest qualified bidder
8 in public as follows:
9 Day and Date:
10 Time:
11 Place:
12 [For a private disposition:]
13 We will sell [or lease or license, as applicable] the
14(describe collateral).... privately sometime after
15(day and date).....
16 You are entitled to an accounting of the unpaid
17 indebtedness secured by the property that we intend to sell
18 [or lease or license, as applicable] for a charge of \$_____.
19 You may request an accounting by calling us at(telephone
20 number).....
21 679.614 Contents and form of notification before
22 disposition of collateral; consumer-goods transaction.--In a
23 consumer-goods transaction, the following rules apply:
24 (1) A notification of disposition must provide the
25 following information:
26 (a) The information specified in s. 679.613(1);
27 (b) A description of any liability for a deficiency of
28 the person to whom the notification is sent;
29 (c) A telephone number from which the amount that must
30 be paid to the secured party to redeem the collateral under s.
31 679.623 is available; and

1 (d) A telephone number or mailing address from which
2 additional information concerning the disposition and the
3 obligation secured is available.

4 (2) A particular phrasing of the notification is not
5 required.

6 (3) The following form of notification, when
7 completed, provides sufficient information:

8(Name and address of secured party)....

9 (Date)....

10 NOTICE OF OUR PLAN TO SELL PROPERTY

11 (Name and address of any obligor who is also a
12 debtor)....

13 Subject:....(Identification of Transaction)....

14 We have your(describe collateral)...., because you broke
15 promises in our agreement.

16
17 [For a public disposition:]

18 We will sell(describe collateral).... at public sale. A
19 sale could include a lease or license. The sale will be held
20 as follows:

21 Date:

22 Time:

23 Place:

24 You may attend the sale and bring bidders if you want.

25 [For a private disposition:]

26 We will sell(describe collateral).... at private sale
27 sometime after(date)..... A sale could include a lease or
28 license.

29
30 The money that we get from the sale (after paying our costs)
31 will reduce the amount you owe. If we get less money than you

1 owe, you(will or will not, as applicable).... still owe
2 us the difference. If we get more money than you owe, you will
3 get the extra money, unless we must pay it to someone else.

4
5 You can get the property back at any time before we sell it by
6 paying us the full amount you owe (not just the past due
7 payments), including our expenses. To learn the exact amount
8 you must pay, call us at(telephone number).....

9
10 If you want us to explain to you in writing how we have
11 figured the amount that you owe us, you may call us at
12(telephone number).... or write us at(secured party's
13 address).... and request a written explanation. We will charge
14 you \$_____ for the explanation if we sent you another written
15 explanation of the amount you owe us within the last 6 months.

16
17 If you need more information about the sale, call us at
18(telephone number).... or write us at(secured party's
19 address).....

20
21 We are sending this notice to the following other people who
22 have an interest in(describe collateral).... or who owe
23 money under your agreement:

24(Names of all other debtors and obligors, if any)....

25 (4) A notification in the form of subsection (3) is
26 sufficient, even if additional information appears at the end
27 of the form.

28 (5) A notification in the form of subsection (3) is
29 sufficient, even if it includes errors in information not
30 required by subsection (1), unless the error is misleading
31 with respect to rights arising under this chapter.

1 (6) If a notification under this section is not in the
2 form of subsection (3), law other than this chapter determines
3 the effect of including information not required by subsection
4 (1).

5 679.615 Application of proceeds of disposition;
6 liability for deficiency and right to surplus.--

7 (1) A secured party shall apply or pay over for
8 application the cash proceeds of disposition under s. 679.610
9 in the following order to:

10 (a) The reasonable expenses of retaking, holding,
11 preparing for disposition, processing, and disposing, and, to
12 the extent provided for by agreement and not prohibited by
13 law, reasonable attorney's fees and legal expenses incurred by
14 the secured party;

15 (b) The satisfaction of obligations secured by the
16 security interest or agricultural lien under which the
17 disposition is made;

18 (c) The satisfaction of obligations secured by any
19 subordinate security interest in or other subordinate lien on
20 the collateral if:

21 1. The secured party receives from the holder of the
22 subordinate security interest or other lien an authenticated
23 demand for proceeds before distribution of the proceeds is
24 completed; and

25 2. In a case in which a consignor has an interest in
26 the collateral, the subordinate security interest or other
27 lien is senior to the interest of the consignor; and

28 (d) A secured party that is a consignor of the
29 collateral if the secured party receives from the consignor an
30 authenticated demand for proceeds before distribution of the
31 proceeds is completed.

1 (2) 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 after receipt of the request and agree to indemnify the
5 secured party on reasonable terms acceptable to the secured
6 party for damages, including reasonable attorney's fees and
7 costs, incurred or suffered by the secured party if the
8 subordinate holder did not have the right to receive the
9 amounts to be paid to it. Unless the holder complies, the
10 secured party need not comply with the holder's demand under
11 paragraph (1)(c).

12 (3) A secured party need not apply or pay over for
13 application noncash proceeds of disposition under s. 679.610
14 unless the failure to do so would be commercially
15 unreasonable. A secured party that applies or pays over for
16 application noncash proceeds shall do so in a commercially
17 reasonable manner.

18 (4) If the security interest under which a disposition
19 is made secures payment or performance of an obligation, after
20 making the payments and applications required by subsection
21 (1) and permitted by subsection (3):

22 (a) Unless paragraph (1)(d) requires the secured party
23 to apply or pay over cash proceeds to a consignor, the secured
24 party shall account to and pay a debtor for any surplus; and

25 (b) The obligor is liable for any deficiency.

26 (5) If the underlying transaction is a sale of
27 accounts, chattel paper, payment intangibles, or promissory
28 notes:

29 (a) The debtor is not entitled to any surplus; and

30 (b) The obligor is not liable for any deficiency.

31

1 (6) The surplus or deficiency following a disposition
2 is calculated based on the amount of proceeds that would have
3 been realized in a disposition complying with this part to a
4 transferee other than the secured party, a person related to
5 the secured party, or a secondary obligor if:

6 (a) The transferee in the disposition is the secured
7 party, a person related to the secured party, or a secondary
8 obligor; and

9 (b) The amount of proceeds of the disposition is
10 significantly below the range of proceeds that a complying
11 disposition to a person other than the secured party, a person
12 related to the secured party, or a secondary obligor would
13 have brought.

14 (7) A secured party that receives cash proceeds of a
15 disposition in good faith and without knowledge that the
16 receipt violates the rights of the holder of a security
17 interest or other lien that is not subordinate to the security
18 interest or agricultural lien under which the disposition is
19 made:

20 (a) Takes the cash proceeds free of the security
21 interest or other lien;

22 (b) Is not obligated to apply the proceeds of the
23 disposition to the satisfaction of obligations secured by the
24 security interest or other lien; and

25 (c) Is not obligated to account to or pay the holder
26 of the security interest or other lien for any surplus.

27 (8) If the secured party in good faith cannot
28 determine the validity, extent, or priority of a subordinate
29 security interest or other lien or there are conflicting
30 claims of subordinate interests or liens, the secured party
31 may commence an interpleader action with respect to remaining

1 proceeds in excess of \$2,500 in the circuit or county court,
2 as applicable based upon the amount to be deposited, where the
3 collateral was located or collected or in the county where the
4 debtor's chief executive office or principal residence is
5 located in this state, as applicable. The interpleading
6 secured party and any other parties in the interpleader action
7 shall only be entitled to recover attorney's fees and costs as
8 permitted in s. 679.608(3).

9 679.616 Explanation of calculation of surplus or
10 deficiency.--

11 (1) In this section, the term:

12 (a) "Explanation" means a writing that:

13 1. States the amount of the surplus or deficiency;

14 2. Provides an explanation in accordance with

15 subsection (3) of how the secured party calculated the surplus
16 or deficiency;

17 3. States, if applicable, that future debits, credits,
18 charges, including additional credit service charges or
19 interest, rebates, and expenses may affect the amount of the
20 surplus or deficiency; and

21 4. Provides a telephone number or mailing address from
22 which additional information concerning the transaction is
23 available.

24 (b) "Request" means a record:

25 1. Authenticated by a debtor or consumer obligor;

26 2. Requesting that the recipient provide an
27 explanation; and

28 3. Sent after disposition of the collateral under s.
29 679.610.

