

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; creating s. 285.20, F.S.;
15 establishing the Tribal Secured Transactions
16 Filing Offices; specifying nonsupersession of
17 certain provisions; providing effective dates.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Part I of chapter 679, Florida Statutes,
22 consisting of sections 679.101, 679.102, 679.103, 679.104,
23 679.105, 679.106, 679.107, 679.108, 679.109, 679.110, 679.112,
24 679.113, 679.114, 679.115, and 679.116, Florida Statutes, is
25 repealed and a new part I of that chapter, consisting of
26 sections 679.1011, 679.1021, 679.1031, 679.1041, 679.1051,
27 679.1061, 679.1071, 679.1081, 679.1091, and 679.1101, Florida
28 Statutes, is created to read:

29 PART I

30 GENERAL PROVISIONS

31

1 679.1011 Short title.--This chapter may be cited as
2 Uniform Commercial Code-Secured Transactions.

3 679.1021 Definitions and index of definitions.--

4 (1) In this chapter, the term:

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

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

29 (c) "Account debtor" means a person obligated on an
30 account, chattel paper, or general intangible. The term does
31

1 not include persons obligated to pay a negotiable instrument,
2 even if the instrument constitutes part of chattel paper.

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

- 5 1. Authenticated by a secured party;
- 6 2. Indicating the aggregate unpaid secured obligations
7 as of a date not more than 35 days earlier or 35 days later
8 than the date of the record; and
- 9 3. Identifying the components of the obligations in
10 reasonable detail.

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

13 1. Which secures payment or performance of an
14 obligation for:

15 a. Goods or services furnished in connection with a
16 debtor's farming operation; or

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

19 2. Which is created by statute in favor of a person
20 who:

21 a. In the ordinary course of the person's business
22 furnished goods or services to a debtor in connection with a
23 debtor's farming operation; or

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

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

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

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

31

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

3 b. Attaches to the minerals as extracted; or

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

7 (g) "Authenticate" means:

8 1. To sign; or

9 2. To execute or otherwise adopt a symbol, or encrypt
10 or similarly process a record in whole or in part, with the
11 present intent of the authenticating person to identify the
12 person and adopt or accept a record.

13 (h) "Bank" means an organization that is engaged in
14 the business of banking. The term includes savings banks,
15 savings and loan associations, credit unions, and trust
16 companies.

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

19 (j) "Certificate of title" means a certificate of
20 title with respect to which a statute provides for the
21 security interest in question to be indicated on the
22 certificate as a condition or result of the security
23 interest's obtaining priority over the rights of a lien
24 creditor with respect to the collateral.

25 (k) "Chattel paper" means a record or records that
26 evidence both a monetary obligation and a security interest in
27 specific goods, a security interest in specific goods and
28 software used in the goods, a security interest in specific
29 goods and license of software used in the goods, a lease of
30 specific goods, or a lease of specific goods and license of
31 software used in the goods. In this paragraph, "monetary

1 obligation" means a monetary obligation secured by the goods
2 or owed under a lease of the goods and includes a monetary
3 obligation with respect to software used in the goods. The
4 term does not include charters or other contracts involving
5 the use or hire of a vessel or records that evidence a right
6 to payment arising out of the use of a credit or charge card
7 or information contained on or for use with the card. If a
8 transaction is evidenced by records that include an instrument
9 or series of instruments, the group of records taken together
10 constitutes chattel paper.

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

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

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

- 19 1. The claimant is an organization; or
20 2. The claimant is an individual and the claim:
21 a. Arose in the course of the claimant's business or
22 profession; and
23 b. Does not include damages arising out of personal
24 injury to or the death of an individual.

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

28 (o) "Commodity contract" means a commodity futures
29 contract, an option on a commodity futures contract, a
30 commodity option, or another contract if the contract or
31 option is:

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

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

7 (p) "Commodity customer" means a person for which a
8 commodity intermediary carries a commodity contract on its
9 books.

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

11 1. Is registered as a futures commission merchant
12 under federal commodities law; or

13 2. In the ordinary course of the person's business
14 provides clearance or settlement services for a board of trade
15 that has been designated as a contract market pursuant to
16 federal commodities law.

17 (r) "Communicate" means:

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

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

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

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

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

29 1. The merchant:

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

- 1 b. Is not an auctioneer; and
2 c. Is not generally known by its creditors to be
3 substantially engaged in selling the goods of others;
4 2. With respect to each delivery, the aggregate value
5 of the goods is \$1,000 or more at the time of delivery;
6 3. The goods are not consumer goods immediately before
7 delivery; and
8 4. The transaction does not create a security interest
9 that secures an obligation.
10 (u) "Consignor" means a person who delivers goods to a
11 consignee in a consignment.
12 (v) "Consumer debtor" means a debtor in a consumer
13 transaction.
14 (w) "Consumer goods" means goods that are used or
15 bought for use primarily for personal, family, or household
16 purposes.
17 (x) "Consumer-goods transaction" means a consumer
18 transaction in which:
19 1. An individual incurs an obligation primarily for
20 personal, family, or household purposes; and
21 2. A security interest in consumer goods secures the
22 obligation.
23 (y) "Consumer obligor" means an obligor who is an
24 individual and who incurred the obligation as part of a
25 transaction entered into primarily for personal, family, or
26 household purposes.
27 (z) "Consumer transaction" means a transaction in
28 which an individual incurs an obligation primarily for
29 personal, family, or household purposes; a security interest
30 secures the obligation; and the collateral is held or acquired
31

1 primarily for personal, family, or household purposes. The
2 term includes consumer-goods transactions.

3 (aa) "Continuation statement" means an amendment of a
4 financing statement which:

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

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

10 (bb) "Debtor" means:

11 1. A person having an interest, other than a security
12 interest or other lien, in the collateral, whether or not the
13 person is an obligor;

14 2. A seller of accounts, chattel paper, payment
15 intangibles, or promissory notes; or

16 3. A consignee.

17 (cc) "Deposit account" means a demand, time, savings,
18 passbook, or similar account maintained with a bank. The term
19 does not include investment property or accounts evidenced by
20 an instrument.

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

23 (ee) "Electronic chattel paper" means chattel paper
24 evidenced by a record or records consisting of information
25 stored in an electronic medium.

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

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

31

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

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

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

6 b. Aquatic goods produced in aquacultural operations;

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

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

10 or

11 4. Products of crops or livestock in their
12 unmanufactured states.

13 (ii) "Farming operation" means raising, cultivating,
14 propagating, fattening, grazing, or any other farming,
15 livestock, or aquacultural operation.

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

18 (kk) "Filing office" means an office designated in s.
19 679.5011 as the place to file a financing statement.

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

22 (mm) "Financing statement" means a record or records
23 composed of an initial financing statement and any filed
24 record relating to the initial financing statement.

25 (nn) "Fixture filing" means the filing of a financing
26 statement covering goods that are or are to become fixtures
27 and satisfying s. 679.502(1) and (2). The term includes the
28 filing of a financing statement covering goods of a
29 transmitting utility which are or are to become fixtures.

30

31

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

4 (pp) "General intangible" means any personal property,
5 including things in action, other than accounts, chattel
6 paper, commercial tort claims, deposit accounts, documents,
7 goods, instruments, investment property, letter-of-credit
8 rights, letters of credit, money, and oil, gas, or other
9 minerals before extraction. The term includes payment
10 intangibles and software.

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

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

31

1 credit, money, or oil, gas, or other minerals before
2 extraction.

3 (ss) "Governmental unit" means a subdivision, agency,
4 department, county, parish, municipality, or other unit of the
5 government of the United States, a state, or a foreign
6 country. The term includes an organization having a separate
7 corporate existence if the organization is eligible to issue
8 debt on which interest is exempt from income taxation under
9 the laws of the United States.

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

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

24 (vv) "Inventory" means goods, other than farm
25 products, which:

- 26 1. Are leased by a person as lessor;
- 27 2. Are held by a person for sale or lease or to be
28 furnished under a contract of service;
- 29 3. Are furnished by a person under a contract of
30 service; or

31

1 4. Consist of raw materials, work in process, or
2 materials used or consumed in a business.

3 (ww) "Investment property" means a security, whether
4 certificated or uncertificated, security entitlement,
5 securities account, commodity contract, or commodity account.

6 (xx) "Jurisdiction of organization," with respect to a
7 registered organization, means the jurisdiction under whose
8 law the organization is organized.

9 (yy) "Letter-of-credit right" means a right to payment
10 or performance under a letter of credit, whether or not the
11 beneficiary has demanded or is at the time entitled to demand
12 payment or performance. The term does not include the right
13 of a beneficiary to demand payment or performance under a
14 letter of credit.

15 (zz) "Lien creditor" means:

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

18 2. An assignee for benefit of creditors from the time
19 of assignment;

20 3. A trustee in bankruptcy from the date of the filing
21 of the petition; or

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

23 (aaa) "Manufactured home" means a structure,
24 transportable in one or more sections, which, in the traveling
25 mode, is eight body feet or more in width or 40 body feet or
26 more in length, or, when erected on site, is 320 or more
27 square feet, and which is built on a permanent chassis and
28 designed to be used as a dwelling with or without a permanent
29 foundation when connected to the required utilities, and
30 includes the plumbing, heating, air-conditioning, and
31 electrical systems contained therein. The term includes any

1 structure that meets all of the requirements of this paragraph
2 except the size requirements and with respect to which the
3 manufacturer voluntarily files a certification required by the
4 United States Secretary of Housing and Urban Development and
5 complies with the standards established under Title 42 of the
6 United States Code.

7 (bbb) "Manufactured-home transaction" means a secured
8 transaction:

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

12 2. In which a manufactured home, other than a
13 manufactured home held as inventory, is the primary
14 collateral.

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

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

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

27 (fff) "Noncash proceeds" means proceeds other than
28 cash proceeds.

29 (ggg) "Obligor" means a person who, with respect to an
30 obligation secured by a security interest in or an
31 agricultural lien on the collateral, owes payment or other

1 performance of the obligation, has provided property other
2 than the collateral to secure payment or other performance of
3 the obligation, or is otherwise accountable in whole or in
4 part for payment or other performance of the obligation. The
5 term does not include issuers or nominated persons under a
6 letter of credit.

7 (hhh) "Original debtor," except as used in s.
8 679.3101(3), means a person who, as debtor, entered into a
9 security agreement to which a new debtor has become bound
10 under s. 679.2031(4).

11 (iii) "Payment intangible" means a general intangible
12 under which the account debtor's principal obligation is a
13 monetary obligation.

14 (jjj) "Person related to," with respect to an
15 individual, means:

- 16 1. The spouse of the individual;
- 17 2. A brother, brother-in-law, sister, or sister-in-law
18 of the individual;
- 19 3. An ancestor or lineal descendant of the individual
20 or the individual's spouse; or
- 21 4. Any other relative, by blood or marriage, of the
22 individual or the individual's spouse who shares the same home
23 with the individual.

24 (kkk) "Person related to," with respect to an
25 organization, means:

- 26 1. A person directly or indirectly controlling,
27 controlled by, or under common control with the organization;
- 28 2. An officer or director of, or a person performing
29 similar functions with respect to, the organization;

30
31

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

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

6 5. An individual who is related by blood or marriage
7 to an individual described in subparagraph 1., subparagraph
8 2., subparagraph 3., or subparagraph 4. and shares the same
9 home with the individual.

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

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

14 2. Whatever is collected on, or distributed on account
15 of, collateral;

16 3. Rights arising out of collateral;

17 4. To the extent of the value of collateral, claims
18 arising out of the loss, nonconformity, or interference with
19 the use of, defects or infringement of rights in, or damage
20 to, the collateral; or

21 5. To the extent of the value of collateral and to the
22 extent payable to the debtor or the secured party, insurance
23 payable by reason of the loss or nonconformity of, defects or
24 infringement of rights in, or damage to, the collateral.

25 (mmm) "Promissory note" means an instrument that
26 evidences a promise to pay a monetary obligation, does not
27 evidence an order to pay, and does not contain an
28 acknowledgment by a bank that the bank has received for
29 deposit a sum of money or funds.

30 (nnn) "Proposal" means a record authenticated by a
31 secured party which includes the terms on which the secured

1 party is willing to accept collateral in full or partial
2 satisfaction of the obligation it secures pursuant to ss.
3 679.620, 679.621, and 679.622.

4 (ooo) "Pursuant to commitment," with respect to an
5 advance made or other value given by a secured party, means
6 pursuant to the secured party's obligation, whether or not a
7 subsequent event of default or other event not within the
8 secured party's control has relieved or may relieve the
9 secured party from its obligation.

10 (ppp) "Record," except as used in the terms "for
11 record," "of record," "record or legal title," and "record
12 owner," means information that is inscribed on a tangible
13 medium or that is stored in an electronic or other medium and
14 is retrievable in perceivable form.

15 (qqq) "Registered organization" means an organization
16 organized solely under the law of a single state or the United
17 States and as to which the state or the United States must
18 maintain a public record showing the organization to have been
19 organized.

20 (rrr) "Secondary obligor" means an obligor to the
21 extent that:

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

26 (sss) "Secured party" means:

- 27 1. A person in whose favor a security interest is
28 created or provided for under a security agreement, whether or
29 not any obligation to be secured is outstanding;
30 2. A person who holds an agricultural lien;
31 3. A consignor;

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

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

6 6. A person who holds a security interest arising
7 under s. 672.401, s. 672.505, s. 672.711(3), s. 680.508(5), s.
8 674.2101, or s. 675.118.

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

11 (uuu) "Send," in connection with a record or
12 notification, means:

13 1. To deposit in the mail, deliver for transmission,
14 or transmit by any other usual means of communication, with
15 postage or cost of transmission provided for, addressed to any
16 address reasonable under the circumstances; or

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

20 (vvv) "Software" means a computer program and any
21 supporting information provided in connection with a
22 transaction relating to the program. The term does not include
23 a computer program that is included in the definition of
24 goods.

25 (www) "State" means a state of the United States, the
26 District of Columbia, Puerto Rico, the United States Virgin
27 Islands, or any territory or insular possession subject to the
28 jurisdiction of the United States.

29 (xxx) "Supporting obligation" means a letter-of-credit
30 right or secondary obligation that supports the payment or
31

1 performance of an account, chattel paper, a document, a
2 general intangible, an instrument, or investment property.

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

6 (zzz) "Termination statement" means an amendment of a
7 financing statement which:

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

11 2. Indicates either that it is a termination statement
12 or that the identified financing statement is no longer
13 effective.

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

16 1. Operating a railroad, subway, street railway, or
17 trolley bus;

18 2. Transmitting communications electrically,
19 electromagnetically, or by light;

20 3. Transmitting goods by pipeline or sewer; or

21 4. Transmitting or producing and transmitting
22 electricity, steam, gas, or water.

23 (2) The following definitions in other chapters apply
24 to this chapter:

25 "Applicant" s. 675.103.