30 (2) In a consumer-goods transaction in which the
31 debtor is entitled to a surplus or a consumer obligor is

1 liable for a deficiency under s. 679.615, the secured party
2 shall:

3 (a) Send an explanation to the debtor or consumer
4 obligor, as applicable, after the disposition and:

5 1. Before or when the secured party accounts to the
6 debtor and pays any surplus or first makes written demand on
7 the consumer obligor after the disposition for payment of the
8 deficiency; and

9 2. Within 14 days after receipt of a request; or

10 (b) In the case of a consumer obligor who is liable
11 for a deficiency, within 14 days after receipt of a request,
12 send to the consumer obligor a record waiving the secured
13 party's right to a deficiency.

14 (3) To comply with subparagraph (1)(a)2., a writing
15 must provide the following information in the following order:

16 (a) The aggregate amount of obligations secured by the
17 security interest under which the disposition was made, and,
18 if the amount reflects a rebate of unearned interest or credit
19 service charge, an indication of that fact, calculated as of a
20 specified date:

21 1. If the secured party takes or receives possession
22 of the collateral after default, not more than 35 days before
23 the secured party takes or receives possession; or

24 2. If the secured party takes or receives possession
25 of the collateral before default or does not take possession
26 of the collateral, not more than 35 days before the
27 disposition;

28 (b) The amount of proceeds of the disposition;

29 (c) The aggregate amount of the obligations after
30 deducting the amount of proceeds;

31

1 (d) The amount, in the aggregate or by type, and types
2 of expenses, including expenses of retaking, holding,
3 preparing for disposition, processing, and disposing of the
4 collateral, and attorney's fees secured by the collateral
5 which are known to the secured party and relate to the current
6 disposition;

7 (e) The amount, in the aggregate or by type, and types
8 of credits, including rebates of interest or credit service
9 charges, to which the obligor is known to be entitled and
10 which are not reflected in the amount in paragraph (a); and

11 (f) The amount of the surplus or deficiency.

12 (4) A particular phrasing of the explanation is not
13 required. An explanation complying substantially with the
14 requirements of subsection (1) is sufficient, even if it
15 includes minor errors that are not seriously misleading.

16 (5) A debtor or consumer obligor is entitled without
17 charge to one response to a request under this section during
18 any 6-month period in which the secured party did not send to
19 the debtor or consumer obligor an explanation pursuant to
20 paragraph (2)(a). The secured party may require payment of a
21 charge not exceeding \$25 for each additional response.

22 679.617 Rights of transferee of collateral.--

23 (1) A secured party's disposition of collateral after
24 default:

25 (a) Transfers to a transferee for value all of the
26 debtor's rights in the collateral;

27 (b) Discharges the security interest under which the
28 disposition is made; and

29 (c) Discharges any subordinate security interest or
30 other subordinate lien other than liens created under statutes
31 providing for liens, if any, that are not to be discharged.

1 (2) A transferee that acts in good faith takes free of
2 the rights and interests described in subsection (1), even if
3 the secured party fails to comply with this chapter or the
4 requirements of any judicial proceeding.

5 (3) If a transferee does not take free of the rights
6 and interests described in subsection (1), the transferee
7 takes the collateral subject to:

8 (a) The debtor's rights in the collateral;

9 (b) The security interest or agricultural lien under
10 which the disposition is made; and

11 (c) Any other security interest or other lien.

12 679.618 Rights and duties of certain secondary
13 obligors.--

14 (1) A secondary obligor acquires the rights and
15 becomes obligated to perform the duties of the secured party
16 after the secondary obligor:

17 (a) Receives an assignment of a secured obligation
18 from the secured party;

19 (b) Receives a transfer of collateral from the secured
20 party and agrees to accept the rights and assume the duties of
21 the secured party; or

22 (c) Is subrogated to the rights of a secured party
23 with respect to collateral.

24 (2) An assignment, transfer, or subrogation described
25 in subsection (1):

26 (a) Is not a disposition of collateral under s.
27 679.610; and

28 (b) Relieves the secured party of further duties under
29 this chapter.

30 679.619 Transfer of record or legal title.--

31

1 (1) In this section, the term "transfer statement"
2 means a record authenticated by a secured party stating:

3 (a) That the debtor has defaulted in connection with
4 an obligation secured by specified collateral;

5 (b) That the secured party has exercised its
6 post-default remedies with respect to the collateral;

7 (c) That, by reason of the exercise, a transferee has
8 acquired the rights of the debtor in the collateral; and

9 (d) The name and mailing address of the secured party,
10 debtor, and transferee.

11 (2) A transfer statement entitles the transferee to
12 the transfer of record of all rights of the debtor in the
13 collateral specified in the statement in any official filing,
14 recording, registration, or certificate-of-title system
15 covering the collateral. If a transfer statement is presented
16 with the applicable fee and request form to the official or
17 office responsible for maintaining the system, the official or
18 office shall:

19 (a) Accept the transfer statement;

20 (b) Promptly amend its records to reflect the
21 transfer; and

22 (c) If applicable, issue a new appropriate certificate
23 of title in the name of the transferee.

24 (3) A transfer of the record or legal title to
25 collateral to a secured party under subsection (2) or
26 otherwise is not of itself a disposition of collateral under
27 this chapter and does not of itself relieve the secured party
28 of its duties under this chapter.

29 679.620 Acceptance of collateral in full or partial
30 satisfaction of obligation; compulsory disposition of
31 collateral.--

1 (1) Except as otherwise provided in subsection (7), a
2 secured party may accept collateral in full or partial
3 satisfaction of the obligation it secures only if:

4 (a) The debtor consents to the acceptance under
5 subsection (3);

6 (b) The secured party does not receive, within the
7 time set forth in subsection (4), a notification of objection
8 to the proposal authenticated by:

9 1. A person to whom the secured party was required to
10 send a proposal under s. 679.621; or

11 2. Any other person, other than the debtor, holding an
12 interest in the collateral subordinate to the security
13 interest that is the subject of the proposal;

14 (c) If the collateral is consumer goods, the
15 collateral is not in the possession of the debtor when the
16 debtor consents to the acceptance; and

17 (d) Subsection (5) does not require the secured party
18 to dispose of the collateral or the debtor waives the
19 requirement pursuant to s. 679.624.

20 (2) A purported or apparent acceptance of collateral
21 under this section is ineffective unless:

22 (a) The secured party consents to the acceptance in an
23 authenticated record or sends a proposal to the debtor; and

24 (b) The conditions of subsection (1) are met.

25 (3) For purposes of this section:

26 (a) A debtor consents to an acceptance of collateral
27 in partial satisfaction of the obligation it secures only if
28 the debtor agrees to the terms of the acceptance in a record
29 authenticated after default; and

30 (b) A debtor consents to an acceptance of collateral
31 in full satisfaction of the obligation it secures only if the

1 debtor agrees to the terms of the acceptance in a record
2 authenticated after default or the secured party:
3 1. Sends to the debtor after default a proposal that
4 is unconditional or subject only to a condition that
5 collateral not in the possession of the secured party be
6 preserved or maintained;
7 2. In the proposal, proposes to accept collateral in
8 full satisfaction of the obligation it secures, and, in a
9 consumer transaction, provides notice that the proposal will
10 be deemed accepted if it is not objected to by an
11 authenticated notice within 30 days after the date the
12 proposal is sent by the secured party; and
13 3. Does not receive a notification of objection
14 authenticated by the debtor within 30 days after the proposal
15 is sent.
16 (4) To be effective under paragraph (1)(b), a
17 notification of objection must be received by the secured
18 party:
19 (a) In the case of a person to whom the proposal was
20 sent pursuant to s. 679.621, within 20 days after notification
21 was sent to that person; and
22 (b) In other cases:
23 1. Within 20 days after the last notification was sent
24 pursuant to s. 679.621; or
25 2. If a notification was not sent, before the debtor
26 consents to the acceptance under subsection (3).
27 (5) A secured party that has taken possession of
28 collateral shall dispose of the collateral pursuant to s.
29 679.610 within the time specified in subsection (6) if:
30
31

1 (a) Sixty percent of the cash price has been paid in
2 the case of a purchase-money security interest in consumer
3 goods; or

4 (b) Sixty percent of the principal amount of the
5 obligation secured has been paid in the case of a
6 non-purchase-money security interest in consumer goods.

7 (6) To comply with subsection (5), the secured party
8 shall dispose of the collateral:

9 (a) Within 90 days after taking possession; or

10 (b) Within any longer period to which the debtor and
11 all secondary obligors have agreed in an agreement to that
12 effect entered into and authenticated after default.

13 (7) In a consumer transaction, a secured party may not
14 accept collateral in partial satisfaction of the obligation it
15 secures.

16 679.621 Notification of proposal to accept
17 collateral.--

18 (1) A secured party that desires to accept collateral
19 in full or partial satisfaction of the obligation it secures
20 shall send its proposal to:

21 (a) Any person from whom the secured party has
22 received, before the debtor consented to the acceptance, an
23 authenticated notification of a claim of an interest in the
24 collateral;

25 (b) Any other secured party or lienholder that, 10
26 days before the debtor consented to the acceptance, held a
27 security interest in or other lien on the collateral perfected
28 by the filing of a financing statement that:

29 1. Identified the collateral;

30 2. Was indexed under the debtor's name as of that
31 date; and

1 3. Was filed in the office or offices in which to file
2 a financing statement against the debtor covering the
3 collateral as of that date; and

4 (c) Any other secured party that, 10 days before the
5 debtor consented to the acceptance, held a security interest
6 in the collateral perfected by compliance with a statute,
7 regulation, or treaty described in s. 679.3111(1).

8 (2) A secured party that desires to accept collateral
9 in partial satisfaction of the obligation it secures shall
10 send its proposal to any secondary obligor in addition to the
11 persons described in subsection (1).

12 (3) A secured party shall send its proposal under s.
13 679.621(1) or (2) to the affected party at the address
14 prescribed in s. 679.611(6).

15 679.622 Effect of acceptance of collateral.--

16 (1) A secured party's acceptance of collateral in full
17 or partial satisfaction of the obligation it secures:

18 (a) Discharges the obligation to the extent consented
19 to by the debtor;

20 (b) Transfers to the secured party all of a debtor's
21 rights in the collateral;

22 (c) Discharges the security interest or agricultural
23 lien that is the subject of the debtor's consent and any
24 subordinate security interest or other subordinate lien; and

25 (d) Terminates any other subordinate interest.

26 (2) A subordinate interest is discharged or terminated
27 under subsection (1), even if the secured party fails to
28 comply with this chapter.

29 679.623 Right to redeem collateral.--

30 (1) A debtor, any secondary obligor, or any other
31 secured party or lienholder may redeem collateral.

1 (2) To redeem collateral, a person shall tender:
2 (a) Fulfillment of all obligations secured by the
3 collateral; and
4 (b) The reasonable expenses and attorney's fees
5 described in s. 679.615(1)(a).
6 (3) A redemption may occur at any time before a
7 secured party:
8 (a) Has collected collateral under s. 679.607;
9 (b) Has disposed of collateral or entered into a
10 contract for its disposition under s. 679.610; or
11 (c) Has accepted collateral in full or partial
12 satisfaction of the obligation it secures under s. 679.622.
13 679.624 Waiver.--
14 (1) A debtor or secondary obligor may waive the right
15 to notification of disposition of collateral under s. 679.611
16 only by an agreement to that effect entered into and
17 authenticated after default.
18 (2) A debtor may waive the right to require
19 disposition of collateral under s. 679.620(5) only by an
20 agreement to that effect entered into and authenticated after
21 default.
22 (3) Except in a consumer-goods transaction, a debtor
23 or secondary obligor may waive the right to redeem collateral
24 under s. 679.623 only by an agreement to that effect entered
25 into and authenticated after default.
26 679.625 Remedies for failure to comply with article.--
27 (1) If it is established that a secured party is not
28 proceeding in accordance with this chapter, a court may order
29 or restrain collection, enforcement, or disposition of
30 collateral on appropriate terms and conditions. This
31 subsection shall not preclude a debtor other than a consumer

1 and a secured party, or two or more secured parties in other
2 than a consumer transaction, from agreeing in an authenticated
3 record that the debtor or secured party must first provide to
4 the alleged offending secured party notice of a violation of
5 this chapter and opportunity to cure before commencing any
6 legal proceeding under this section.

7 (2) Subject to subsections (3), (4), and (6), a person
8 is liable for damages in the amount of any loss caused by a
9 failure to comply with this chapter, including damages
10 suffered by the debtor resulting from the debtor's inability
11 to obtain, or increased costs of, alternative financing, but
12 not including consequential, special, or penal damages, unless
13 the conduct giving rise to the failure constitutes an
14 independent claim under the laws of this state other than this
15 chapter and then only to the extent otherwise recoverable
16 under law.

17 (3) Except as otherwise provided in s. 679.628:

18 (a) A person who, at the time of the failure, was a
19 debtor, was an obligor, or held a security interest in or
20 other lien on the collateral may recover damages under
21 subsection (2) for the person's loss; and

22 (b) If the collateral is consumer goods, a person who
23 was a debtor or a secondary obligor at the time a secured
24 party failed to comply with this part may recover for that
25 failure in any event an amount not less than the credit
26 service charge plus 10 percent of the principal amount of the
27 obligation or the time-price differential plus 10 percent of
28 the cash price.

29 (4) A debtor whose deficiency is eliminated under s.
30 679.626 may recover damages for the loss of any surplus.
31 However, a debtor or secondary obligor whose deficiency is

1 eliminated or reduced under s. 679.626 may not otherwise
2 recover under subsection (2) for noncompliance with the
3 provisions of this part relating to collection, enforcement,
4 disposition, or acceptance.

5 (5) In lieu of damages recoverable under subsection
6 (2), the debtor, consumer obligor, or person named as a debtor
7 in a filed record, as applicable, may recover \$500 in each
8 case from a person who:

9 (a) Fails to comply with s. 679.2081;

10 (b) Fails to comply with s. 679.209;

11 (c) Files a record that the person is not entitled to
12 file under s. 679.509(1);

13 (d) Fails to cause the secured party of record to file
14 or send a termination statement as required by s. 679.513(1)
15 or (3) after receipt of an authenticated record notifying the
16 person of such noncompliance;

17 (e) Fails to comply with s. 679.616(2)(a) and whose
18 failure is part of a pattern, or consistent with a practice,
19 of noncompliance; or

20 (f) Fails to comply with s. 679.616(2)(b) with respect
21 to a consumer transaction, and with respect to a transaction
22 other than a consumer transaction, after receipt of an
23 authenticated record notifying the person of such
24 noncompliance.

25 (6) A debtor or consumer obligor may recover damages
26 under subsection (2) and, in addition, \$500 in each case from
27 a person who, without reasonable cause, fails to comply with a
28 request under s. 679.210. A recipient of a request under s.
29 679.210 which never claimed an interest in the collateral or
30 obligations that are the subject of a request under that
31

1 section has a reasonable excuse for failure to comply with the
2 request within the meaning of this subsection.

3 (7) If a secured party fails to comply with a request
4 regarding a list of collateral or a statement of account under
5 S. 679.210, the secured party may claim a security interest
6 only as shown in the list or statement included in the request
7 as against a person who is reasonably misled by the failure.

8 679.626 Action in which deficiency or surplus is in
9 issue.--In an action arising from a transaction in which the
10 amount of a deficiency or surplus is in issue, the following
11 rules apply:

12 (1) A secured party need not prove compliance with the
13 provisions of this part relating to collection, enforcement,
14 disposition, or acceptance unless the debtor or a secondary
15 obligor places the secured party's compliance in issue.

16 (2) If the secured party's compliance is placed in
17 issue, the secured party has the burden of establishing that
18 the collection, enforcement, disposition, or acceptance was
19 conducted in accordance with this part.

20 (3) Except as otherwise provided in s. 679.628, if a
21 secured party fails to prove that the collection, enforcement,
22 disposition, or acceptance was conducted in accordance with
23 the provisions of this part relating to collection,
24 enforcement, disposition, or acceptance, the liability of a
25 debtor or a secondary obligor for a deficiency is limited to
26 an amount by which the sum of the secured obligation,
27 reasonable expenses, and, to the extent provided for by
28 agreement and not prohibited by law, attorney's fees exceeds
29 the greater of:

30 (a) The proceeds of the collection, enforcement,
31 disposition, or acceptance; or

1 (b) The amount of proceeds that would have been
2 realized had the noncomplying secured party proceeded in
3 accordance with the provisions of this part relating to
4 collection, enforcement, disposition, or acceptance.