26 "Beneficiary" s. 675.103.

27 "Broker" s. 678.1021.

28 "Certificated security" s. 678.1021.

29 "Check" s. 673.1041.

30 "Clearing corporation" s. 678.1021.

31 "Contract for sale" s. 672.106.

1	<u>"Customer"</u>	s. 674.104.
2	<u>"Entitlement holder"</u>	s. 678.1021.
3	<u>"Financial asset"</u>	s. 678.1021.
4	<u>"Holder in due course"</u>	s. 673.3021.
5	<u>"Issuer" (with respect to a letter of credit or</u>	
6	<u>letter-of-credit right)</u>	s. 675.103.
7	<u>"Issuer" (with respect to a security)</u>	s. 678.2011.
8	<u>"Lease"</u>	s. 680.1031.
9	<u>"Lease agreement"</u>	s. 680.1031.
10	<u>"Lease contract"</u>	s. 680.1031.
11	<u>"Leasehold interest"</u>	s. 680.1031.
12	<u>"Lessee"</u>	s. 680.1031.
13	<u>"Lessee in ordinary course of business"</u>	s. 680.1031.
14	<u>"Lessor"</u>	s. 680.1031.
15	<u>"Lessor's residual interest"</u>	s. 680.1031.
16	<u>"Letter of credit"</u>	s. 675.103.
17	<u>"Merchant"</u>	s. 672.104.
18	<u>"Negotiable instrument"</u>	s. 673.1041.
19	<u>"Nominated person"</u>	s. 675.103.
20	<u>"Note"</u>	s. 673.1041.
21	<u>"Proceeds of a letter of credit"</u>	s. 675.114.
22	<u>"Prove"</u>	s. 673.1031.
23	<u>"Sale"</u>	s. 672.106.
24	<u>"Securities account"</u>	s. 678.5011.
25	<u>"Securities intermediary"</u>	s. 678.1021.
26	<u>"Security"</u>	s. 678.1021.
27	<u>"Security certificate"</u>	s. 678.1021.
28	<u>"Security entitlement"</u>	s. 678.1021.
29	<u>"Uncertificated security"</u>	s. 678.1021.
30		
31		

1 (3) Chapter 671 contains general definitions and
2 principles of construction and interpretation applicable
3 throughout this chapter.

4 679.1031 Purchase-money security interest; application
5 of payments; burden of establishing.--

6 (1) In this section, the term:

7 (a) "Purchase-money collateral" means goods or
8 software that secures a purchase-money obligation incurred
9 with respect to that collateral.

10 (b) "Purchase-money obligation" means an obligation of
11 an obligor incurred as all or part of the price of the
12 collateral or for value given to enable the debtor to acquire
13 rights in or the use of the collateral if the value is in fact
14 so used.

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

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

19 (b) If the security interest is in inventory that is
20 or was purchase-money collateral, also to the extent that the
21 security interest secures a purchase-money obligation incurred
22 with respect to other inventory in which the secured party
23 holds or held a purchase-money security interest; and

24 (c) Also to the extent that the security interest
25 secures a purchase-money obligation incurred with respect to
26 software in which the secured party holds or held a
27 purchase-money security interest.

28 (3) A security interest in software is a
29 purchase-money security interest to the extent that the
30 security interest also secures a purchase-money obligation
31

1 incurred with respect to goods in which the secured party
2 holds or held a purchase-money security interest if:
3 (a) The debtor acquired interest in the software in an
4 integrated transaction in which the debtor acquired an
5 interest in the goods; and
6 (b) The debtor acquired interest in the software for
7 the principal purpose of using the software in the goods.
8 (4) The security interest of a consignor in goods that
9 are the subject of a consignment is a purchase-money security
10 interest in inventory.
11 (5) If the extent to which a security interest is a
12 purchase-money security interest depends on the application of
13 a payment to a particular obligation, the payment must be
14 applied:
15 (a) In accordance with any reasonable method of
16 application to which the parties agree;
17 (b) In the absence of the parties' agreement to a
18 reasonable method, in accordance with any intention of the
19 obligor manifested at or before the time of payment; or
20 (c) In the absence of an agreement to a reasonable
21 method and a timely manifestation of the obligor's intention,
22 in the following order:
23 1. To obligations that are not secured; and
24 2. If more than one obligation is secured, to
25 obligations secured by purchase-money security interests in
26 the order in which those obligations were incurred.
27 (6) A purchase-money security interest does not lose
28 its status as such, even if:
29 (a) The purchase-money collateral also secures an
30 obligation that is not a purchase-money obligation;
31

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

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

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

8 679.1041 Control of deposit account.--

9 (1) A secured party has control of a deposit account
10 if:

11 (a) The secured party is the bank with which the
12 deposit account is maintained;

13 (b) The debtor, secured party, and bank have agreed in
14 an authenticated record that the bank will comply with
15 instructions originated by the secured party directing
16 disposition of the funds in the deposit account without
17 further consent by the debtor; or

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

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

23 679.1051 Control of electronic chattel paper.--A
24 secured party has control of electronic chattel paper if the
25 record or records comprising the chattel paper are created,
26 stored, and assigned in such a manner that:

27 (1) A single authoritative copy of the record or
28 records exists which is unique, identifiable and, except as
29 otherwise provided in subsections (4), (5), and (6),
30 unalterable;

31

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

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

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

8 (5) Each copy of the authoritative copy and any copy
9 of a copy is readily identifiable as a copy that is not the
10 authoritative copy; and

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

13 679.1061 Control of investment property.--

14 (1) A person has control of a certificated security,
15 uncertificated security, or security entitlement as provided
16 in s. 678.1061.

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

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

21 (b) The commodity customer, secured party, and
22 commodity intermediary have agreed that the commodity
23 intermediary will apply any value distributed on account of
24 the commodity contract as directed by the secured party
25 without further consent by the commodity customer.

26 (3) A secured party having control of all security
27 entitlements or commodity contracts carried in a securities
28 account or commodity account has control over the securities
29 account or commodity account.

30 679.1071 Control of letter-of-credit right.--A secured
31 party has control of a letter-of-credit right to the extent of

1 any right to payment or performance by the issuer or any
2 nominated person if the issuer or nominated person has
3 consented to an assignment of proceeds of the letter of credit
4 under s. 675.114(3) or otherwise applicable law or practice.

5 679.1081 Sufficiency of description.--

6 (1) Except as otherwise provided herein and in
7 subsections (3), (4), and (5), a description of personal or
8 real property is sufficient, whether or not it is specific, if
9 it reasonably identifies what is described. A description of
10 real estate in a record filed to perfect a security interest
11 in crops growing or to be grown or goods which are or are to
12 become fixtures shall be sufficient only if the filing or
13 recording of the same constitutes constructive notice under
14 the laws of this state, other than this chapter, which are
15 applicable to the filing or recording of a record of a
16 mortgage, and a mailing or street address alone shall not be
17 sufficient.

18 (2) Except as otherwise provided in subsection (4), a
19 description of collateral reasonably identifies the collateral
20 if it identifies the collateral by:

21 (a) Specific listing;

22 (b) Category;

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

25 (d) Quantity;

26 (e) Computational or allocational formula or
27 procedure; or

28 (f) Except as otherwise provided in subsection (3),
29 any other method, if the identity of the collateral is
30 objectively determinable.

31

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

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

8 (a) The collateral by those terms or as investment
9 property; or

10 (b) The underlying financial asset or commodity
11 contract.

12 (5) A description only by type of collateral defined
13 in the Uniform Commercial Code is an insufficient description
14 of:

15 (a) A commercial tort claim; or

16 (b) In a consumer transaction, consumer goods, a
17 security entitlement, a securities account, or a commodity
18 account.

19 679.1091 Scope.--

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

22 (a) A transaction, regardless of its form, that
23 creates a security interest in personal property or fixtures
24 by contract;

25 (b) An agricultural lien;

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

28 (d) A consignment;

29 (e) A security interest arising under s. 672.401, s.
30 672.502, s. 672.711, or s. 680.508(5), as provided in s.
31 679.1101; and

1 (f) A security interest arising under s. 674.2101 or
2 s. 675.118.

3 (2) The application of this chapter to a security
4 interest in a secured obligation is not affected by the fact
5 that the obligation is itself secured by a transaction or
6 interest to which this chapter does not apply.

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

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

10 (b) The rights of a transferee beneficiary or
11 nominated person under a letter of credit are independent and
12 superior under s. 675.114.

13 (4) This chapter does not apply to:

14 (a) A landlord's lien, other than an agricultural
15 lien;

16 (b) A lien, other than an agricultural lien, given by
17 statute or other rule of law for services or materials, but s.
18 679.333 applies with respect to priority of the lien;

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

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

24 (e) An assignment of accounts, chattel paper, payment
25 intangibles, or promissory notes which is for the purpose of
26 collection only;

27 (f) An assignment of a right to payment under a
28 contract to an assignee that is also obligated to perform
29 under the contract;

30
31

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

4 (h) A transfer of an interest in or an assignment of a
5 claim under a policy of insurance, other than an assignment by
6 or to a health-care provider of a health-care-insurance
7 receivable and any subsequent assignment of the right to
8 payment, but ss. 679.3151 and 679.322 apply with respect to
9 proceeds and priorities in proceeds;

10 (i) An assignment of a right represented by a
11 judgment, other than a judgment taken on a right to payment
12 that was collateral;

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

14 1. Section 679.340 applies with respect to the
15 effectiveness of rights of recoupment or set-off against
16 deposit accounts; and

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

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

22 1. Liens on real property in ss. 679.2031 and
23 679.3081;

24 2. Fixtures in s. 679.334;

25 3. Fixture filings in ss. 679.5011, 679.5021, 679.512,
26 679.516, and 679.519; and

27 4. Security agreements covering personal and real
28 property in s. 679.604;

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

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

5 (2) Nothing in this chapter validates any charge or
6 practice illegal under any statute or regulation thereunder
7 governing usury, small loans, retail installment sales, or the
8 like, or extends the application of any such statute or
9 regulation to any transaction not otherwise subject thereto.

10 A transaction, although subject to this chapter, is also
11 subject to chapters 516 and 520, and in the case of conflict
12 between the provisions of this chapter and any such statute,
13 the provisions of such statute shall control. Failure to
14 comply with any applicable statute has only the effect which
15 is specified therein.

16 679.2021 Title to collateral immaterial.--Except as
17 otherwise provided with respect to consignments or sales of
18 accounts, chattel paper, payment intangibles, or promissory
19 notes, the provisions of this chapter with regard to rights
20 and obligations apply whether title to collateral is in the
21 secured party or the debtor.

22 679.2031 Attachment and enforceability of security
23 interest; proceeds; supporting obligations; formal
24 requisites.--

25 (1) A security interest attaches to collateral when it
26 becomes enforceable against the debtor with respect to the
27 collateral, unless an agreement expressly postpones the time
28 of attachment.

29 (2) Except as otherwise provided in subsections (3)
30 through (9), a security interest is enforceable against the
31

1 debtor and third parties with respect to the collateral only
2 if:
3 (a) Value has been given;
4 (b) The debtor has rights in the collateral or the
5 power to transfer rights in the collateral to a secured party;
6 and
7 (c) One of the following conditions is met:
8 1. The debtor has authenticated a security agreement
9 that provides a description of the collateral and, if the
10 security interest covers timber to be cut, a description of
11 the land concerned;
12 2. The collateral is not a certificated security and
13 is in the possession of the secured party under s. 679.3131
14 pursuant to the debtor's security agreement;
15 3. The collateral is a certificated security in
16 registered form and the security certificate has been
17 delivered to the secured party under S. 678.3011 pursuant to
18 the debtor's security agreement; or
19 4. The collateral is deposit accounts, electronic
20 chattel paper, investment property, or letter-of-credit
21 rights, and the secured party has control under s. 679.1041,
22 s. 679.1051, s. 679.1061, or s. 679.1071 pursuant to the
23 debtor's security agreement.
24 (3) Subsection (2) is subject to s. 674.2101 on the
25 security interest of a collecting bank, s. 675.118 on the
26 security interest of a letter-of-credit issuer or nominated
27 person, s. 679.1101 on a security interest arising under
28 chapter 672 or chapter 680, and s. 679.2061 on security
29 interests in investment property.
30
31

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

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

6 (b) The person becomes generally obligated for the
7 obligations of the other person, including the obligation
8 secured under the security agreement, and acquires or succeeds
9 to all or substantially all of the assets of the other person.

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

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

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

18 (6) The attachment of a security interest in
19 collateral gives the secured party the rights to proceeds
20 provided by s. 679.3151 and is also attachment of a security
21 interest in a supporting obligation for the collateral.

22 (7) The attachment of a security interest in a right
23 to payment or performance secured by a security interest or
24 other lien on personal or real property is also attachment of
25 a security interest in the security interest, mortgage, or
26 other lien.

27 (8) The attachment of a security interest in a
28 securities account is also attachment of a security interest
29 in the security entitlements carried in the securities
30 account.

31

1 (9) The attachment of a security interest in a
2 commodity account is also attachment of a security interest in
3 the commodity contracts carried in the commodity account.

4 679.2041 After-acquired property; future advances.--

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

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

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

13 (b) A commercial tort claim.

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

19 679.2051 Use or disposition of collateral
20 permissible.--

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

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

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

26 2. Collect, compromise, enforce, or otherwise deal
27 with collateral;

28 3. Accept the return of collateral or make
29 repossessions; or

30 4. Use, commingle, or dispose of proceeds; or
31

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

3 (2) This section does not relax the requirements of
4 possession if attachment, perfection, or enforcement of a
5 security interest depends upon possession of the collateral by
6 the secured party.

7 679.2061 Security interest arising in purchase or
8 delivery of financial asset.--

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

11 (a) The person buys a financial asset through the
12 securities intermediary in a transaction in which the person
13 is obligated to pay the purchase price to the securities
14 intermediary at the time of the purchase; and

15 (b) The securities intermediary credits the financial
16 asset to the buyer's securities account before the buyer pays
17 the securities intermediary.

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

21 (3) A security interest in favor of a person who
22 delivers a certificated security or other financial asset
23 represented by a writing attaches to the security or other
24 financial asset if:

25 (a) The security or other financial asset:

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

28 2. Is delivered under an agreement between persons in
29 the business of dealing with such securities or financial
30 assets; and

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

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

3 679.2071 Rights and duties of secured party having
4 possession or control of collateral.--

5 (1) Except as otherwise provided in subsection (4), a
6 secured party shall use reasonable care in the custody and
7 preservation of collateral in the secured party's possession.
8 In the case of chattel paper or an instrument, reasonable care
9 includes taking necessary steps to preserve rights against
10 prior parties unless otherwise agreed.

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

13 (a) Reasonable expenses, including the cost of
14 insurance and payment of taxes or other charges, incurred in
15 the custody, preservation, use, or operation of the collateral
16 are chargeable to the debtor and are secured by the
17 collateral;

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

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

23 (d) The secured party may use or operate the
24 collateral:

25 1. For the purpose of preserving the collateral or its
26 value;

27 2. As permitted by an order of a court having
28 competent jurisdiction; or

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

31

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

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

7 (b) Shall apply money or funds received from the
8 collateral to reduce the secured obligation, unless remitted
9 to the debtor; and

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

11 (4) If the secured party is a buyer of accounts,
12 chattel paper, payment intangibles, or promissory notes or a
13 consignor:

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

16 1. To charge back uncollected collateral; or

17 2. Otherwise to full or limited recourse against the
18 debtor or a secondary obligor based on the nonpayment or other
19 default of an account debtor or other obligor on the
20 collateral; and

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

22 679.2081 Additional duties of secured party having
23 control of collateral.--

24 (1) This section applies to cases in which there is no
25 outstanding secured obligation and the secured party is not
26 committed to make advances, incur obligations, or otherwise
27 give value.

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

30 (a) A secured party having control of a deposit
31 account under s. 679.1041(1)(b) shall send to the bank with

1 which the deposit account is maintained an authenticated
2 statement that releases the bank from any further obligation
3 to comply with instructions originated by the secured party;

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

6 1. Pay the debtor the balance on deposit in the
7 deposit account; or

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

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

12 1. Communicate the authoritative copy of the
13 electronic chattel paper to the debtor or its designated
14 custodian;

15 2. If the debtor designates a custodian that is the
16 designated custodian with which the authoritative copy of the
17 electronic chattel paper is maintained for the secured party,
18 communicate to the custodian an authenticated record releasing
19 the designated custodian from any further obligation to comply
20 with instructions originated by the secured party and
21 instructing the custodian to comply with instructions
22 originated by the debtor; and

23 3. Take appropriate action to enable the debtor or the
24 debtor's designated custodian to make copies of or revisions
25 to the authoritative copy which add or change an identified
26 assignee of the authoritative copy without the consent of the
27 secured party;

28 (d) A secured party having control of investment
29 property under s. 678.1061(4)(b) or s. 679.1061(2) shall send
30 to the securities intermediary or commodity intermediary with
31 which the security entitlement or commodity contract is

1 maintained an authenticated record that releases the
2 securities intermediary or commodity intermediary from any
3 further obligation to comply with entitlement orders or
4 directions originated by the secured party; and

5 (e) A secured party having control of a
6 letter-of-credit right under s. 679.1071 shall send to each
7 person having an unfulfilled obligation to pay or deliver
8 proceeds of the letter of credit to the secured party an
9 authenticated release from any further obligation to pay or
10 deliver proceeds of the letter of credit to the secured party.

11 679.209 Duties of secured party if account debtor has
12 been notified of assignment.--

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

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

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

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

24 (3) This section does not apply to an assignment
25 constituting the sale of an account, chattel paper, or payment
26 intangible.

27 679.210 Request for accounting; request regarding list
28 of collateral or statement of account.--

29 (1) In this section, the term:

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

1 (b) "Request for an accounting" means a record
2 authenticated by a debtor requesting that the recipient
3 provide an accounting of the unpaid obligations secured by
4 collateral and reasonably identifying the transaction or
5 relationship that is the subject of the request.

6 (c) "Request regarding a list of collateral" means a
7 record authenticated by a debtor requesting that the recipient
8 approve or correct a list of what the debtor believes to be
9 the collateral securing an obligation and reasonably
10 identifying the transaction or relationship that is the
11 subject of the request.

12 (d) "Request regarding a statement of account" means a
13 record authenticated by a debtor requesting that the recipient
14 approve or correct a statement indicating what the debtor
15 believes to be the aggregate amount of unpaid obligations
16 secured by collateral as of a specified date and reasonably
17 identifying the transaction or relationship that is the
18 subject of the request.

19 (e) "Reasonably identifying the transaction or
20 relationship" means that the request provides information
21 sufficient for the person to identify the transaction or
22 relationship and respond to the request. Pursuant to s.
23 679.603(1), a secured party and debtor may determine by
24 agreement the standards for measuring fulfillment of this
25 duty.

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

29 (2) Subject to subsections (3), (4), (5), and (6), a
30 secured party, other than a buyer of accounts, chattel paper,
31

1 payment intangibles, or promissory notes or a consignor, shall
2 comply with a request within 14 days after receipt:

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

5 (b) In the case of a request regarding a list of
6 collateral or a request regarding a statement of account, by
7 authenticating and sending to the debtor an approval or
8 correction.

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

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

20 (a) Disclaiming any interest in the collateral; 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 collateral.

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

30 (a) Disclaiming any interest in the obligations; and
31

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

4 (6) A debtor is entitled under this section without
 5 charge to one response to a request for an accounting or a
 6 request regarding a statement of account for each secured
 7 obligation during any 6-month period. A debtor in a consumer
 8 transaction is entitled to a single response to a request
 9 regarding a list of collateral, for a transaction other than a
 10 consumer transaction, without charge during any 6-month
 11 period. The secured party may require payment of a charge not
 12 exceeding \$25 for each additional response to a request for an
 13 accounting, a request regarding a statement of account, or a
 14 request regarding a list of collateral for a consumer
 15 transaction. To the extent provided in an authenticated
 16 record, the secured party may require the payment of
 17 reasonable expenses, including attorney's fees, reasonably
 18 incurred in providing a response to a request regarding a list
 19 of collateral for a transaction other than a consumer
 20 transaction under this section; otherwise, the secured party
 21 may not charge more than \$25 for each request regarding a list
 22 of collateral. Excluding a request related to a proposed
 23 satisfaction of the secured obligation, a secured party is not
 24 required to respond to more than 12 of each of the permitted
 25 requests in any 12-month period.

26 Section 3. Part III of chapter 679, Florida Statutes,
 27 consisting of sections 679.301, 679.302, 679.303, 679.304,
 28 690.305, 679.306, 679.307, 679.308, 679.309, 679.310, 679.311,
 29 679.312, 679.313, 679.314, 679.315, 679.316, 679.317, and
 30 679.318, Florida Statutes, is repealed and a new part III of
 31 that chapter, consisting of sections 679.3011, 679.3021,

1 679.3031, 679.3041, 690.3051, 679.3061, 679.3071, 679.3081,
2 679.3091, 679.3101, 679.3111, 679.3121, 679.3131, 679.3141,
3 679.3151, 679.3161, 679.3171, 679.3181, 679.319, 679.320,
4 679.321, 679.322, 679.323, 679.324, 679.325, 679.326, 679.327,
5 679.328, 679.329, 679.330, 679.331, 679.332, 679.333, 679.334,
6 679.335, 679.336, 679.337, 679.3381, 679.339, 679.340,
7 679.341, and 679.342, Florida Statutes, is created to read:

8 PART III

9 PERFECTION AND PRIORITY

10 679.3011 Law governing perfection and priority of
11 security interests.--Except as otherwise provided in ss.
12 679.1091, 679.3031, 679.3041, 679.3051, and 679.3061, the
13 following rules determine the law governing perfection, the
14 effect of perfection or nonperfection, and the priority of a
15 security interest in collateral:

16 (1) Except as otherwise provided in this section,
17 while a debtor is located in a jurisdiction, the local law of
18 that jurisdiction governs perfection, the effect of perfection
19 or nonperfection, and the priority of a security interest in
20 collateral.

21 (2) While collateral is located in a jurisdiction, the
22 local law of that jurisdiction governs perfection, the effect
23 of perfection or nonperfection, and the priority of a
24 possessory security interest in that collateral.

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

29 (a) Perfection of a security interest in the goods by
30 filing a fixture filing;

31

1 (b) Perfection of a security interest in timber to be
2 cut; and

3 (c) The effect of perfection or nonperfection and the
4 priority of a nonpossessory security interest in the
5 collateral.

6 (4) The local law of the jurisdiction in which the
7 wellhead or minehead is located governs perfection, the effect
8 of perfection or nonperfection, and the priority of a security
9 interest in as-extracted collateral.

10 679.3021 Law governing perfection and priority of
11 agricultural liens.--While farm products are located in a
12 jurisdiction, the local law of that jurisdiction governs
13 perfection, the effect of perfection or nonperfection, and the
14 priority of an agricultural lien on the farm products.

15 679.3031 Law governing perfection and priority of
16 security interests in goods covered by a certificate of
17 title.--

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

22 (2) Goods become covered by a certificate of title
23 when a valid application for the certificate of title and the
24 applicable fee are delivered to the appropriate authority.
25 Goods cease to be covered by a certificate of title at the
26 earlier of the time the certificate of title ceases to be
27 effective under the law of the issuing jurisdiction or the
28 time the goods become covered subsequently by a certificate of
29 title issued by another jurisdiction.

30 (3) The local law of the jurisdiction under whose
31 certificate of title the goods are covered governs perfection,

1 the effect of perfection or nonperfection, and the priority of
2 a security interest in goods covered by a certificate of title
3 from the time the goods become covered by the certificate of
4 title until the goods cease to be covered by the certificate
5 of title.

6 679.3041 Law governing perfection and priority of
7 security interests in deposit accounts.--

8 (1) The local law of a bank's jurisdiction governs
9 perfection, the effect of perfection or nonperfection, and the
10 priority of a security interest in a deposit account
11 maintained with that bank.

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

14 (a) If an agreement between the bank and the debtor
15 governing the deposit account expressly provides that a
16 particular jurisdiction is the bank's jurisdiction for
17 purposes of this part, this chapter, or the Uniform Commercial
18 Code, that jurisdiction is the bank's jurisdiction.

19 (b) If paragraph (a) does not apply and an agreement
20 between the bank and its customer governing the deposit
21 account expressly provides that the agreement is governed by
22 the law of a particular jurisdiction, that jurisdiction is the
23 bank's jurisdiction.

24 (c) If neither paragraph (a) nor paragraph (b) applies
25 and an agreement between the bank and its customer governing
26 the deposit account expressly provides that the deposit
27 account is maintained at an office in a particular
28 jurisdiction, that jurisdiction is the bank's jurisdiction.

29 (d) If none of the preceding paragraphs applies, the
30 bank's jurisdiction is the jurisdiction in which the office
31

1 identified in an account statement as the office serving the
2 customer's account is located.

3 (e) If none of the preceding paragraphs applies, the
4 bank's jurisdiction is the jurisdiction in which the chief
5 executive office of the bank is located.

6 679.3051 Law governing perfection and priority of
7 security interests in investment property.--

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

10 (a) While a security certificate is located in a
11 jurisdiction, the local law of that jurisdiction governs
12 perfection, the effect of perfection or nonperfection, and the
13 priority of a security interest in the certificated security
14 represented thereby.

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

19 (c) The local law of the securities intermediary's
20 jurisdiction as specified in s. 678.1101(5) governs
21 perfection, the effect of perfection or nonperfection, and the
22 priority of a security interest in a security entitlement or
23 securities account.

24 (d) The local law of the commodity intermediary's
25 jurisdiction governs perfection, the effect of perfection or
26 nonperfection, and the priority of a security interest in a
27 commodity contract or commodity account.

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

30 (a) If an agreement between the commodity intermediary
31 and commodity customer governing the commodity account

1 expressly provides that a particular jurisdiction is the
2 commodity intermediary's jurisdiction for purposes of this
3 part, this chapter, or the Uniform Commercial Code, that
4 jurisdiction is the commodity intermediary's jurisdiction.

5 (b) If paragraph (a) does not apply and an agreement
6 between the commodity intermediary and commodity customer
7 governing the commodity account expressly provides that the
8 agreement is governed by the law of a particular jurisdiction,
9 that jurisdiction is the commodity intermediary's
10 jurisdiction.

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

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

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

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

27 (a) Perfection of a security interest in investment
28 property by filing;

29 (b) Automatic perfection of a security interest in
30 investment property created by a broker or securities
31 intermediary; and

1 (c) Automatic perfection of a security interest in a
2 commodity contract or commodity account created by a commodity
3 intermediary.

4 679.3061 Law governing perfection and priority of
5 security interests in letter-of-credit rights.--

6 (1) Subject to subsection (3), the local law of the
7 issuer's jurisdiction or a nominated person's jurisdiction
8 governs perfection, the effect of perfection or nonperfection,
9 and the priority of a security interest in a letter-of-credit
10 right if the issuer's jurisdiction or nominated person's
11 jurisdiction is a state.

12 (2) For purposes of this part, an issuer's
13 jurisdiction or nominated person's jurisdiction is the
14 jurisdiction whose law governs the liability of the issuer or
15 nominated person with respect to the letter-of-credit right as
16 provided in s. 675.116.

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

19 679.3071 Location of debtor.--

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

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

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

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

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

31

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

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

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

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

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

23 (b) In the state that the registered organization,
24 branch, or agency designates, if the law of the United States
25 authorizes the registered organization, branch, or agency to
26 designate its state of location; or

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

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

1 (a) The suspension, revocation, forfeiture, or lapse
2 of the registered organization's status as such in its
3 jurisdiction of organization; or

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

6 (8) The United States is located in the District of
7 Columbia.

8 (9) A branch or agency of a bank that is not organized
9 under the law of the United States or a state is located in
10 the state in which the branch or agency is licensed, if all
11 branches and agencies of the bank are licensed in only one
12 state.

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

17 (11) This section applies only for purposes of this
18 part.

19 679.3081 When security interest or agricultural lien
20 is perfected; continuity of perfection.--

21 (1) Except as otherwise provided in this section and
22 s. 679.3091, a security interest is perfected if it has
23 attached and all of the applicable requirements for perfection
24 in ss. 679.3101-679.3161 have been satisfied. A security
25 interest is perfected when it attaches if the applicable
26 requirements are satisfied before the security interest
27 attaches.

28 (2) An agricultural lien is perfected if it has become
29 effective and all of the applicable requirements for
30 perfection in s. 679.3101 have been satisfied. An
31 agricultural lien is perfected when it becomes effective if

1 the applicable requirements are satisfied before the
2 agricultural lien becomes effective.

3 (3) A security interest or agricultural lien is
4 perfected continuously if it is originally perfected by one
5 method under this chapter and is later perfected by another
6 method under this chapter, without an intermediate period
7 during which it was unperfected.

8 (4) Perfection of a security interest in collateral
9 also perfects a security interest in a supporting obligation
10 for the collateral.

11 (5) Perfection of a security interest in a right to
12 payment or performance also perfects a security interest in a
13 security interest, mortgage, or other lien on personal or real
14 property securing the right.

15 (6) Perfection of a security interest in a securities
16 account also perfects a security interest in the security
17 entitlements carried in the securities account.

18 (7) Perfection of a security interest in a commodity
19 account also perfects a security interest in the commodity
20 contracts carried in the commodity account.