5 (4) For purposes of paragraph (3)(b), the amount of
6 proceeds that would have been realized is equal to the sum of
7 the secured obligation, expenses, and attorney's fees unless
8 the secured party proves that the amount is less than that
9 sum.

10 (5) If a deficiency or surplus is calculated under s.
11 679.615(6), the debtor or obligor has the burden of
12 establishing that the amount of proceeds of the disposition is
13 significantly below the range of prices that a complying
14 disposition to a person other than the secured party, a person
15 related to the secured party, or a secondary obligor would
16 have brought.

17 679.627 Determination of whether conduct was
18 commercially reasonable.--

19 (1) The fact that a greater amount could have been
20 obtained by a collection, enforcement, disposition, or
21 acceptance at a different time or in a different method from
22 that selected by the secured party is not of itself sufficient
23 to preclude the secured party from establishing that the
24 collection, enforcement, disposition, or acceptance was made
25 in a commercially reasonable manner.

26 (2) A disposition of collateral is made in a
27 commercially reasonable manner if the disposition is made:

28 (a) In the usual manner on any recognized market;

29 (b) At the price current in any recognized market at
30 the time of the disposition; or

31

1 (c) Otherwise in conformity with reasonable commercial
2 practices among dealers in the type of property that was the
3 subject of the disposition.

4 (3) A collection, enforcement, disposition, or
5 acceptance is commercially reasonable if it has been approved:

6 (a) In a judicial proceeding;

7 (b) By a bona fide creditors' committee;

8 (c) By a representative of creditors; or

9 (d) By an assignee for the benefit of creditors.

10 (4) Approval under subsection (3) need not be
11 obtained, and lack of approval does not mean that the
12 collection, enforcement, disposition, or acceptance is not
13 commercially reasonable.

14 679.628 Nonliability and limitation on liability of
15 secured party; liability of secondary obligor.--

16 (1) Unless a secured party knows that a person is a
17 debtor or obligor, knows the identity of the person, and knows
18 how to communicate with the person:

19 (a) The secured party is not liable to the person, or
20 to a secured party or lienholder that has filed a financing
21 statement against the person, for failure to comply with this
22 chapter; and

23 (b) The secured party's failure to comply with this
24 chapter does not affect the liability of the person for a
25 deficiency.

26 (2) A secured party is not liable because of its
27 status as a secured party:

28 (a) To a person who is a debtor or obligor, unless the
29 secured party knows:

30 1. That the person is a debtor or obligor;

31 2. The identity of the person; and

1 (1) Except as otherwise provided in this part, this
2 act applies to a transaction or lien within its scope, even if
3 the transaction or lien was entered into or created before
4 this act takes effect.

5 (2) Except as otherwise provided in subsection (3) and
6 ss. 679.703-679.709:

7 (a) Transactions and liens that were not governed by
8 chapter 679, Florida Statutes 2000, were validly entered into
9 or created before this act takes effect, and would be subject
10 to this act if they had been entered into or created after
11 this act takes effect, and the rights, duties, and interests
12 flowing from those transactions and liens remain valid after
13 this act takes effect; and

14 (b) The transactions and liens may be terminated,
15 completed, consummated, and enforced as required or permitted
16 by this act or by the law that otherwise would apply if this
17 act had not taken effect.

18 (3) This act does not affect an action, case, or
19 proceeding commenced before this act takes effect.

20 679.703 Security interest perfected before effective
21 date.--

22 (1) A security interest that is enforceable
23 immediately before this act takes effect and would have
24 priority over the rights of a person who becomes a lien
25 creditor at that time is a perfected security interest under
26 this act if, when this act takes effect, the applicable
27 requirements for enforceability and perfection under this act
28 are satisfied without further action.

29 (2) Except as otherwise provided in s. 679.705, if,
30 immediately before this act takes effect, a security interest
31 is enforceable and would have priority over the rights of a

1 person who becomes a lien creditor at that time, but the
2 applicable requirements for enforceability or perfection under
3 this act are not satisfied when this act takes effect, the
4 security interest:

5 (a) Is a perfected security interest for 1 year after
6 this act takes effect;

7 (b) Remains enforceable thereafter only if the
8 security interest becomes enforceable under s. 679.203 before
9 the year expires; and

10 (c) Remains perfected thereafter only if the
11 applicable requirements for perfection under this act are
12 satisfied before the year expires.

13 679.704 Security interest unperfected before effective
14 date.--A security interest that is enforceable immediately
15 before this act takes effect but that would be subordinate to
16 the rights of a person who becomes a lien creditor at that
17 time:

18 (1) Remains an enforceable security interest for 1
19 year after this act takes effect;

20 (2) Remains enforceable thereafter if the security
21 interest becomes enforceable under s. 679.203 when this act
22 takes effect or within 1 year thereafter; and

23 (3) Becomes perfected:

24 (a) Without further action when this act takes effect
25 if the applicable requirements for perfection under this act
26 are satisfied before or at that time; or

27 (b) When the applicable requirements for perfection
28 are satisfied if the requirements are satisfied after that
29 time.

30 679.705 Effectiveness of action taken before effective
31 date.--

1 (1) If action, other than the filing of a financing
2 statement, is taken before this act takes effect and the
3 action would have resulted in priority of a security interest
4 over the rights of a person who becomes a lien creditor had
5 the security interest become enforceable before this act takes
6 effect, the action is effective to perfect a security interest
7 that attaches under this act within 1 year after this act
8 takes effect. An attached security interest becomes
9 unperfected 1 year after this act takes effect unless the
10 security interest becomes a perfected security interest under
11 this act before the expiration of that period.

12 (2) The filing of a financing statement before this
13 act takes effect is effective to perfect a security interest
14 to the extent the filing would satisfy the applicable
15 requirements for perfection under this act.

16 (3) This act does not render ineffective an effective
17 financing statement that, before this act takes effect, is
18 filed and satisfies the applicable requirements for perfection
19 under the law of the jurisdiction governing perfection as
20 provided in s. 679.103, Florida Statutes 2000. However,
21 except as otherwise provided in subsections (4) and (5) and s.
22 679.706, the financing statement ceases to be effective at the
23 earlier of:

24 (a) The time the financing statement would have ceased
25 to be effective under the law of the jurisdiction in which it
26 is filed; or

27 (b) June 30, 2006.

28 (4) The filing of a continuation statement after this
29 act takes effect does not continue the effectiveness of the
30 financing statement filed before this act takes effect.
31 However, upon the timely filing of a continuation statement

1 after this act takes effect and in accordance with the law of
2 the jurisdiction governing perfection as provided in part III,
3 the effectiveness of a financing statement filed in the same
4 office in that jurisdiction before this act takes effect
5 continues for the period provided by the law of that
6 jurisdiction.

7 (5) Paragraph (3)(b) applies to a financing statement
8 that, before this act takes effect, is filed against a
9 transmitting utility and satisfies the applicable requirements
10 for perfection under the law of the jurisdiction governing
11 perfection as provided in s. 679.103, Florida Statutes 2000,
12 only to the extent that part III provides that the law of a
13 jurisdiction other than the jurisdiction in which the
14 financing statement is filed governs perfection of a security
15 interest in collateral covered by the financing statement.

16 (6) A financing statement that includes a financing
17 statement filed before this act takes effect and a
18 continuation statement filed after this act takes effect is
19 effective only to the extent that it satisfies the
20 requirements of part V for an initial financing statement.

21 679.706 When initial financing statement suffices to
22 continue effectiveness of financing statement.--

23 (1) The filing of an initial financing statement in
24 the office specified in s. 679.5011 continues the
25 effectiveness of a financing statement filed before this act
26 takes effect if:

27 (a) The filing of an initial financing statement in
28 that office would be effective to perfect a security interest
29 under this act;
30
31

1 (b) The pre-effective date financing statement was
2 filed in an office in another state or another office in this
3 state; and

4 (c) The initial financing statement satisfies
5 subsection (3).

6 (2) The filing of an initial financing statement under
7 subsection (1) continues the effectiveness of the
8 pre-effective date financing statement:

9 (a) If the initial financing statement is filed before
10 this act takes effect, for the period provided in s. 679.403,
11 Florida Statutes 2000, with respect to a financing statement;
12 and

13 (b) If the initial financing statement is filed after
14 this act takes effect, for the period provided in s. 679.515
15 with respect to an initial financing statement.

16 (3) To be effective for purposes of subsection (1), an
17 initial financing statement must:

18 (a) Satisfy the requirements of part V for an initial
19 financing statement;

20 (b) Identify the pre-effective date financing
21 statement by indicating the office in which the financing
22 statement was filed and providing the dates of filing and file
23 numbers, if any, of the financing statement and of the most
24 recent continuation statement filed with respect to the
25 financing statement; and

26 (c) Indicate that the pre-effective date financing
27 statement remains effective.

28 679.707 Amendment or pre-effective date financing
29 statement.--

30
31

1 (1) In this section, the term "pre-effective date
2 financing statement" means a financing statement filed before
3 this act takes effect.

4 (2) After this act takes effect, a person may add or
5 delete collateral covered by, continue or terminate the
6 effectiveness of, or otherwise amend the information provided
7 in a pre-effective date financing statement only in accordance
8 with the law of the jurisdiction governing perfection as
9 provided in part III. However, the effectiveness of a
10 pre-effective date financing statement also may be terminated
11 in accordance with the law of the jurisdiction in which the
12 financing statement is filed.

13 (3) Except as otherwise provided in subsection (4), if
14 the law of this state governs perfection of a security
15 interest, the information in a pre-effective date financing
16 statement may be amended after this act takes effect only if:

17 (a) The pre-effective date financing statement and an
18 amendment are filed in the office specified in s. 679.5011;

19 (b) An amendment is filed in the office specified in
20 s. 679.5011 concurrently with, or after the filing in that
21 office of, an initial financing statement that satisfies s.
22 671.706(3); or

23 (c) An initial financing statement that provides the
24 information as amended and satisfies s. 679.706(3) is filed in
25 the office specified in s. 679.5011.

26 (4) If the law of this state governs perfection of a
27 security interest, the effectiveness of a pre-effective date
28 financing statement may be continued only under s. 679.705(4)
29 and (6) or s. 679.706.

30 (5) Whether or not the law of this state governs
31 perfection of a security interest, the effectiveness of a

1 pre-effective date financing statement filed in this state may
2 be terminated after this act takes effect by filing a
3 termination statement in the office in which the pre-effective
4 date financing statement is filed, unless an initial financing
5 statement that satisfies s. 679.706(3) has been filed in the
6 office specified by the law of the jurisdiction governing
7 perfection as provided in part III as the office in which to
8 file a financing statement.

9 679.708 Persons entitled to file initial financing
10 statement or continuation statement.--A person may file an
11 initial financing statement or a continuation statement under
12 this part if:

13 (1) The secured party of record authorizes the filing;
14 and

15 (2) The filing is necessary under this part:

16 (a) To continue the effectiveness of a financing
17 statement filed before this act takes effect; or

18 (b) To perfect or continue the perfection of a
19 security interest.

20 679.709 Priority.--

21 (1) This act determines the priority of conflicting
22 claims to collateral. However, if the relative priorities of
23 the claims were established before this act takes effect,
24 chapter 679, Florida Statutes 2000, determines priority.

25 (2) For purposes of s. 679.322(1), the priority of a
26 security interest that becomes enforceable under s. 679.2031
27 of this act dates from the time this act takes effect if the
28 security interest is perfected under this act by the filing of
29 a financing statement before this act takes effect which would
30 not have been effective to perfect the security interest under
31 chapter 679, Florida Statutes 2000. This subsection does not

1 apply to conflicting security interests each of which is
2 perfected by the filing of such a financing statement.

3 Section 9. Subsection (2) of section 671.105, Florida
4 Statutes, is amended to read:

5 671.105 Territorial application of the code; parties'
6 power to choose applicable law.--

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

12 (a) Governing law in the chapter on funds transfers.
13 (s. 670.507)

14 (b) Rights of sellers' creditors against sold goods.
15 (s. 672.402)

16 (c) Applicability of the chapter on bank deposits and
17 collections. (s. 674.102)

18 (d) Applicability of the chapter on letters of credit.
19 (s. 675.116)

20 (e) Applicability of the chapter on investment
21 securities. (s. 678.1101)

22 (f) Law governing perfection, the effect provisions of
23 perfection or nonperfection, and the priority of security
24 interests and agricultural liens ~~chapter on secured~~
25 ~~transactions. (ss. 679.3011-679.3071) (s. 679.103)~~

26 (g) Applicability of the chapter on leases. (ss.
27 680.1051 and 680.1061)

28 Section 10. Subsections (9), (32), and (37) of section
29 671.201, Florida Statutes, are amended to read:

30 671.201 General definitions.--Subject to additional
31 definitions contained in the subsequent chapters of this code

1 which are applicable to specific chapters or parts thereof,
 2 and unless the context otherwise requires, in this code:

3 (9) "Buyer in ordinary course of business" means a
 4 person who buys goods in good faith ~~and~~ without knowledge that
 5 the sale violates ~~to him or her is in violation of the~~
 6 ownership rights or security interest of another person a
 7 third party in the goods, and buys in the ordinary course from
 8 a person, other than a pawnbroker, in the business of selling
 9 goods of that kind ~~but does not include a pawnbroker.~~ A
 10 person buys goods in the ordinary course if the sale to the
 11 person comports with the usual or customary practices in the
 12 kind of business in which the seller is engaged or with the
 13 seller's own usual or customary practices. A person who sells
 14 oil, gas, or other minerals at the wellhead or minehead is a
 15 person ~~All persons who sell minerals or the like (including~~
 16 ~~oil and gas) at wellhead or minehead shall be deemed to be~~
 17 ~~persons~~ in the business of selling goods of that kind. A buyer
 18 in the ordinary course of business ~~"Buying"~~ may buy ~~be~~ for
 19 cash, ~~or~~ by exchange of other property, ~~or~~ on secured or
 20 unsecured credit and may acquire ~~includes receiving~~ goods or
 21 documents of title under a preexisting contract for sale ~~but~~
 22 ~~does not include a transfer in bulk or as security for or in~~
 23 ~~total or partial satisfaction of a money debt.~~ Only a buyer
 24 who takes possession of the goods or has a right to recover
 25 the goods from the seller under chapter 672 may be a buyer in
 26 the ordinary course of business. A person who acquires goods
 27 in a transfer in bulk or as security for or in total or
 28 partial satisfaction of a money debt is not a buyer in the
 29 ordinary course of business.

30 (32) "Purchase" includes taking by sale, discount,
 31 negotiation, mortgage, pledge, lien, security interest, issue

1 or reissue, gift or any other voluntary transaction creating
2 an interest in property.

3 (37) "Security interest" means an interest in personal
4 property or fixtures which secures payment or performance of
5 an obligation. ~~The retention or reservation of title by a~~
6 ~~seller of goods notwithstanding shipment or delivery to the~~
7 ~~buyer (s. 672.401) is limited in effect to a reservation of a~~
8 ~~security interest.~~The term also includes any interest of a
9 consignor and a buyer of accounts, or chattel paper, a payment
10 intangible, or a promissory note in a transaction which is
11 subject to chapter 679. The special property interest of a
12 buyer of goods on identification of those goods to a contract
13 for sale under s. 672.401 is not a security interest, but a
14 buyer may also acquire a security interest by complying with
15 chapter 679. Except as otherwise provided in s. 672.505, the
16 right of a seller or lessor of goods under chapter 672 or
17 chapter 680 to retain or acquire possession of the goods is
18 not a security interest, but a seller or lessor may also
19 acquire a security interest by complying with chapter 679. The
20 retention or reservation of title by a seller of goods,
21 notwithstanding shipment or delivery to the buyer (s.
22 672.401), is limited in effect to a reservation of a security
23 interest.~~Unless a consignment is intended as security,~~
24 ~~reservation of title thereunder is not a security interest,~~
25 ~~but a consignment is in any event subject to the provisions on~~
26 ~~consignment sales (s. 672.326).~~ Whether a transaction creates
27 a lease or security interest is determined by the facts of
28 each case; however:

29 (a) A transaction creates a security interest if the
30 consideration the lessee is to pay the lessor for the right to
31