21 679.3091 Security interest perfected upon
22 attachment.--The following security interests are perfected
23 when they attach:

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

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

- 1 (3) A sale of a payment intangible;
2 (4) A sale of a promissory note;
3 (5) A security interest created by the assignment of a
4 health-care-insurance receivable to the provider of the
5 health-care goods or services;
6 (6) A security interest arising under s. 672.401, s.
7 672.505, s. 672.711(3), or s. 680.508(5), until the debtor
8 obtains possession of the collateral;
9 (7) A security interest of a collecting bank arising
10 under s. 674.2101;
11 (8) A security interest of an issuer or nominated
12 person arising under s. 675.118;
13 (9) A security interest arising in the delivery of a
14 financial asset under s. 679.2061(3);
15 (10) A security interest in investment property
16 created by a broker or securities intermediary;
17 (11) A security interest in a commodity contract or a
18 commodity account created by a commodity intermediary;
19 (12) An assignment for the benefit of all creditors of
20 the transferor and subsequent transfers by the assignee
21 thereunder; and
22 (13) A security interest created by an assignment of a
23 beneficial interest in a decedent's estate.
24 679.3101 When filing required to perfect security
25 interest or agricultural lien; security interests and
26 agricultural liens to which filing provisions do not apply.--
27 (1) Except as otherwise provided in subsection (2) and
28 s. 679.3121(2), a financing statement must be filed to perfect
29 all security interests and agricultural liens.
30 (2) The filing of a financing statement is not
31 necessary to perfect a security interest:

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

3 (b) That is perfected under s. 679.3091 when it
4 attaches;

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

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

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

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

14 (g) In a certificated security which is perfected by
15 delivery of the security certificate to the secured party
16 under s. 679.3131;

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

20 (i) In proceeds which is perfected under s. 679.3151;
21 or

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

23 (3) If a secured party assigns a perfected security
24 interest or agricultural lien, a filing under this chapter is
25 not required to continue the perfected status of the security
26 interest against creditors of and transferees from the
27 original debtor.

28 679.3111 Perfection of security interests in property
29 subject to certain statutes, regulations, and treaties.--

30 (1) Except as otherwise provided in subsection (4),
31 the filing of a financing statement is not necessary or

1 effective to perfect a security interest in property subject
2 to:

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

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

12 (c) A certificate-of-title statute of another
13 jurisdiction which provides for a security interest to be
14 indicated on the certificate as a condition or result of the
15 security interest's obtaining priority over the rights of a
16 lien creditor with respect to the property.

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

21 Except as otherwise provided in subsection (4) and ss.
22 679.3131 and 679.3161(4) and (5) for goods covered by a
23 certificate of title, a security interest in property subject
24 to a statute, regulation, or treaty described in subsection
25 (1) may be perfected only by compliance with those
26 requirements, and a security interest so perfected remains
27 perfected notwithstanding a change in the use or transfer of
28 possession of the collateral.

29 (3) Except as otherwise provided in subsection (4) and
30 s. 679.3161(4) and (5), duration and renewal of perfection of
31 a security interest perfected by compliance with the

1 requirements prescribed by a statute, regulation, or treaty
2 described in subsection (1) are governed by the statute,
3 regulation, or treaty. In other respects, the security
4 interest is subject to this chapter.

5 (4) During any period in which collateral subject to a
6 statute specified in paragraph (1)(b) is inventory held for
7 sale or lease by a person or leased by that person as lessor
8 and that person is in the business of selling goods of that
9 kind, this section does not apply to a security interest in
10 that collateral created by that person.

11 679.3121 Perfection of security interests in chattel
12 paper, deposit accounts, documents, goods covered by
13 documents, instruments, investment property, letter-of-credit
14 rights, and money; perfection by permissive filing; temporary
15 perfection without filing or transfer of possession.--

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

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

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

23 (b) And except as otherwise provided in s.
24 679.3081(4), a security interest in a letter-of-credit right
25 may be perfected only by control under s. 679.3141.

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

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

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

1 (b) A security interest perfected in the document has
2 priority over any security interest that becomes perfected in
3 the goods by another method during that time.

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

7 (a) Issuance of a document in the name of the secured
8 party;

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

11 (c) Filing as to the goods.

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

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

23 (a) Ultimate sale or exchange; or

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

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

31 (a) Ultimate sale or exchange; or

1 (b) Presentation, collection, enforcement, renewal, or
2 registration of transfer.

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

6 679.3131 When possession by or delivery to secured
7 party perfects security interest without filing.--

8 (1) Except as otherwise provided in subsection (2), a
9 secured party may perfect a security interest in negotiable
10 documents, goods, instruments, money, or tangible chattel
11 paper by taking possession of the collateral. A secured party
12 may perfect a security interest in certificated securities by
13 taking delivery of the certificated securities under s.
14 678.3011.

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

19 (3) With respect to collateral other than certificated
20 securities and goods covered by a document, a secured party
21 takes possession of collateral in the possession of a person
22 other than the debtor, the secured party, or a lessee of the
23 collateral from the debtor in the ordinary course of the
24 debtor's business, when:

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

28 (b) The person takes possession of the collateral
29 after having authenticated a record acknowledging that the
30 person will hold possession of collateral for the secured
31 party's benefit.

1 (4) If perfection of a security interest depends upon
2 possession of the collateral by a secured party, perfection
3 occurs no earlier than the time the secured party takes
4 possession and continues only while the secured party retains
5 possession.

6 (5) A security interest in a certificated security in
7 registered form is perfected by delivery when delivery of the
8 certificated security occurs under s. 678.3011 and remains
9 perfected by delivery until the debtor obtains possession of
10 the security certificate.

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

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

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

19 (b) Unless the person otherwise agrees or law other
20 than this chapter otherwise provides, the person does not owe
21 any duty to the secured party and is not required to confirm
22 the acknowledgment to another person.

23 (8) A secured party having possession of collateral
24 does not relinquish possession by delivering the collateral to
25 a person other than the debtor or a lessee of the collateral
26 from the debtor in the ordinary course of the debtor's
27 business if the person was instructed before the delivery or
28 is instructed contemporaneously with the delivery:

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

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

1 (9) A secured party does not relinquish possession,
2 even if a delivery under subsection (8) violates the rights of
3 a debtor. A person to whom collateral is delivered under
4 subsection (8) does not owe any duty to the secured party and
5 is not required to confirm the delivery to another person
6 unless the person otherwise agrees or law other than this
7 chapter otherwise provides.

8 679.3141 Perfection by control.--

9 (1) A security interest in investment property,
10 deposit accounts, letter-of-credit rights, or electronic
11 chattel paper may be perfected by control of the collateral
12 under s. 679.1041, s. 679.1051, s. 679.1061, or s. 679.1071.

13 (2) A security interest in deposit accounts,
14 electronic chattel paper, or letter-of-credit rights is
15 perfected by control under s. 679.1041, s. 679.1051, or s.
16 679.1071 when the secured party obtains control and remains
17 perfected by control only while the secured party retains
18 control.

19 (3) A security interest in investment property is
20 perfected by control under s. 679.1061 from the time the
21 secured party obtains control and remains perfected by control
22 until:

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

24 (b) One of the following occurs:

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

27 2. If the collateral is an uncertificated security,
28 the issuer has registered or registers the debtor as the
29 registered owner; or

30 3. If the collateral is a security entitlement, the
31 debtor is or becomes the entitlement holder.

1 679.3151 Secured party's rights on disposition of
2 collateral and in proceeds.--

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

5 (a) A security interest or agricultural lien continues
6 in collateral notwithstanding sale, lease, license, exchange,
7 or other disposition thereof unless the secured party
8 authorized the disposition free of the security interest or
9 agricultural lien; and

10 (b) A security interest attaches to any identifiable
11 proceeds of collateral.

12 (2) Proceeds that are commingled with other property
13 are identifiable proceeds:

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

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

21 (3) A security interest in proceeds is a perfected
22 security interest if the security interest in the original
23 collateral was perfected.

24 (4) A perfected security interest in proceeds becomes
25 unperfected on the 21st day after the security interest
26 attaches to the proceeds unless:

27 (a) The following conditions are satisfied:

28 1. A filed financing statement covers the original
29 collateral;

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

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

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

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

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

13 (a) When the effectiveness of the filed financing
14 statement lapses under s. 679.515 or is terminated under s.
15 679.513; or

16 (b) The 21st day after the security interest attaches
17 to the proceeds.

18 679.3161 Continued perfection of security interest
19 following change in governing law.--

20 (1) A security interest perfected pursuant to the law
21 of the jurisdiction designated in s. 679.3011(1) or s.
22 679.3051(3) remains perfected until the earliest of:

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

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

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

30 (2) If a security interest described in subsection (1)
31 becomes perfected under the law of the other jurisdiction

1 before the earliest time or event described in that
2 subsection, it remains perfected thereafter. If the security
3 interest does not become perfected under the law of the other
4 jurisdiction before the earliest time or event, it becomes
5 unperfected and is deemed never to have been perfected as
6 against a purchaser of the collateral for value.

7 (3) A possessory security interest in collateral,
8 other than goods covered by a certificate of title and
9 as-extracted collateral consisting of goods, remains
10 continuously perfected if:

11 (a) The collateral is located in one jurisdiction and
12 subject to a security interest perfected under the law of that
13 jurisdiction;

14 (b) Thereafter the collateral is brought into another
15 jurisdiction; and

16 (c) Upon entry into the other jurisdiction, the
17 security interest is perfected under the law of the other
18 jurisdiction.

19 (4) Except as otherwise provided in subsection (5), a
20 security interest in goods covered by a certificate of title
21 which is perfected by any method under the law of another
22 jurisdiction when the goods become covered by a certificate of
23 title from this state remains perfected until the security
24 interest would have become unperfected under the law of the
25 other jurisdiction had the goods not become so covered.

26 (5) A security interest described in subsection (4)
27 becomes unperfected as against a purchaser of the goods for
28 value and is deemed never to have been perfected as against a
29 purchaser of the goods for value if the applicable
30 requirements for perfection under s. 679.3111(2) or s.
31 679.3131 are not satisfied before the earlier of:

1 (a) The time the security interest would have become
2 unperfected under the law of the other jurisdiction had the
3 goods not become covered by a certificate of title from this
4 state; or

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

7 (6) A security interest in deposit accounts,
8 letter-of-credit rights, or investment property which is
9 perfected under the law of the bank's jurisdiction, the
10 issuer's jurisdiction, a nominated person's jurisdiction, the
11 securities intermediary's jurisdiction, or the commodity
12 intermediary's jurisdiction, as applicable, remains perfected
13 until the earlier of:

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

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

18 (7) If a security interest described in subsection (6)
19 becomes perfected under the law of the other jurisdiction
20 before the earlier of the time or the end of the period
21 described in that subsection, it remains perfected thereafter.
22 If the security interest does not become perfected under the
23 law of the other jurisdiction before the earlier of that time
24 or the end of that period, it becomes unperfected and is
25 deemed never to have been perfected as against a purchaser of
26 the collateral for value.

27 679.3171 Interests that take priority over or take
28 free of security interest or agricultural lien.--

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

31

1 (a) A person entitled to priority under s. 679.322;
2 and

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

6 1. The security interest or agricultural lien is
7 perfected; or

8 2. One of the conditions specified in s.
9 679.2031(2)(c) is met and a financing statement covering the
10 collateral is filed.

11 (2) Except as otherwise provided in subsection (5), a
12 buyer, other than a secured party, of tangible chattel paper,
13 documents, goods, instruments, or a security certificate takes
14 free of a security interest or agricultural lien if the buyer
15 gives value and receives delivery of the collateral without
16 knowledge of the security interest or agricultural lien and
17 before it is perfected.

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

23 (4) A licensee of a general intangible or a buyer,
24 other than a secured party, of accounts, electronic chattel
25 paper, general intangibles, or investment property other than
26 a certificated security takes free of a security interest if
27 the licensee or buyer gives value without knowledge of the
28 security interest and before it is perfected.

29 (5) Except as otherwise provided in ss. 679.320 and
30 679.321, if a person files a financing statement with respect
31 to a purchase-money security interest before or within 20 days

1 after the debtor receives delivery of the collateral, the
2 security interest takes priority over the rights of a buyer,
3 lessee, or lien creditor which arise between the time the
4 security interest attaches and the time of filing.

5 679.3181 No interest retained in right to payment that
6 is sold; rights and title of seller of account or chattel
7 paper with respect to creditors and purchasers.--

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

11 (2) For purposes of determining the rights of
12 creditors of, and purchasers for value of an account or
13 chattel paper from, a debtor who has sold an account or
14 chattel paper, while the buyer's security interest is
15 unperfected, the debtor is deemed to have rights and title to
16 the account or chattel paper identical to those the debtor
17 sold.

18 679.319 Rights and title of consignee with respect to
19 creditors and purchasers.--

20 (1) Except as otherwise provided in subsection (2),
21 for purposes of determining the rights of creditors of, and
22 purchasers for value of goods from, a consignee, while the
23 goods are in the possession of the consignee, the consignee is
24 deemed to have rights and title to the goods identical to
25 those the consignor had or had power to transfer.

26 (2) For purposes of determining the rights of a
27 creditor of a consignee, law other than this chapter
28 determines the rights and title of a consignee while goods are
29 in the consignee's possession if, under this part, a perfected
30 security interest held by the consignor would have priority
31 over the rights of the creditor.

1 679.320 Buyer of goods.--

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

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

13 (a) Without knowledge of the security interest;

14 (b) For value;

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

17 (d) Before the filing of a financing statement
18 covering the goods.

19 (3) To the extent that it affects the priority of a
20 security interest over a buyer of goods under subsection (2),
21 the period of effectiveness of a filing made in the
22 jurisdiction in which the seller is located is governed by s.
23 679.3161(1) and (2).

24 (4) A buyer in ordinary course of business buying oil,
25 gas, or other minerals at the wellhead or minehead or after
26 extraction takes free of an interest arising out of an
27 encumbrance.

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

31

1 679.321 Licensee of general intangible and lessee of
2 goods in ordinary course of business.--

3 (1) In this section, the term "licensee in ordinary
4 course of business" means a person who becomes a licensee of a
5 general intangible in good faith, without knowledge that the
6 license violates the rights of another person in the general
7 intangible, and in the ordinary course from a person in the
8 business of licensing general intangibles of that kind. A
9 person becomes a licensee in the ordinary course if the
10 license to the person comports with the usual or customary
11 practices in the kind of business in which the licensor is
12 engaged or with the licensor's own usual or customary
13 practices.

14 (2) A licensee in ordinary course of business takes
15 its rights under a nonexclusive license free of a security
16 interest in the general intangible created by the licensor,
17 even if the security interest is perfected and the licensee
18 knows of its existence.

19 (3) A lessee in ordinary course of business takes its
20 leasehold interest free of a security interest in the goods
21 created by the lessor, even if the security interest is
22 perfected and the lessee knows of its existence.