1 possession and use of the goods is an obligation for the term
2 of the lease not subject to termination by the lessee, and;

3 1. The original term of the lease is equal to or
4 greater than the remaining economic life of the goods;

5 2. The lessee is bound to renew the lease for the
6 remaining economic life of the goods or is bound to become the
7 owner of the goods;

8 3. The lessee has an option to renew the lease for the
9 remaining economic life of the goods for no additional
10 consideration or nominal additional consideration upon
11 compliance with the lease agreement; or

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

15 (b) A transaction does not create a security interest
16 merely because it provides that:

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

22 2. The lessee assumes the risk of loss of the goods or
23 agrees to pay taxes; insurance; filing, recording, or
24 registration fees; or service or maintenance costs with
25 respect to the goods;

26 3. The lessee has an option to renew the lease or to
27 become the owner of the goods;

28 4. The lessee has an option to renew the lease for a
29 fixed rent that is equal to or greater than the reasonably
30 predictable fair market rent for the use of the goods for the
31

1 term of the renewal at the time the option is to be performed;
2 or

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

7 (c) For purposes of this subsection:

8 1. Additional consideration is not nominal if, when
9 the option to renew the lease is granted to the lessee, the
10 rent is stated to be the fair market rent for the use of the
11 goods for the term of the renewal determined at the time the
12 option is to be performed or if, when the option to become the
13 owner of the goods is granted to the lessee, the price is
14 stated to be the fair market value of the goods determined at
15 the time the option is to be performed. Additional
16 consideration is nominal if it is less than the lessee's
17 reasonably predictable cost of performing under the lease
18 agreement if the option is not exercised.

19 2. "Reasonably predictable" and "remaining economic
20 life of the goods" are to be determined with reference to the
21 facts and circumstances at the time the transaction is entered
22 into.

23 3. "Present value" means the amount as of a date
24 certain of one or more sums payable in the future, discounted
25 to the date certain. The discount is determined by the
26 interest rate specified by the parties if the rate is not
27 manifestly unreasonable at the time the transaction is entered
28 into; otherwise, the discount is determined by a commercially
29 reasonable rate that takes into account the facts and
30 circumstances of each case at the time the transaction was
31 entered into.

1 Section 11. Subsection (3) of section 672.103, Florida
2 Statutes, is amended to read:

3 672.103 Definitions and index of definitions.--

4 (3) The following definitions in other chapters apply
5 to this chapter:

6 "Check," s. 673.1041.

7 "Consignee," s. 677.102.

8 "Consignor," s. 677.102.

9 "Consumer goods," s. 679.1021 ~~679.109~~.

10 "Dishonor," s. 673.5021.

11 "Draft," s. 673.1041.

12 Section 12. Section 672.210, Florida Statutes, is
13 amended to read:

14 672.210 Delegation of performance; assignment of
15 rights.--

16 (1) A party may perform her or his duty through a
17 delegate unless otherwise agreed or unless the other party has
18 a substantial interest in having her or his original promisor
19 perform or control the acts required by the contract. No
20 delegation of performance relieves the party delegating of any
21 duty to perform or any liability for breach.

22 (2) Except as otherwise provided in s. 679.4061,
23 unless otherwise agreed all rights of either seller or buyer
24 can be assigned except where the assignment would materially
25 change the duty of the other party, or increase materially the
26 burden or risk imposed on her or him by her or his contract,
27 or impair materially her or his chance of obtaining return
28 performance. A right to damages for breach of the whole
29 contract or a right arising out of the assignor's due
30 performance of her or his entire obligation can be assigned
31 despite agreement otherwise.

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

18 ~~(4)(3)~~ Unless the circumstances indicate the contrary
 19 a prohibition of assignment of "the contract" is to be
 20 construed as barring only the delegation to the assignee of
 21 the assignor's performance.

22 ~~(5)(4)~~ An assignment of "the contract" or of "all my
 23 rights under the contract" or an assignment in similar general
 24 terms is an assignment of rights and unless the language or
 25 the circumstances (as in an assignment for security) indicate
 26 the contrary, it is a delegation of performance of the duties
 27 of the assignor and its acceptance by the assignee constitutes
 28 a promise by her or him to perform those duties. This promise
 29 is enforceable by either the assignor or the other party to
 30 the original contract.

31

1 (6)~~(5)~~ The other party may treat any assignment which
2 delegates performance as creating reasonable grounds for
3 insecurity and may without prejudice to her or his rights
4 against the assignor demand assurances from the assignee (s.
5 672.609).

6 Section 13. Section 672.326, Florida Statutes, is
7 amended to read:

8 672.326 Sale on approval and sale or return;
9 ~~consignment sales and rights of creditors.--~~

10 (1) Unless otherwise agreed, if delivered goods may be
11 returned by the buyer even though they conform to the
12 contract, the transaction is:

13 (a) A "sale on approval" if the goods are delivered
14 primarily for use, and

15 (b) A "sale or return" if the goods are delivered
16 primarily for resale.

17 (2) ~~Except as provided in subsection (3),~~ Goods held
18 on approval are not subject to the claims of the buyer's
19 creditors until acceptance; goods held on sale or return are
20 subject to such claims while in the buyer's possession.

21 ~~(3) Where goods are delivered to a person for sale and
22 such person maintains a place of business at which she or he
23 deals in goods of the kind involved, under a name other than
24 the name of the person making delivery, then with respect to
25 claims of creditors of the person conducting the business the
26 goods are deemed to be on sale or return. The provisions of
27 this subsection are applicable even though an agreement
28 purports to reserve title to the person making delivery until
29 payment or resale or uses such words as "on consignment" or
30 "on memorandum." However, this subsection is not applicable if
31 the person making delivery:~~

1 ~~(a) Complies with an applicable law providing for a~~
2 ~~consignor's interest or the like to be evidenced by a sign, or~~

3 ~~(b) Establishes that the person conducting the~~
4 ~~business is generally known by her or his creditors to be~~
5 ~~substantially engaged in selling the goods of others, or~~

6 ~~(c) Complies with the filing provisions of the chapter~~
7 ~~on secured transactions (chapter 679).~~

8 ~~(3)(4)~~ Any "or return" term of a contract for sale is
9 to be treated as a separate contract for sale within the
10 statute of frauds section of this chapter (s. 672.201) and as
11 contradicting the sale aspect of the contract within the
12 provisions of this chapter on parol or extrinsic evidence (s.
13 672.202).

14 Section 14. Section 672.502, Florida Statutes, is
15 amended to read:

16 672.502 Buyer's right to goods on seller's
17 repudiation, failure to deliver, or insolvency.--

18 (1) Subject to subsections ~~subsection~~ (2) and (3), and
19 even though the goods have not been shipped, a buyer who has
20 paid a part or all of the price of goods in which she or he
21 has a special property under the provisions of the immediately
22 preceding section may on making and keeping good a tender of
23 any unpaid portion of their price recover them from the seller
24 if:

25 (a) In the case of goods bought for personal, family,
26 or household purposes, the seller repudiates or fails to
27 deliver as required by the contract; or

28 (b) In all cases, the seller becomes insolvent within
29 ten days after receipt of the first installment on their
30 price.

31

1 (2) The buyer's right to recover the goods under
2 paragraph (1)(a) vests upon acquisition of a special property,
3 even if the seller has not then repudiated or failed to
4 deliver.

5 ~~(3)(2)~~ If the identification creating her or his
6 special property has been made by the buyer she or he acquires
7 the right to recover the goods only if they conform to the
8 contract for sale.

9 Section 15. Section 672.716, Florida Statutes, is
10 amended to read:

11 672.716 Buyer's right to specific performance or
12 replevin.--

13 (1) Specific performance may be decreed where the
14 goods are unique or in other proper circumstances.

15 (2) The decree for specific performance may include
16 such terms and conditions as to payment of the price, damages,
17 or other relief as the court may deem just.

18 (3) The buyer has a right of replevin for goods
19 identified to the contract if after reasonable effort she or
20 he is unable to effect cover for such goods or the
21 circumstances reasonably indicate that such effort will be
22 unavailing or if the goods have been shipped under reservation
23 and satisfaction of the security interest in them has been
24 made or tendered. In the case of goods bought for personal,
25 family, or household purposes, the buyer's right of replevin
26 vests upon acquisition of a special property, even if the
27 seller had not then repudiated or failed to deliver.