23 679.322 Priorities among conflicting security
24 interests in and agricultural liens on same collateral.--

25 (1) Except as otherwise provided in this section,
26 priority among conflicting security interests and agricultural
27 liens in the same collateral is determined according to the
28 following rules:

29 (a) Conflicting perfected security interests and
30 agricultural liens rank according to priority in time of
31 filing or perfection. Priority dates from the earlier of the

1 time a filing covering the collateral is first made or the
2 security interest or agricultural lien is first perfected, if
3 there is no period thereafter during which is neither filing
4 nor perfection.

5 (b) A perfected security interest or agricultural lien
6 has priority over a conflicting unperfected security interest
7 or agricultural lien.

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

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

12 (a) The time of filing or perfection as to a security
13 interest in collateral is also the time of filing or
14 perfection as to a security interest in proceeds; and

15 (b) The time of filing or perfection as to a security
16 interest in collateral supported by a supporting obligation is
17 also the time of filing or perfection as to a security
18 interest in the supporting obligation.

19 (3) Except as otherwise provided in subsection (6), a
20 security interest in collateral which qualifies for priority
21 over a conflicting security interest under s. 679.327, s.
22 679.328, s. 679.329, s. 679.330, or s. 679.331 also has
23 priority over a conflicting security interest in:

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

25 (b) Proceeds of the collateral if:

26 1. The security interest in proceeds is perfected;

27 2. The proceeds are cash proceeds or of the same type
28 as the collateral; and

29 3. In the case of proceeds that are proceeds of
30 proceeds, all intervening proceeds are cash proceeds, proceeds

31

1 of the same type as the collateral, or an account relating to
2 the collateral.

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

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

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

15 (a) Subsection (7) and the other provisions of this
16 part;

17 (b) Section 674.2101 with respect to a security
18 interest of a collecting bank;

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

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

23 (7) A perfected agricultural lien on collateral has
24 priority over a conflicting security interest in or
25 agricultural lien on the same collateral if the statute
26 creating the agricultural lien so provides.

27 679.323 Future advances.--

28 (1) Except as otherwise provided in subsection (3),
29 for purposes of determining the priority of a perfected
30 security interest under s. 679.322(1)(a), perfection of the
31

1 security interest dates from the time an advance is made to
2 the extent that the security interest secures an advance that:

3 (a) Is made while the security interest is perfected
4 only:

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

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

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

10 (2) Except as otherwise provided in subsection (3), a
11 security interest is subordinate to the rights of a person who
12 becomes a lien creditor to the extent that the security
13 interest secures an advance made more than 45 days after the
14 person becomes a lien creditor unless the advance is made:

15 (a) Without knowledge of the lien; or

16 (b) Pursuant to a commitment entered into without
17 knowledge of the lien.

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

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

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

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

29 (5) Subsection (4) does not apply if the advance is
30 made pursuant to a commitment entered into without knowledge

31

1 of the buyer's purchase and before the expiration of the
2 45-day period.

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

8 (a) The time the secured party acquires knowledge of
9 the lease; or

10 (b) Forty-five days after the lease contract becomes
11 enforceable.

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

15 679.324 Priority of purchase-money security
16 interests.--

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

25 (2) Subject to subsection (3) and except as otherwise
26 provided in subsection (7), a perfected purchase-money
27 security interest in inventory has priority over a conflicting
28 security interest in the same inventory, has priority over a
29 conflicting security interest in chattel paper or an
30 instrument constituting proceeds of the inventory and in
31 proceeds of the chattel paper, if so provided in s. 679.330,

1 and, except as otherwise provided in s. 679.327, also has
2 priority in identifiable cash proceeds of the inventory to the
3 extent the identifiable cash proceeds are received on or
4 before the delivery of the inventory to a buyer, if:

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

7 (b) The purchase-money secured party sends an
8 authenticated notification to the holder of the conflicting
9 security interest;

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

13 (d) The notification states that the person sending
14 the notification has or expects to acquire a purchase-money
15 security interest in inventory of the debtor and describes the
16 inventory.

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

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

22 (b) If the purchase-money security interest is
23 temporarily perfected without filing or possession under s.
24 679.3121(6), before the beginning of the 20-day period
25 thereunder.

26 (4) Subject to subsection (5) and except as otherwise
27 provided in subsection (7), a perfected purchase-money
28 security interest in livestock that are farm products has
29 priority over a conflicting security interest in the same
30 livestock, and, except as otherwise provided in s. 679.327, a
31 perfected security interest in their identifiable proceeds and

1 identifiable products in their unmanufactured states also has
2 priority, if:

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

5 (b) The purchase-money secured party sends an
6 authenticated notification to the holder of the conflicting
7 security interest;

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

11 (d) The notification states that the person sending
12 the notification has or expects to acquire a purchase-money
13 security interest in livestock of the debtor and describes the
14 livestock.

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

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

20 (b) If the purchase-money security interest is
21 temporarily perfected without filing or possession under s.
22 679.3121(6), before the beginning of the 20-day period
23 thereunder.

24 (6) Except as otherwise provided in subsection (7), a
25 perfected purchase-money security interest in software has
26 priority over a conflicting security interest in the same
27 collateral, and, except as otherwise provided in s. 679.327, a
28 perfected security interest in its identifiable proceeds also
29 has priority, to the extent that the purchase-money security
30 interest in the goods in which the software was acquired for
31

1 use has priority in the goods and proceeds of the goods under
2 this section.

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

6 (a) A security interest securing an obligation
7 incurred as all or part of the price of the collateral has
8 priority over a security interest securing an obligation
9 incurred for value given to enable the debtor to acquire
10 rights in or the use of collateral; and

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

13 679.325 Priority of security interests in transferred
14 collateral.--

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

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

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

23 (c) There is no period thereafter during which the
24 security interest is unperfected.

25 (2) Subsection (1) subordinates a security interest
26 only if the security interest:

27 (a) Otherwise would have priority solely under s.
28 679.322(1) or s. 679.324; or

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

30 679.326 Priority of security interests created by new
31 debtor.--

1 (1) Subject to subsection (2), a security interest
2 created by a new debtor which is perfected by a filed
3 financing statement that is effective solely under s. 679.508
4 in collateral in which a new debtor has or acquires rights is
5 subordinate to a security interest in the same collateral
6 which is perfected other than by a filed financing statement
7 that is effective solely under s. 679.508.

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

16 679.327 Priority of security interests in deposit
17 account.--The following rules govern priority among
18 conflicting security interests in the same deposit account:

19 (1) A security interest held by a secured party having
20 control of the deposit account under s. 679.1041 has priority
21 over a conflicting security interest held by a secured party
22 that does not have control.

23 (2) Except as otherwise provided in subsections (3)
24 and (4), security interests perfected by control under s.
25 679.3141 rank according to priority in time of obtaining
26 control.

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

31

1 (4) A security interest perfected by control under s.
2 679.1041(1)(c) has priority over a security interest held by
3 the bank with which the deposit account is maintained.

4 679.328 Priority of security interests in investment
5 property.--The following rules govern priority among
6 conflicting security interests in the same investment
7 property:

8 (1) A security interest held by a secured party having
9 control of investment property under s. 679.1061 has priority
10 over a security interest held by a secured party that does not
11 have control of the investment property.

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

16 (a) If the collateral is a security, obtaining
17 control;

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

20 1. If the secured party obtained control under s.
21 678.1061(4)(a), the secured party's becoming the person for
22 which the securities account is maintained;

23 2. If the secured party obtained control under s.
24 678.1061(4)(b), the securities intermediary's agreement to
25 comply with the secured party's entitlement orders with
26 respect to security entitlements carried or to be carried in
27 the securities account; or

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

1 (c) If the collateral is a commodity contract carried
2 with a commodity intermediary, the satisfaction of the
3 requirement for control specified in s. 679.1061(2)(b) with
4 respect to commodity contracts carried or to be carried with
5 the commodity intermediary.

6 (3) A security interest held by a securities
7 intermediary in a security entitlement or a securities account
8 maintained with the securities intermediary has priority over
9 a conflicting security interest held by another secured party.

10 (4) A security interest held by a commodity
11 intermediary in a commodity contract or a commodity account
12 maintained with the commodity intermediary has priority over a
13 conflicting security interest held by another secured party.

14 (5) A security interest in a certificated security in
15 registered form which is perfected by taking delivery under s.
16 679.3131(1) and not by control under s. 679.3141 has priority
17 over a conflicting security interest perfected by a method
18 other than control.

19 (6) Conflicting security interests created by a
20 broker, securities intermediary, or commodity intermediary
21 which are perfected without control under s. 679.1061 rank
22 equally.

23 (7) In all other cases, priority among conflicting
24 security interests in investment property is governed by ss.
25 679.322 and 679.323.

26 679.329 Priority of security interests in
27 letter-of-credit right.--The following rules govern priority
28 among conflicting security interests in the same
29 letter-of-credit right:

30 (1) A security interest held by a secured party having
31 control of the letter-of-credit right under s. 679.1071 has

1 priority to the extent of its control over a conflicting
2 security interest held by a secured party that does not have
3 control.

4 (2) Security interests perfected by control under s.
5 679.3141 rank according to priority in time of obtaining
6 control.

7 679.330 Priority of purchaser of chattel paper or
8 instrument.--

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

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

16 (b) The chattel paper does not indicate that it has
17 been assigned to an identified assignee other than the
18 purchaser.

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

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

31

1 (a) Section 679.322 provides for priority in the
2 proceeds; or

3 (b) The proceeds consist of the specific goods covered
4 by the chattel paper or cash proceeds of the specific goods,
5 even if the purchaser's security interest in the proceeds is
6 unperfected.

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

13 (5) For purposes of subsections (1) and (2), the
14 holder of a purchase-money security interest in inventory
15 gives new value for chattel paper constituting proceeds of the
16 inventory.

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

23 679.331 Priority of rights of purchasers of
24 instruments, documents, and securities under other articles;
25 priority of interests in financial assets and security
26 entitlements under chapter 678.--

27 (1) This chapter does not limit the rights of a holder
28 in due course of a negotiable instrument, a holder to which a
29 negotiable document of title has been duly negotiated, or a
30 protected purchaser of a security. These holders or
31 purchasers take priority over an earlier security interest,

1 even if perfected, to the extent provided in chapters 673,
2 677, and 678.

3 (2) This chapter does not limit the rights of or
4 impose liability on a person to the extent that the person is
5 protected against the assertion of an adverse claim under
6 chapter 678.

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

10 679.332 Transfer of money; transfer of funds from
11 deposit account.--

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

15 (2) A transferee of funds from a deposit account takes
16 the funds free of a security interest in the deposit account
17 unless the transferee acts in collusion with the debtor in
18 violating the rights of the secured party.

19 679.333 Priority of certain liens arising by operation
20 of law.--

21 (1) In this section, the term "possessory lien" means
22 an interest, other than a security interest or an agricultural
23 lien:

24 (a) Which secures payment or performance of an
25 obligation for services or materials furnished with respect to
26 goods by a person in the ordinary course of the person's
27 business;

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

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

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

4 679.334 Priority of security interests in fixtures and
5 crops.--

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

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

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

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

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

28 (a) Created in a manufactured home in a
29 manufactured-home transaction; and

30 (b) Perfected pursuant to a statute described in s.
31 679.3111(1)(b).

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

6 (7) Subsection (6) prevails over any inconsistent
7 provisions of the statutes.

8 679.335 Accessions.--

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

11 (2) If a security interest is perfected when the
12 collateral becomes an accession, the security interest remains
13 perfected in the collateral.

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

17 (4) A security interest in an accession is subordinate
18 to a security interest in the whole which is perfected by
19 compliance with the requirements of a certificate-of-title
20 statute under s. 679.3111(2).

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

25 (6) A secured party that removes an accession from
26 other goods under subsection (5) shall promptly reimburse any
27 holder of a security interest or other lien on, or owner of,
28 the whole or of the other goods, other than the debtor, for
29 the cost of repair of any physical injury to the whole or the
30 other goods. The secured party need not reimburse the holder
31 or owner for any diminution in value of the whole or the other

1 goods caused by the absence of the accession removed or by any
2 necessity for replacing it. A person entitled to
3 reimbursement may refuse permission to remove until the
4 secured party gives adequate assurance for the performance of
5 the obligation to reimburse.

6 679.336 Commingled goods.--

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

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

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

16 (4) If a security interest in collateral is perfected
17 before the collateral becomes commingled goods, the security
18 interest that attaches to the product or mass under subsection

19 (3) is perfected.

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

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

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

31

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

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

12 **(1) A buyer of the goods, other than a person in the**
13 **business of selling goods of that kind, takes free of the**
14 **security interest if the buyer gives value and receives**
15 **delivery of the goods after issuance of the certificate and**
16 **without knowledge of the security interest; and**

17 **(2) The security interest is subordinate to a**
18 **conflicting security interest in the goods that attaches, and**
19 **is perfected under s. 679.3111(2), after issuance of the**
20 **certificate and without the conflicting secured party's**
21 **knowledge of the security interest.**

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

28 **(1) The security interest or agricultural lien is**
29 **subordinate to a conflicting perfected security interest in**
30 **the collateral to the extent that the holder of the**
31

1 conflicting security interest gives value in reasonable
2 reliance upon the incorrect information; and

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

9 679.339 Priority subject to subordination.--This
10 chapter does not preclude subordination by agreement by a
11 person entitled to priority.

12 679.340 Effectiveness of right of recoupment or
13 set-off against deposit account.--

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

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

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

28 679.341 Bank's rights and duties with respect to
29 deposit account.--Except as otherwise provided in s.
30 679.340(3), and unless the bank otherwise agrees in an
31 authenticated record, a bank's rights and duties with respect

1 to a deposit account maintained with the bank are not
2 terminated, suspended, or modified by:

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

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

6 (3) The bank's receipt of instructions from the
7 secured party.

8 679.342 Bank's right to refuse to enter into or
9 disclose existence of control agreement.--This chapter does
10 not require a bank to enter into an agreement of the kind
11 described in s. 679.1041(1)(b), even if its customer so
12 requests or directs. A bank that has entered into such an
13 agreement is not required to confirm the existence of the
14 agreement to another person unless requested to do so by its
15 customer.

16 Section 4. Part IV of chapter 679, Florida Statutes,
17 consisting of sections 679.401, 679.4011, 679.402, 679.403,
18 679.404, 679.405, 679.406, 679.407, and 679.408, Florida
19 Statutes, is repealed and a new part IV, consisting of
20 sections 679.40111, 679.4021, 679.4031, 679.4041, 679.4051,
21 679.4061, 679.4071, 679.4081, and 679.409, Florida Statutes,
22 is created to read:

23 PART IV

24 RIGHTS OF THIRD PARTIES

25 679.40111 Alienability of debtor's rights.--

26 (1) Except as otherwise provided in subsection (2) and
27 ss. 679.4061, 679.4071, 679.4081, and 679.409, whether a
28 debtor's rights in collateral may be voluntarily or
29 involuntarily transferred is governed by law other than this
30 chapter.

31

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

5 679.4021 Secured party not obligated on contract of
6 debtor or in tort.--The existence of a security interest,
7 agricultural lien, or authority given to a debtor to dispose
8 of or use collateral, without more, does not subject a secured
9 party to liability in contract or tort for the debtor's acts
10 or omissions.

11 679.4031 Agreement not to assert defenses against
12 assignee.--

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

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

20 (a) For value;

21 (b) In good faith;

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

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

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

30 (4) In a consumer transaction, if a record evidences
31 the account debtor's obligation, law other than this chapter

1 requires that the record include a statement to the effect
2 that the rights of an assignee are subject to claims or
3 defenses that the account debtor could assert against the
4 original obligee, and the record does not include such a
5 statement:

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

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

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

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

19 679.4041 Rights acquired by assignee; claims and
20 defenses against assignee.--

21 (1) Unless an account debtor has made an enforceable
22 agreement not to assert defenses or claims, and subject to
23 subsections (2) through (5), the rights of an assignee are
24 subject to:

25 (a) All terms of the agreement between the account
26 debtor and assignor and any defense or claim in recoupment
27 arising from the transaction that gave rise to the contract;
28 and

29 (b) Any other defense or claim of the account debtor
30 against the assignor which accrues before the account debtor
31

1 receives a notification of the assignment authenticated by the
2 assignor or the assignee.

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

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

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

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

24 679.4051 Modification of assigned contract.--

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

1 (2) Subsection (1) applies to the extent that:
2 (a) The right to payment or a part thereof under an
3 assigned contract has not been fully earned by performance; or
4 (b) The right to payment or a part thereof has been
5 fully earned by performance and the account debtor has not
6 received notification of the assignment under s. 679.4061(1).
7 (3) This section is subject to law other than this
8 chapter which establishes a different rule for an account
9 debtor who is an individual and who incurred the obligation
10 primarily for personal, family, or household purposes.
11 (4) This section does not apply to an assignment of a
12 health-care-insurance receivable.
13 679.4061 Discharge of account debtor; notification of
14 assignment; identification and proof of assignment;
15 restrictions on assignment of accounts, chattel paper, payment
16 intangibles, and promissory notes ineffective.--
17 (1) Subject to subsections (2) through (9), an account
18 debtor on an account, chattel paper, or a payment intangible
19 may discharge its obligation by paying the assignor until, but
20 not after, the account debtor receives a notification,
21 authenticated by the assignor or the assignee, that the amount
22 due or to become due has been assigned and that payment is to
23 be made to the assignee. After receipt of the notification,
24 the account debtor may discharge its obligation by paying the
25 assignee and may not discharge the obligation by paying the
26 assignor.
27 (2) Subject to subsection (8), notification is
28 ineffective under subsection (1):
29 (a) If it does not reasonably identify the rights
30 assigned;
31

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

5 (c) At the option of an account debtor, if the
6 notification notifies the account debtor to make less than the
7 full amount of any installment or other periodic payment to
8 the assignee, even if:

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

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

12 3. The account debtor knows that the assignment to
13 that assignee is limited.

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

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

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

30 (b) Provides that the assignment or transfer or the
31 creation, attachment, perfection, or enforcement of the

1 security interest may give rise to a default, breach, right of
2 recoupment, claim, defense, termination, right of termination,
3 or remedy under the account, chattel paper, payment
4 intangible, or promissory note.

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

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

15 (a) Prohibits, restricts, or requires the consent of
16 the government, governmental body or official, or account
17 debtor to the assignment or transfer of, or the creation,
18 attachment, perfection, or enforcement of a security interest
19 in the account or chattel paper; or

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

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

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

31 Subsections (4) and (6) do not apply to the creation,

1 attachment, perfection, or enforcement of a security interest
2 in:

3 (a) A claim or right to receive compensation for
4 injuries or sickness as described in 26 U.S.C. subsection
5 104(a)(1) or (2).

6 (b) A claim or right to receive benefits under a
7 special needs trust as described in 42 U.S.C. subsection
8 1396p(d)(4).

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

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

16 (9) Subsections (4), (6), and (8) apply only to a
17 security interest created after January 1, 2002.

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

20 (11) This section prevails over any inconsistent
21 statute, rule, or regulation.

22 679.4071 Restrictions on creation or enforcement of
23 security interest in leasehold interest or in lessor's
24 residual interest.--

25 (1) Except as otherwise provided in subsection (2), a
26 term in a lease agreement is ineffective to the extent that
27 it:

28 (a) Prohibits, restricts, or requires the consent of a
29 party to the lease to the assignment or transfer of, or the
30 creation, attachment, perfection, or enforcement of a security
31

1 interest in, an interest of a party under the lease contract
2 or in the lessor's residual interest in the goods; or

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

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

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

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

15 (3) The creation, attachment, perfection, or
16 enforcement of a security interest in the lessor's interest
17 under the lease contract or the lessor's residual interest in
18 the goods is not a transfer that materially impairs the
19 lessee's prospect of obtaining return performance or
20 materially changes the duty of or materially increases the
21 burden or risk imposed on the lessee within the purview of s.
22 680.303(4) unless, and then only to the extent that,
23 enforcement actually results in a delegation of material
24 performance of the lessor.

25 679.4081 Restrictions on assignment of promissory
26 notes, health-care-insurance receivables, and certain general
27 intangibles ineffective.--

28 (1) Except as otherwise provided in subsection (2), a
29 term in a promissory note or in an agreement between an
30 account debtor and a debtor which relates to a
31 health-care-insurance receivable or a general intangible,

1 including a contract, permit, license, or franchise, and which
2 term prohibits, restricts, or requires the consent of the
3 person obligated on the promissory note or the account debtor
4 to, the assignment or transfer of, or creation, attachment, or
5 perfection of a security interest in, the promissory note,
6 health-care-insurance receivable, or general intangible, is
7 ineffective to the extent that the term:

8 (a) Would impair the creation, attachment, or
9 perfection of a security interest; or

10 (b) Provides that the assignment or transfer or the
11 creation, attachment, or perfection of the security interest
12 may give rise to a default, breach, right of recoupment,
13 claim, defense, termination, right of termination, or remedy
14 under the promissory note, health-care-insurance receivable,
15 or general intangible.

16 (2) Subsection (1) applies to a security interest in a
17 payment intangible or promissory note only if the security
18 interest arises out of a sale of the payment intangible or
19 promissory note.

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

30 (a) Would impair the creation, attachment, or
31 perfection of a security interest; or

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

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

16 **(a) Is not enforceable against the person obligated on**
17 **the promissory note or the account debtor;**

18 **(b) Does not impose a duty or obligation on the person**
19 **obligated on the promissory note or the account debtor;**

20 **(c) Does not require the person obligated on the**
21 **promissory note or the account debtor to recognize the**
22 **security interest, pay or render performance to the secured**
23 **party, or accept payment or performance from the secured**
24 **party;**

25 **(d) Does not entitle the secured party to use or**
26 **assign the debtor's rights under the promissory note,**
27 **health-care-insurance receivable, or general intangible,**
28 **including any related information or materials furnished to**
29 **the debtor in the transaction giving rise to the promissory**
30 **note, health-care-insurance receivable, or general intangible;**
31

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

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

8 (5) This section prevails over any inconsistent
9 statute, rule, or regulation.

10 (6) Subsections (1) and (3) do not apply to the
11 creation, attachment, perfection, or enforcement of a security
12 interest in:

13 (a) A claim or right to receive compensation for
14 injuries or sickness as described in 26 U.S.C. subsection
15 104(a)(1) or (2).

16 (b) A claim or right to receive benefits under a
17 special needs trust as described in 42 U.S.C. subsection
18 1396p(d)(4).

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

22 (d) The interest of a debtor who is a natural person
23 in other benefits which are designated solely for his or her
24 maintenance, support, or education, the assignability of which
25 is expressly prohibited or restricted by statute.

26 (7) Subsections (1), (3), and (6) apply only to a
27 security interest created after January 1, 2002.

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

30 (1) A term in a letter of credit or a rule of law,
31 statute, regulation, custom, or practice applicable to the

1 letter of credit which prohibits, restricts, or requires the
2 consent of an applicant, issuer, or nominated person to a
3 beneficiary's assignment of or creation of a security interest
4 in a letter-of-credit right is ineffective to the extent that
5 the term or rule of law, statute, regulation, custom, or
6 practice:

7 (a) Would impair the creation, attachment, or
8 perfection of a security interest in the letter-of-credit
9 right; or

10 (b) Provides that the assignment or the creation,
11 attachment, or perfection of the security interest may give
12 rise to a default, breach, right of recoupment, claim,
13 defense, termination, right of termination, or remedy under
14 the letter-of-credit right.

15 (2) To the extent that a term in a letter of credit is
16 ineffective under subsection (1) but would be effective under
17 law other than this chapter or a custom or practice applicable
18 to the letter of credit, to the transfer of a right to draw or
19 otherwise demand performance under the letter of credit, or to
20 the assignment of a right to proceeds of the letter of credit,
21 the creation, attachment, or perfection of a security interest
22 in the letter-of-credit right:

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

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

27 (c) Does not require the applicant, issuer, nominated
28 person, or transferee beneficiary to recognize the security
29 interest, pay or render performance to the secured party, or
30 accept payment or other performance from the secured party.

31

1 Section 5. (1) The Legislature finds that it is in
2 the best interest of the citizens and businesses of this state
3 to adopt Part V of Revised Article 9 of the Uniform Commercial
4 Code as proposed by the National Conference of Commissioners
5 on Uniform State Law, "revised Article 9," subject to specific
6 modifications, as revised chapter 679, Florida Statutes. Such
7 revised Article 9 almost exclusively affects secured
8 transactions and the relationships between and among secured
9 creditors, debtors, other creditors, and purchasers of
10 personal property subject to a security interest. Both
11 individuals and business entities are intended to benefit from
12 the enactment of revised Article 9.

13 (2) The Legislature also finds that, among other
14 things, revised Article 9 contemplates a more straightforward
15 and efficient system for documenting the perfection,
16 amendment, continuance, termination, assignment, and transfer
17 of security interests and requires less governmental
18 involvement than necessary under existing law. Revised
19 Article 9 suggests the possibility that states may delegate
20 their historical administrative and operational
21 responsibilities over financing statement filings to a
22 nongovernmental entity. This principle complements the
23 legislative policy of reducing government's detailed
24 regulation and involvement with private commerce and business
25 transactions. Consistent with other revisions to current
26 chapter 679, Florida Statutes, being adopted by this act, the
27 requirement for exclusive administration and operation by this
28 state of the system of filing and maintaining documents
29 evidencing secured transactions no longer exists. However, the
30 carrying out of the duties of the filing office and filing
31 officer are very important to the uninterrupted flow of

1 secured transactions and the Secretary of State shall retain
2 oversight over the private filing agency to which the filing
3 office and filing officer duties under revised Article 9, as
4 revised chapter 679, Florida Statutes, may be delegated.

5 Section 6. Part V of chapter 679, Florida Statutes,
6 consisting of sections 679.501, 679.502, 679.503, 679.504,
7 679.505, 679.506, and 679.507, Florida Statutes, is repealed
8 and a new part V, consisting of sections 679.5011, 679.5021,
9 679.5031. 679.5041, 679.5051, 679.5061, 679.5071, 679.508,
10 679.509, 679.510, 679.511, 679.512, 679.513, 671.514, 679.515,
11 679.516, 679.517, 679.518, 679.519, 679.520, 679.521, 679.522,
12 679.523, 679.524, 679.525, 679.526, and 679.527, Florida
13 Statutes, is created to read:

14 PART V

15 FILING

16 679.5011 Filing office.--

17 (1) Except as otherwise provided in subsection (2),
18 the office in which to file a financing statement to perfect a
19 security interest or agricultural lien is:

20 (a) The office of the clerk of the circuit court, if:

21 1. The collateral is as-extracted collateral or timber
22 to be cut; or

23 2. The collateral is goods that are or are to become
24 fixtures in this state, in which event the financing statement
25 shall be filed as a fixture filing.

26 (b) The Florida Secured Transaction Registry, in
27 accordance with ss. 679.3011-679.3071, and in all other cases.

28 (2) The office in which to file a financing statement
29 to perfect a security interest in collateral, including
30 fixtures, of a transmitting utility is the Office of the
31 Secretary of State, or the filing office authorized by s.

1 697.527 to accept filings for the Florida Secured Transaction
2 Registry. The financing statement also constitutes a fixture
3 filing as to the collateral indicated in the financing
4 statement which is or is to become fixtures.

5 679.5021 Contents of financing statement; record of
6 mortgage as financing statement; time of filing financing
7 statement.--

8 (1) Subject to subsection (2), a financing statement
9 is sufficient only if it:

10 (a) Provides the name of the debtor;

11 (b) Provides the name of the secured party or a
12 representative of the secured party; and

13 (c) Indicates the collateral covered by the financing
14 statement.

15 (2) Except as otherwise provided in s. 679.5011(2), to
16 be sufficient, a financing statement that covers as-extracted
17 collateral or timber to be cut, or that is filed as a fixture
18 filing and covers goods that are or are to become fixtures,
19 must comply with the requirements of subsection (1) and also:

20 (a) Indicate that it covers this type of collateral;

21 (b) Indicate that it is to be filed in the real
22 property records;

23 (c) Provide a description of the real property to
24 which the collateral is related; and

25 (d) If the debtor does not have an interest of record
26 in the real property, provide the name of a record owner.

27 (3) A record of a mortgage satisfying the requirements
28 of chapter 697 is effective, from the date of recording, as a
29 financing statement filed as a fixture filing or as a
30 financing statement covering as-extracted collateral or timber
31 to be cut only if:

1 (a) The record of a mortgage indicates the goods or
2 accounts that it covers;

3 (b) The goods are or are to become fixtures related to
4 the real property described in the record of a mortgage or the
5 collateral is related to the real property described in the
6 mortgage and is as-extracted collateral or timber to be cut;

7 (c) The record of a mortgage complies with the
8 requirements for a financing statement in this section other
9 than an indication that it is to be filed in the real property
10 records; and

11 (d) The record of a mortgage is recorded as required
12 by chapter 697.

13 (4) A financing statement may be filed before a
14 security agreement is made or a security interest otherwise
15 attaches.