28 Section 16. Subsection (3) of section 674.2101,
29 Florida Statutes, is amended to read:

30 674.2101 Security interest of collecting bank in
31 items, accompanying documents, and proceeds.--

1 (3) Receipt by a collecting bank of a final settlement
2 for an item is a realization on its security interest in the
3 item, accompanying documents, and proceeds. So long as the
4 bank does not receive final settlement for the item or give up
5 possession of the item or accompanying documents for purposes
6 other than collection, the security interest continues to that
7 extent and is subject to chapter 679, but:

8 (a) No security agreement is necessary to make the
9 security interest enforceable (s. 679.2031(2)(c)1.

10 ~~679.203(1)(a)~~);

11 (b) No filing is required to perfect the security
12 interest; and

13 (c) The security interest has priority over
14 conflicting perfected security interests in the item,
15 accompanying documents, or proceeds.

16 Section 17. Section 675.1181, Florida Statutes, is
17 created to read:

18 675.1181 Security interest of issuer of nominated
19 person.--

20 (1) An issuer or nominated person has a security
21 interest in a document presented under a letter of credit to
22 the extent that the issuer or nominated person honors or gives
23 value for the presentation.

24 (2) As long as and to the extent that an issuer or
25 nominated person has not been reimbursed or has not otherwise
26 recovered the value given with respect to a security interest
27 in a document under subsection (1), the security interest
28 continues and is subject to chapter 679, but a security
29 agreement is not necessary to make the security interest
30 enforceable under s. 679.2031(2)(c):

31

1 (a) If the document is presented in a medium other
2 than a written or other tangible medium, the security interest
3 is perfected; and

4 (b) If the document is presented in a written or other
5 tangible medium and is not a certificated security, chattel
6 paper, a document of title, an instrument, or a letter of
7 credit, the security interest is perfected and has priority
8 over a conflicting security interest in the document so long
9 as the debtor does not have possession of the document.

10 Section 18. Subsection (1) of section 677.503, Florida
11 Statutes, is amended to read:

12 677.503 Document of title to goods defeated in certain
13 cases.--

14 (1) A document of title confers no right in goods
15 against a person who before issuance of the document had a
16 legal interest or a perfected security interest in them and
17 who neither:

18 (a) Delivered or entrusted them or any document of
19 title covering them to the bailor or the bailor's nominee with
20 actual or apparent authority to ship, store or sell or with
21 power to obtain delivery under this chapter (s. 677.403) or
22 with power of disposition under this code (ss. 672.403 and
23 679.320 ~~679.307~~) or other statute or rule of law; nor

24 (b) Acquiesced in the procurement by the bailor or the
25 bailor's nominee of any document of title.

26 Section 19. Subsection (6) of section 678.1031,
27 Florida Statutes, is amended to read:

28 678.1031 Rules for determining whether certain
29 obligations and interests are securities or financial
30 assets.--

31

1 (6) A commodity contract, as defined in s.
2 679.1021(1)(o)~~679.115~~, is not a security or a financial
3 asset.

4 Section 20. Subsections (4) and (6) of section
5 678.1061, Florida Statutes, are amended to read:

6 678.1061 Control.--

7 (4) A purchaser has "control" of a security
8 entitlement if:

9 (a) The purchaser becomes the entitlement holder; ~~or~~

10 (b) The securities intermediary has agreed that it
11 will comply with entitlement orders originated by the
12 purchaser without further consent by the entitlement holder;
13 or;

14 (c) Another person has control of the security
15 entitlement on behalf of the purchaser or, having previously
16 acquired control of the security entitlement, acknowledges
17 that the person has control on behalf of the purchaser.

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

27 Section 21. Subsection (5) of section 678.1101,
28 Florida Statutes, is amended to read:

29 678.1101 Applicability; choice of law.--

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

1 (a) If an agreement between the securities
 2 intermediary and its entitlement holder governing the
 3 securities account expressly provides that a particular
 4 jurisdiction is the securities intermediary's jurisdiction for
 5 purposes of this part, this chapter, or this code ~~specifies~~
 6 ~~that it is governed by the law of a particular jurisdiction,~~
 7 that jurisdiction is the securities intermediary's
 8 jurisdiction.

9 (b) If paragraph (a) does not apply and an agreement
 10 between the securities intermediary and its entitlement holder
 11 governing the securities account expressly provides that the
 12 agreement is governed by the law of a particular jurisdiction,
 13 that jurisdiction is the securities intermediary's
 14 jurisdiction.

15 (c)~~(b)~~ If neither paragraph (a) nor paragraph (b)
 16 applies and an agreement between the securities intermediary
 17 and its entitlement holder governing the securities account
 18 ~~does not specify the governing law as provided in paragraph~~
 19 ~~(a), but expressly provides~~ ~~specifies~~ that the securities
 20 account is maintained at an office in a particular
 21 jurisdiction, that jurisdiction is the securities
 22 intermediary's jurisdiction.

23 (d)~~(c)~~ If none of the preceding paragraphs applies an
 24 agreement between the securities intermediary and its
 25 entitlement holder does not specify a jurisdiction as provided
 26 in paragraph (a) or paragraph (b), the securities
 27 intermediary's jurisdiction is the jurisdiction in which is
 28 located the office identified in an account statement as the
 29 office serving the entitlement holder's account is located.

30 (e)~~(d)~~ If none of the preceding paragraphs applies an
 31 agreement between the securities intermediary and its

1 ~~entitlement holder does not specify a jurisdiction as provided~~
2 ~~in paragraph (a) or paragraph (b) and an account statement~~
3 ~~does not identify an office serving the entitlement holder's~~
4 ~~account as provided in paragraph (c), the securities~~
5 ~~intermediary's jurisdiction is the jurisdiction in which is~~
6 ~~located the chief executive office of the securities~~
7 ~~intermediary is located.~~

8 Section 22. Subsection (1) of section 678.3011,
9 Florida Statutes, is amended to read:

10 678.3011 Delivery.--

11 (1) Delivery of a certificated security to a purchaser
12 occurs when:

13 (a) The purchaser acquires possession of the security
14 certificate;

15 (b) Another person, other than a securities
16 intermediary, either acquires possession of the security
17 certificate on behalf of the purchaser or, having previously
18 acquired possession of the certificate, acknowledges that it
19 holds for the purchaser; or

20 (c) A securities intermediary acting on behalf of the
21 purchaser acquires possession of the security certificate,
22 only if the certificate is in registered form and is
23 registered in the name of the purchaser, payable to the order
24 of the purchaser, or ~~has been~~ specially indorsed to the
25 purchaser by an effective indorsement and has not been
26 endorsed to the securities intermediary or in blank.

27 Section 23. Section 678.3021, Florida Statutes, is
28 amended to read:

29 678.3021 Rights of purchaser.--

30 (1) Except as otherwise provided in subsections (2)
31 and (3), a purchaser ~~upon delivery~~ of a certificated or

1 ~~uncertificated security to a purchaser, the purchaser~~ acquires
2 all rights in the security that the transferor had or had
3 power to transfer.

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

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

9 Section 24. Section 678.5101, Florida Statutes, is
10 amended to read:

11 678.5101 Rights of purchaser of security entitlement
12 from entitlement holder.--

13 (1) In a case not covered by the priority rules in
14 chapter 679 or the rules stated in subsection (3), an action
15 based on an adverse claim to a financial asset or security
16 entitlement, whether framed in conversion, replevin,
17 constructive trust, equitable lien, or other theory, may not
18 be asserted against a person who purchases a security
19 entitlement, or an interest therein, from an entitlement
20 holder if the purchaser gives value, does not have notice of
21 the adverse claim, and obtains control.

22 (2) If an adverse claim could not have been asserted
23 against an entitlement holder under s. 678.5021, the adverse
24 claim cannot be asserted against a person who purchases a
25 security entitlement, or an interest therein, from the
26 entitlement holder.