16 679.5031 Name of debtor and secured party.--

17 (1) A financing statement sufficiently provides the
18 name of the debtor:

19 (a) If the debtor is a registered organization, only
20 if the financing statement provides the name of the debtor
21 indicated on the public record of the debtor's jurisdiction of
22 organization which shows the debtor to have been organized;

23 (b) If the debtor is a decedent's estate, only if the
24 financing statement provides the name of the decedent and
25 indicates that the debtor is an estate;

26 (c) If the debtor is a trust or a trustee acting with
27 respect to property held in trust, only if the financing
28 statement:

29 1. Provides the name, if any, specified for the trust
30 in its organic documents or, if no name is specified, provides
31 the name of the settlor and additional information sufficient

1 to distinguish a debtor from other trusts having one or more
2 of the same settlors; and
3 2. Indicates, in the debtor's name or otherwise, that
4 the debtor is a trust or is a trustee acting with respect to
5 property held in trust; and
6 (d) In other cases:
7 1. If the debtor has a name, only if it provides the
8 individual or organizational name of the debtor; and
9 2. If the debtor does not have a name, only if it
10 provides the names of the partners, members, associates, or
11 other persons comprising the debtor.
12 (2) A financing statement that provides the name of
13 the debtor in accordance with subsection (1) is not rendered
14 ineffective by the absence of:
15 (a) A trade name or other name of the debtor; or
16 (b) Unless required under subparagraph (1)(d)2., names
17 of partners, members, associates, or other persons comprising
18 the debtor.
19 (3) A financing statement that provides only the
20 debtor's trade name does not sufficiently provide the name of
21 the debtor.
22 (4) Failure to indicate the representative capacity of
23 a secured party or representative of a secured party does not
24 affect the sufficiency of a financing statement.
25 (5) A financing statement may provide the name of more
26 than one debtor and the name of more than one secured party.
27 679.5041 Indication of collateral.--A financing
28 statement sufficiently indicates the collateral that it covers
29 if the financing statement provides:
30 (1) A description of the collateral pursuant to s.
31 679.1081; or

1 (2) If the security agreement grants a security
2 interest in all of the debtor's personal property and such
3 property is reasonably identified in the security agreement,
4 as permitted by s. 679.1081, an indication that the financing
5 statement covers all assets or all personal property.

6 679.5051 Filing and compliance with other statutes and
7 treaties for consignments, leases, bailments, and other
8 transactions.--

9 (1) A consignor, lessor, or bailor of goods, a
10 licensor, or a buyer of a payment intangible or promissory
11 note may file a financing statement, or may comply with a
12 statute or treaty described in s. 679.3111(1), using the terms
13 "consignor," "consignee," "lessor," "lessee," "bailor,"
14 "bailee," "licensor," "licensee," "owner," "registered owner,"
15 "buyer," "seller," or words of similar import, instead of the
16 terms "secured party" and "debtor."

17 (2) This part applies to the filing of a financing
18 statement under subsection (1) and, as appropriate, to
19 compliance that is equivalent to filing a financing statement
20 under s. 679.3111(2), but the filing or compliance is not of
21 itself a factor in determining whether the collateral secures
22 an obligation. If it is determined for another reason that the
23 collateral secures an obligation, a security interest held by
24 the consignor, lessor, bailor, licensor, owner, or buyer which
25 attaches to the collateral is perfected by the filing or
26 compliance.

27 679.5061 Effect of errors or omissions.--

28 (1) A financing statement substantially complying with
29 the requirements of this part is effective, even if it has
30 minor errors or omissions, unless the errors or omissions make
31 the financing statement seriously misleading.

1 (2) Except as otherwise provided in subsection (3), a
2 financing statement that fails sufficiently to provide the
3 name of the debtor in accordance with s. 679.5031(1) is
4 seriously misleading.

5 (3) If a search of the records of the filing office
6 under the debtor's correct name, using the filing office's
7 standard search logic, if any, would disclose a financing
8 statement that fails sufficiently to provide the name of the
9 debtor in accordance with s. 679.5031(1), the name provided
10 does not make the financing statement seriously misleading.

11 (4) For purposes of s. 679.508(2), the term "debtor's
12 correct name" as used in subsection (3) means the correct name
13 of the new debtor.

14 679.5071 Effect of certain events on effectiveness of
15 financing statement.--

16 (1) A filed financing statement remains effective with
17 respect to collateral that is sold, exchanged, leased,
18 licensed, or otherwise disposed of and in which a security
19 interest or agricultural lien continues, even if the secured
20 party knows of or consents to the disposition.

21 (2) Except as otherwise provided in subsection (3) and
22 s. 679.508, a financing statement is not rendered ineffective
23 if, after the financing statement is filed, the information
24 provided in the financing statement becomes seriously
25 misleading under the standard set forth in s. 679.5061.

26 (3) If a debtor so changes its name that a filed
27 financing statement becomes seriously misleading under the
28 standard set forth in s. 679.5061:

29 (a) The financing statement is effective to perfect a
30 security interest in collateral acquired by the debtor before,
31 or within 4 months after, the change; and

1 (b) The financing statement is not effective to
2 perfect a security interest in collateral acquired by the
3 debtor more than 4 months after the change, unless an
4 amendment to the financing statement which renders the
5 financing statement not seriously misleading is filed within 4
6 months after the change.

7 679.508 Effectiveness of financing statement if new
8 debtor becomes bound by security agreement.--

9 (1) Except as otherwise provided in this section, a
10 filed financing statement naming an original debtor is
11 effective to perfect a security interest in collateral in
12 which a new debtor has or acquires rights to the extent that
13 the financing statement would have been effective had the
14 original debtor acquired rights in the collateral.

15 (2) If the difference between the name of the original
16 debtor and that of the new debtor causes a filed financing
17 statement that is effective under subsection (1) to be
18 seriously misleading under the standard set forth in s.
19 679.5061:

20 (a) The financing statement is effective to perfect a
21 security interest in collateral acquired by the new debtor
22 before, and within 4 months after, the new debtor becomes
23 bound under s. 679.2031(4); and

24 (b) The financing statement is not effective to
25 perfect a security interest in collateral acquired by the new
26 debtor more than 4 months after the new debtor becomes bound
27 under s. 679.2031(4) unless an initial financing statement
28 providing the name of the new debtor is filed before the
29 expiration of that time.

30
31

1 (3) This section does not apply to collateral as to
2 which a filed financing statement remains effective against
3 the new debtor under s. 679.5071(1).

4 679.509 Persons entitled to file a record.--

5 (1) A person may file an initial financing statement,
6 amendment that adds collateral covered by a financing
7 statement, or amendment that adds a debtor to a financing
8 statement only if:

9 (a) The debtor authorizes the filing in an
10 authenticated record or pursuant to subsection (2) or
11 subsection (3); or

12 (b) The person holds an agricultural lien that has
13 become effective at the time of filing and the financing
14 statement covers only collateral in which the person holds an
15 agricultural lien.

16 (2) By authenticating or becoming bound as a debtor by
17 a security agreement, a debtor or new debtor authorizes the
18 filing of an initial financing statement, and an amendment,
19 covering:

20 (a) The collateral described in the security
21 agreement; and

22 (b) Property that becomes collateral under s.
23 679.3151(1)(b), whether or not the security agreement
24 expressly covers proceeds.

25 (3) A person may file an amendment other than an
26 amendment that adds collateral covered by a financing
27 statement or an amendment that adds a debtor to a financing
28 statement only if:

29 (a) The secured party of record authorizes the filing;
30 or

31

1 (b) The amendment is a termination statement for a
2 financing statement as to which the secured party of record
3 has failed to file or send a termination statement as required
4 by s. 679.5131(1) or (3).

5 (4) If there is more than one secured party of record
6 for a financing statement, each secured party of record may
7 authorize the filing of an amendment under subsection (3).

8 (5) By acquiring collateral in which a security
9 interest or agricultural lien continues under s. 679.3151(1),
10 a debtor authorizes the filing of an initial financing, and an
11 amendment, covering the collateral and property that become
12 collateral under s. 679.3151(1)(b).

13 679.510 Effectiveness of filed record.--

14 (1) Subject to subsection (3), a filed record is
15 effective only to the extent that it was filed by a person who
16 may file it under s. 679.509.

17 (2) A record authorized by one secured party of record
18 does not affect the financing statement with respect to
19 another secured party of record.

20 (3) If a person may file a termination statement only
21 under s. 679.509(3)(b), the filed termination statement is
22 effective only if the debtor authorizes the filing and the
23 termination statement indicates that the debtor authorized it
24 to be filed.

25 (4) A continuation statement that is not filed within
26 the 6-month period prescribed by s. 679.515(4) is ineffective.

27 679.511 Secured party of record.--

28 (1) A secured party of record with respect to a
29 financing statement is a person whose name is provided as the
30 name of the secured party or a representative of the secured
31 party in an initial financing statement that has been filed.

1 If an initial financing statement is filed under s.
2 679.514(1), the assignee named in the initial financing
3 statement is the secured party of record with respect to the
4 financing statement.

5 (2) If an amendment of a financing statement which
6 provides the name of a person as a secured party or a
7 representative of a secured party is filed, the person named
8 in the amendment is a secured party of record. If an
9 amendment is filed under s. 679.514(2), the assignee named in
10 the amendment is a secured party of record.

11 (3) A person remains a secured party of record until
12 the filing of an amendment of the financing statement which
13 deletes the person.

14 679.512 Amendment of financing statement.--

15 (1) Subject to s. 679.509, a person may add or delete
16 collateral covered by, continue or terminate the effectiveness
17 of, or, subject to subsection (5), otherwise amend the
18 information provided in, a financing statement by filing an
19 amendment that:

20 (a) Identifies, by its correct file number, if any,
21 the initial financing statement to which the amendment
22 relates, and the name of the debtor and the secured party of
23 record; and

24 (b) If the amendment relates to an initial financing
25 statement filed or recorded in a filing office described in s.
26 679.5011(1)(a), provides the information specified in s.
27 679.5021(2), the official records book and page number of the
28 initial financing statement to which the amendment relates,
29 and the name of the debtor and secured party of record.

30
31

1 (2) Except as otherwise provided in s. 679.515, the
2 filing of an amendment does not extend the period of
3 effectiveness of the financing statement.

4 (3) A financing statement that is amended by an
5 amendment that adds collateral is effective as to the added
6 collateral only from the date of the filing of the amendment.

7 (4) A financing statement that is amended by an
8 amendment that adds a debtor is effective as to the added
9 debtor only from the date of the filing of the amendment.

10 (5) An amendment is ineffective to the extent it:

11 (a) Purports to delete all debtors and fails to
12 provide the name of a debtor to be covered by the financing
13 statement; or

14 (b) Purports to delete all secured parties of record
15 and fails to provide the name of a new secured party of
16 record.

17 679.513 Termination statement.--

18 (1) A secured party shall cause the secured party of
19 record for a financing statement to file a termination
20 statement for the financing statement if the financing
21 statement covers consumer goods and:

22 (a) There is no obligation secured by the collateral
23 covered by the financing statement and no commitment to make
24 an advance, incur an obligation, or otherwise give value; or

25 (b) The debtor did not authorize the filing of the
26 initial financing statement.

27 (2) To comply with subsection (1), a secured party
28 shall cause the secured party of record to file the
29 termination statement:

30 (a) Within 1 month after there is no obligation
31 secured by the collateral covered by the financing statement

1 and no commitment to make an advance, incur an obligation, or
2 otherwise give value; or

3 (b) If earlier, within 20 days after the secured party
4 receives an authenticated demand from a debtor.

5 (3) In cases not governed by subsection (1), within 20
6 days after a secured party receives an authenticated demand
7 from a debtor, the secured party shall cause the secured party
8 of record for a financing statement to send to the debtor a
9 termination statement for the financing statement or file the
10 termination statement in the filing office if:

11 (a) Except in the case of a financing statement
12 covering accounts or chattel paper that has been sold or goods
13 that are the subject of a consignment, there is no obligation
14 secured by the collateral covered by the financing statement
15 and no commitment to make an advance, incur an obligation, or
16 otherwise give value;

17 (b) The financing statement covers accounts or chattel
18 paper that has been sold but as to which the account debtor or
19 other person obligated has discharged its obligation;

20 (c) The financing statement covers goods that were the
21 subject of a consignment to the debtor but are not in the
22 debtor's possession; or

23 (d) The debtor did not authorize the filing of the
24 initial financing statement.

25 (4) Except as otherwise provided in s. 679.510, upon
26 the filing of a termination statement with the filing office,
27 the financing statement to which the termination statement
28 relates ceases to be effective. Except as otherwise provided
29 in s. 679.510, for purposes of ss. 679.519(7) and 679.522(1),
30 the filing with the filing office of a termination statement
31 relating to a financing statement that indicates that the

1 debtor is a transmitting utility also causes the effectiveness
2 of the financing statement to lapse.

3 679.514 Assignment of powers of secured party of
4 record.--

5 (1) Except as otherwise provided in subsection (3), an
6 initial financing statement may reflect an assignment of all
7 of the secured party's power to authorize an amendment to the
8 financing statement by providing the name and mailing address
9 of the assignee as the name and address of the secured party.

10 (2) Except as otherwise provided in subsection (3), a
11 secured party of record may assign of record all or part of
12 its power to authorize an amendment to a financing statement
13 by filing in the filing office an amendment of the financing
14 statement which:

15 (a) Identifies, by its correct file number and the
16 secured party of record, the initial financing statement to
17 which it relates;

18 (b) Provides the names of the assignor and debtor; and

19 (c) Provides the name and mailing address of the
20 assignee.

21 (3) An assignment of record of a security interest in
22 a fixture covered by a real property mortgage that is
23 effective as a fixture filing under s. 679.5021(3) may be made
24 only by an assignment of record of the mortgage in the manner
25 provided by s. 701.02.

26 679.515 Duration and effectiveness of financing
27 statement; effect of lapsed financing statement.--

28 (1) Except as otherwise provided in subsections (2),
29 (5), (6), and (7), a filed financing statement is effective
30 for a period of 5 years after the date of filing.

31

1 (2) Except as otherwise provided in subsections (5),
 2 (6), and (7), an initial financing statement filed in
 3 connection with a manufactured-home transaction is effective
 4 for a period of 30 years after the date of filing if it
 5 indicates that it is filed in connection with a
 6 manufactured-home transaction.

7 (3) The effectiveness of a filed financing statement
 8 lapses on the expiration of the period of its effectiveness
 9 unless, before the lapse, a continuation statement is filed
 10 pursuant to subsection (4). Upon lapse, a financing statement
 11 ceases to be effective and any security interest or
 12 agricultural lien that was perfected by the financing
 13 statement becomes unperfected, unless the security interest is
 14 perfected without filing. If the security interest or
 15 agricultural lien becomes unperfected upon lapse, it is deemed
 16 never to have been perfected as against a purchaser of the
 17 collateral for value.

18 (4) A continuation statement may be filed only within
 19 6 months before the expiration of the 5-year period specified
 20 in subsection (1) or the 30-year period specified in
 21 subsection (2), whichever is applicable.