27 (3) In a case not covered by the priority rules in
28 chapter 679, a purchaser for value of a security entitlement,
29 or an interest therein, who obtains control has priority over
30 a purchaser of a security entitlement, or an interest therein,
31 who does not obtain control. Except as otherwise provided in

1 subsection (4), purchasers who have control rank according to
2 priority in time of:

3 (a) The purchaser's becoming the person for whom the
4 securities account, in which the security entitlement is
5 carried, is maintained, if the purchaser obtained control
6 under s. 678.1061(4)(a);

7 (b) The securities intermediary's agreement to comply
8 with the purchaser's entitlement orders with respect to
9 security entitlements carried or to be carried in the
10 securities account in which the security entitlement is
11 carried, if the purchaser obtained control under s.
12 678.1061(4)(b); or

13 (c) If the purchaser obtained control through another
14 person under s. 678.1061(4)(c), the time on which priority
15 would be based under this subsection if the other person were
16 the secured party, ~~equally, except that~~

17 (4) A securities intermediary as purchaser has
18 priority over a conflicting purchaser who has control unless
19 otherwise agreed by the securities intermediary.

20 Section 25. Subsection (3) of section 680.1031,
21 Florida Statutes, is amended to read:

22 680.1031 Definitions and index of definitions.--

23 (3) The following definitions in other chapters of
24 this code apply to this chapter:

25 (a) "Account," s. 679.1021(1)(b)~~679.106~~.

26 (b) "Between merchants," s. 672.104(3).

27 (c) "Buyer," s. 672.103(1)(a).

28 (d) "Chattel paper," s. 679.1021(1)(k)~~679.105(1)(b)~~.

29 (e) "Consumer goods," s. 679.1021(1)(w)~~679.109(1)~~.

30 (f) "Document," s. 679.1021(1)(dd)~~679.105(1)(f)~~.

31 (g) "Entrusting," s. 672.403(3).

- 1 (h) "General intangible ~~intangibles~~," s.
2 679.1021(1)(pp)~~679.106~~.
- 3 (i) "Good faith," s. 672.103(1)(b).
- 4 (j) "Instrument," s. 679.1021(1)(uu)~~679.105(1)(i)~~.
- 5 (k) "Merchant," s. 672.104(1).
- 6 (l) "Mortgage," s. 679.1021(1)(ccc)~~679.105(1)(j)~~.
- 7 (m) "Pursuant to a commitment," s. 679.1021(1)(ppp)
8 ~~679.105(1)(k)~~.
- 9 (n) "Receipt," s. 672.103(1)(c).
- 10 (o) "Sale," s. 672.106(1).
- 11 (p) "Sale on approval," s. 672.326(1).
- 12 (q) "Sale or return," s. 672.326(1).
- 13 (r) "Seller," s. 672.103(1)(d).

14 Section 26. Section 680.303, Florida Statutes, is
15 amended to read:

16 680.303 Alienability of party's interest under lease
17 contract or of lessor's residual interest in goods; delegation
18 of performance; transfer of rights.--

19 (1) As used in this section, "creation of a security
20 interest" includes the sale of a lease contract that is
21 subject to chapter 679 by reason of s. 679.1091(1)(c).

22 (2) Except as provided in subsection ~~subsections~~ (3)
23 and s. 679.4071(4)~~(4)~~, a provision in a lease agreement which:

24 (a) Prohibits the voluntary or involuntary transfer,
25 including a transfer by sale, sublease, creation or
26 enforcement of a security interest, or attachment, levy, or
27 other judicial process, of an interest of a party under the
28 lease contract or of the lessor's residual interest in the
29 goods; or

30 (b) Makes such a transfer an event of default, gives
31 rise to the rights and remedies provided in subsection(4)

1 ~~(5)~~, but a transfer that is prohibited or is an event of
2 default under the lease agreement is otherwise effective.
3 ~~(3) A provision in a lease agreement which:~~
4 ~~(a) Prohibits the creation or enforcement of a~~
5 ~~security interest in an interest of a party under the lease~~
6 ~~contract or in the lessor's residual interest in the goods; or~~
7 ~~(b) Makes such a transfer an event of default, is not~~
8 ~~enforceable unless, and then only to the extent that, there is~~
9 ~~an actual transfer by the lessee of the lessee's right of~~
10 ~~possession or use of the goods in violation of the provision~~
11 ~~or an actual delegation of a material performance of either~~
12 ~~party to the lease contract in violation of the provision.~~
13 ~~Neither the granting nor the enforcement of a security~~
14 ~~interest in the lessor's interest under the lease contract or~~
15 ~~the lessor's residual interest in the goods is a transfer that~~
16 ~~materially impairs the prospect of obtaining return~~
17 ~~performance by, materially changes the duty of, or materially~~
18 ~~increases the burden or risk imposed on, the lessee within the~~
19 ~~purview of subsection (5) unless, and then only to the extent~~
20 ~~that, there is an actual delegation of a material performance~~
21 ~~of the lessor.~~
22 (3)(4) A provision in a lease agreement which:
23 (a) Prohibits a transfer of a right to damages for
24 default with respect to the whole lease contract or of a right
25 to payment arising out of the transferor's due performance of
26 the transferor's entire obligation; or
27 (b) Makes such a transfer an event of default, is not
28 enforceable, and such a transfer is not a transfer that
29 materially impairs the prospect of obtaining return
30 performance by, materially changes the duty of, or materially
31

1 increases the burden or risk imposed on, the other party to
2 the lease contract within the purview of subsection (4)~~(5)~~.

3 ~~(4)~~~~(5)~~ Subject to subsection ~~subsections~~ (3) and s.
4 679.4071~~(4)~~:

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

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

24 ~~(5)~~~~(6)~~ A transfer of "the lease" or of "all my rights
25 under the lease" or a transfer in similar general terms is a
26 transfer of rights, and unless the language or the
27 circumstances, as in a transfer for security, indicate the
28 contrary, the transfer is a delegation of duties by the
29 transferor to the transferee. Acceptance by the transferee
30 constitutes a promise by the transferee to perform those
31

1 duties. The promise is enforceable by either the transferor or
2 the other party to the lease contract.

3 (6)~~(7)~~ Unless otherwise agreed by the lessor and the
4 lessee, a delegation of performance does not relieve the
5 transferor as against the other party of any duty to perform
6 or of any liability for default.

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

11 Section 27. Section 680.307, Florida Statutes, is
12 amended to read:

13 680.307 Priority of liens arising by attachment or
14 levy on, security interests in, and other claims to goods.--

15 (1) Except as otherwise provided in s. 680.306, a
16 creditor of a lessee takes subject to the lease contract.

17 (2) Except as otherwise provided in subsection
18 ~~subsections~~ (3) ~~and (4)~~ and in ss. 680.306 and 680.308, a
19 creditor of a lessor takes subject to the lease contract
20 unless:

21 ~~(a) the creditor holds a lien that attached to the~~
22 ~~goods before the lease contract became enforceable.~~

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

26 ~~(c) The creditor holds a security interest in the~~
27 ~~goods which was perfected (s. 679.303) before the lease~~
28 ~~contract became enforceable.~~

29 (3) Except as otherwise provided in ss. 679.3171,
30 679.321, and 679.323, a lessee takes a leasehold interest
31 subject to a security interest held by a creditor or lessor.

1 ~~lessee in the ordinary course of business takes the leasehold~~
2 ~~interest free of a security interest in the goods created by~~
3 ~~the lessor even though the security interest is perfected (s.~~
4 ~~679.303) and the lessee knows of its existence.~~

5 ~~(4) A lessee other than a lessee in the ordinary~~
6 ~~course of business takes the leasehold interest free of a~~
7 ~~security interest to the extent that it secures future~~
8 ~~advances made after the secured party acquires knowledge of~~
9 ~~the lease or more than 45 days after the lease contract~~
10 ~~becomes enforceable, whichever first occurs, unless the future~~
11 ~~advances are made pursuant to a commitment entered into~~
12 ~~without knowledge of the lease and before the expiration of~~
13 ~~the 45-day period.~~

14 Section 28. Paragraph (b) of subsection (1) of section
15 680.309, Florida Statutes, is amended to read:

16 680.309 Lessor's and lessee's rights when goods become
17 fixtures.--

18 (1) In this section:

19 (b) A "fixture filing" is the filing, in the office
20 where a mortgage on the real estate would be filed or
21 recorded, of a financing statement covering goods that are or
22 are to become fixtures and conforming to the requirements of
23 s. 679.5021(1) and (2)~~679.402(5)~~.

24 Section 29. This act shall take effect January 1,
25 2002.