22 (5) Except as otherwise provided in s. 679.510, upon
 23 timely filing of a continuation statement, the effectiveness
 24 of the initial financing statement continues for a period of 5
 25 years commencing on the day on which the financing statement
 26 would have become ineffective in the absence of the filing.
 27 Upon the expiration of the 5-year period, the financing
 28 statement lapses in the same manner as provided in subsection
 29 (3), unless, before the lapse, another continuation statement
 30 is filed pursuant to subsection (4). Succeeding continuation
 31

1 statements may be filed in the same manner to continue the
2 effectiveness of the initial financing statement.

3 (6) If a debtor is a transmitting utility and a filed
4 financing statement so indicates, the financing statement is
5 effective until a termination statement is filed.

6 (7) A record of a mortgage satisfying the requirements
7 of chapter 697 that is effective as a fixture filing under s.
8 679.5021(3) remains effective as a financing statement filed
9 as a fixture filing until the mortgage is released or
10 satisfied of record or its effectiveness otherwise terminates
11 as to the real property.

12 679.516 What constitutes filing; effectiveness of
13 filing.--

14 (1) Except as otherwise provided in subsection (2),
15 communication of a record to a filing office, tender of the
16 processing fee, or acceptance of the record by the filing
17 office constitutes filing.

18 (2) Filing does not occur with respect to a record
19 that a filing office refuses to accept because:

20 (a) The record is not communicated by a method or
21 medium of communication authorized by the filing office;

22 (b) An amount equal to or greater than the applicable
23 processing fee is not tendered;

24 (c) The record does not include the notation required
25 by s. 201.22 indicating that the excise tax required by
26 chapter 201 had been paid or is not required;

27 (d) The filing office is unable to index the record
28 because:

29 1. In the case of an initial financing statement, the
30 record does not provide an organization's name or, if an
31

1 individual, the individual's last name and first name or
2 initial;
3 2. In the case of an amendment or correction
4 statement, the record:
5 a. Does not correctly identify the initial financing
6 statement as required by s. 679.512 or s. 679.518, as
7 applicable; or
8 b. Identifies an initial financing statement the
9 effectiveness of which has lapsed under s. 679.515;
10 3. In the case of an initial financing statement that
11 provides the name of a debtor identified as an individual or
12 an amendment that provides a name of a debtor identified as an
13 individual which was not previously provided in the financing
14 statement to which the record relates, the record does not
15 identify the debtor's last name and first name or initial; or
16 4. In the case of a record filed or recorded in the
17 filing office described in s. 679.5011(1)(a), the record does
18 not provide a sufficient description of the real property to
19 which it relates;
20 (e) In the case of an initial financing statement or
21 an amendment that adds a secured party of record, the record
22 does not provide an organization's name or, if an individual,
23 the individual's last name and first name or initial and
24 mailing address for the secured party of record;
25 (f) In the case of an initial financing statement or
26 an amendment that provides a name of a debtor which was not
27 previously provided in the financing statement to which the
28 amendment relates, the record does not:
29 1. Provide a mailing address for the debtor;
30 2. Indicate whether the debtor is an individual or an
31 organization; or

1 3. If the financing statement indicates that the
2 debtor is an organization, provide:

3 a. A type of organization for the debtor;

4 b. A jurisdiction of organization for the debtor; or

5 c. An organizational identification number for the
6 debtor or indicate that the debtor has none;

7 (g) In the case of an assignment reflected in an
8 initial financing statement under s. 679.514(1) or an
9 amendment filed under s. 679.514(2), the record does not
10 provide an organization's name or, if an individual, the
11 individual's last name and first name or initial and mailing
12 address for the assignee;

13 (h) In the case of a continuation statement, the
14 record is not filed within the 6-month period prescribed by s.
15 679.515(4);

16 (i) In the case of an initial financing statement or
17 an amendment, which amendment requires the inclusion of a
18 collateral statement but the record does not provide any, the
19 record does not provide a statement of collateral; or

20 (3) For purposes of subsection (2):

21 (a) A record does not provide information if the
22 filing office is unable to read or decipher the information;
23 and

24 (b) A record that does not indicate that it is an
25 amendment or identify an initial financing statement to which
26 it relates, as required by s. 679.512, s. 679.514, or s.
27 679.518, is an initial financing statement.

28 (4) A record that is communicated to the filing office
29 with tender of the filing fee, but that the filing office
30 refuses to accept for a reason other than one set forth in
31 subsection (2), is effective as a filed record except as

1 against a purchaser of the collateral which gives value in
2 reasonable reliance upon the absence of the record from the
3 files.

4 679.517 Effect of indexing errors.--The failure of the
5 filing office to index a record correctly does not affect the
6 effectiveness of the filed record.

7 679.518 Claim concerning inaccurate or wrongfully
8 filed record.--

9 (1) A person may file in the filing office a
10 correction statement with respect to a record indexed there
11 under the person's name if the person believes that the record
12 is inaccurate or was wrongfully filed.

13 (2) A correction statement must:

14 (a) Identify the record to which it relates by the
15 file number assigned to the initial financing statement, the
16 debtor, and the secured party of record to which the record
17 relates;

18 (b) Indicate that it is a correction statement; and

19 (c) Provide the basis for the person's belief that the
20 record is inaccurate and indicate the manner in which the
21 person believes the record should be amended to cure any
22 inaccuracy or provide the basis for the person's belief that
23 the record was wrongfully filed.

24 (3) The filing of a correction statement does not
25 affect the effectiveness of an initial financing statement or
26 other filed record.

27 679.519 Numbering, maintaining, and indexing records;
28 communicating information provided in records.--

29 (1) For each record filed in a filing office, the
30 filing office shall, in accordance with such other laws
31

1 applicable to the recording of instruments by a filing office
2 described in s. 679.5011(1)(a):
3 (a) Assign a unique number to the filed record;
4 (b) Create a record that bears the number assigned to
5 the filed record and the date and time of filing;
6 (c) Maintain the filed record for public inspection;
7 and
8 (d) Index the filed record in accordance with
9 subsections (3), (4), and (5).
10 (2) Except as otherwise provided in subsection (9), a
11 file number assigned after January 1, 2002, must include a
12 digit that:
13 (a) Is mathematically derived from or related to the
14 other digits of the file number; and
15 (b) Enables the filing office to detect whether a
16 number communicated as the file number includes a single-digit
17 or transpositional error.
18 (3) Except as otherwise provided in subsections (4)
19 and (5), the filing office shall:
20 (a) Index an initial financing statement according to
21 the name of the debtor and shall index all filed records
22 relating to the initial financing statement in a manner that
23 associates with one another an initial financing statement and
24 all filed records relating to the initial financing statement;
25 and
26 (b) Index a record that provides a name of a debtor
27 which was not previously provided in the financing statement
28 to which the record relates also according to the name that
29 was not previously provided.
30
31

1 (4) 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 it:

4 (a) Under the names of the debtor and of each owner of
5 record shown on the financing statement as if they were the
6 mortgagors under a mortgage of the real property described;
7 and

8 (b) To the extent that the law of this state provides
9 for indexing of mortgages under the name of the mortgagee,
10 under the name of the secured party as if the secured party
11 were the mortgagee thereunder, or, if indexing is by
12 description, as if the financing statement were a mortgage of
13 the real property described.

14 (5) If a financing statement is filed as a fixture
15 filing or covers as-extracted collateral or timber to be cut,
16 the filing office shall index an assignment filed under s.
17 679.514(1) or an amendment filed under s. 679.514(2):

18 (a) Under the name of the assignor as grantor; and

19 (b) To the extent that the law of this state provides
20 for indexing the assignment of a real property mortgage under
21 the name of the assignee, under the name of the assignee.

22 (6) The filing office shall maintain a capability for:

23 (a) Retrieving a record by the name of the debtor and
24 by the file number assigned to the initial financing statement
25 to which the record relates; and

26 (b) Associating and retrieving with one another an
27 initial financing statement and each filed record relating to
28 the initial financing statement.

29 (7) The filing office may not remove a debtor's name
30 from the index until 1 year after the effectiveness of a
31

1 financing statement naming the debtor lapses under s. 679.515
2 with respect to all secured parties of record.

3 (8) Except as otherwise provided in subsection (9),
4 the filing office shall perform the acts required by
5 subsections (1) through (5) at the time and in the manner
6 prescribed by any filing-office rule, but not later than 3
7 business days after the filing office receives the record in
8 question, if practical.

9 (9) Subsections (1), (2), and (8) do not apply to a
10 filing office described in s. 679.5011(1)(a).

11 679.520 Acceptance and refusal to accept record.--

12 (1) A filing office shall refuse to accept a record
13 for filing for a reason set forth in s. 679.516(2) and may
14 refuse to accept a record for filing only for a reason set
15 forth in s. 679.516(2).

16 (2) If a filing office refuses to accept a record for
17 filing, it shall communicate to the person that presented the
18 record the fact of and reason for the refusal and the date and
19 time the record would have been filed had the filing office
20 accepted it. The communication must be made at the time and
21 in the manner prescribed by any filing-office rule but, in the
22 case of a filing office described in s. 679.5011(1)(b), in no
23 event more than 3 business days after the filing office
24 receives the record, if practical.

25 (3) A filed financing statement satisfying s.
26 679.5021(1) and (2) is effective, even if the filing office is
27 required to refuse to accept it for filing under subsection
28 (1). However, s. 679.338 applies to a filed financing
29 statement providing information described in s. 679.516(2)(e)
30 which is incorrect at the time the financing statement is
31 filed.

1 (4) If a record communicated to a filing office
2 provides information that relates to more than one debtor,
3 this part applies as to each debtor separately.

4 679.521 Uniform form of written financing statement
5 and amendment.--The Secretary of State shall develop or
6 approve acceptable forms for use in filing under this chapter.
7 Such forms must be in accord with the requirements of Florida
8 law, including s. 201.22. The secretary may, if he or she
9 finds that such forms meet these requirements, approve the use
10 of a standard national form for this purpose.

11 679.522 Maintenance and destruction of records.--

12 (1) The filing office shall maintain a record of the
13 information provided in a filed financing statement for at
14 least 1 year after the effectiveness of the financing
15 statement has lapsed under s. 679.515 with respect to all
16 secured parties of record. The record must be retrievable by
17 using the name of the debtor and by using the file number, or
18 official records book and page number if a fixture filing,
19 assigned to the initial financing statement to which the
20 record relates.

21 (2) Except to the extent that chapter 119 governing
22 disposition of public records provides otherwise, the filing
23 office immediately may destroy any written record evidencing a
24 financing statement. However, if the filing office destroys a
25 written record, it shall maintain another record of the
26 financing statement which complies with subsection (1).

27 679.523 Information from filing office; sale or
28 license of records.--

29 (1) If a person files a written record, the filing
30 office shall make available, on the database, an image of the
31 record showing the number assigned to the record pursuant to

1 s. 679.519(1)(a) and the date of the filing of the record or,
2 if requested, send to the person a separate printed
3 acknowledgement indicating the debtor's name, the number
4 assigned to the record pursuant to s. 679.519(1)(a), and the
5 date of the filing of the record.

6 (2) If a person files a record other than a written
7 record, the filing office described in s. 679.5011(1)(b) shall
8 communicate to the person an image that provides:

9 (a) The information in the record;

10 (b) The number assigned to the record pursuant to s.
11 679.519(1)(a); and

12 (c) The date and time of the filing of the record.

13 (3) In complying with its duty under this chapter, the
14 filing office described in s. 679.5011(1)(b) may communicate
15 information in any medium. However, if requested, the filing
16 office shall communicate information by issuing its written
17 certificate or a record that can be admitted into evidence in
18 the courts of the state without extrinsic evidence of its
19 authenticity.

20 (4) The filing office described in s. 679.5011(1)(b)
21 shall perform the acts required by subsections (1) and (2) at
22 the time and in the manner prescribed by any filing-office
23 rule, but not later than 3 business days after the filing
24 office receives the request, if practical.

25 679.524 Delay by filing office.--Delay by the filing
26 office beyond a time limit prescribed by this part is excused
27 if:

28 (1) The delay is caused by interruption of
29 communication or computer facilities, war, emergency
30 conditions, failure of equipment, or other circumstances
31 beyond control of the filing office; and

1 (2) The filing office exercises reasonable diligence
2 under the circumstances.

3 679.525 Processing fees.--

4 (1) Except as otherwise provided in subsection (3),
5 the nonrefundable processing fee for filing and indexing a
6 record under this part, other than an initial financing
7 statement of the kind described in s. 679.5021(3), is:

8 (a) For filing an initial financing statement, \$25 for
9 the first page, which shall include the cost of filing a
10 termination statement for the financing statement;

11 (b) For filing an amendment, \$12 for the first page;

12 (c) For indexing by additional debtor, secured party,
13 or assignee, \$3 per additional name indexed;

14 (d) For use of a nonapproved form, \$5;

15 (e) For each additional page attached to a record, \$3;

16 (f) For filing a financing statement communicated by
17 an electronic filing process authorized by the filing office,
18 \$15 with no additional fees for multiple names or attached
19 pages;

20 (g) For filing an amendment communicated by an
21 electronic filing process authorized by the filing office, \$5
22 with no additional fees for multiple names or attached pages;

23 (h) For a certified copy of a financing statement and
24 any and all associated amendments, \$30; and

25 (i) For a photocopy of a filed record, \$1 per page.

26 (2) Except as otherwise provided in subsection (3),
27 the fee for filing and indexing an initial financing statement
28 of the kind described in s. 679.5021(3) is the amount
29 specified in chapter 28.

30 (3) This section does not require a fee with respect
31 to a mortgage that is effective as a financing statement filed

1 as a fixture filing or as a financing statement covering
2 as-extracted collateral or timber to be cut under s.
3 679.5021(3). However, the recording and satisfaction fees
4 that otherwise would be applicable to the mortgage apply.

5 679.526 Filing-office rules.--The Department of State
6 may adopt and publish rules to administer this chapter. The
7 filing-office rules must be:

8 (1) Consistent with this chapter.

9 (2) Adopted and published in accordance with the
10 Administrative Procedure Act.

11 679.527 Florida Secured Transaction Registry.--

12 (1) As used in this section, the term:

13 (a) The "Florida Secured Transaction Registry" or
14 "registry" means the centralized database in which all initial
15 financing statements, amendments, assignments, and other
16 statements of change authorized to be filed under this chapter
17 are filed, maintained, and retrieved. The term does not apply
18 to documents that are filed under this chapter with the clerk
19 of a circuit court.

20 (b) "Department" means the Department of State.

21 (c) "Materials and records" includes, but is not
22 limited to data bases, source or object codes, and any
23 software relating to the Florida Secured Transaction Registry
24 or system for centralized filing under this part, regardless
25 of the original source of its creation or maintenance.

26 (2) The Department of State may contract for the
27 performance of the administrative and operational functions
28 under this part of the filing office and filing officer for
29 the Florida Secured Transaction Registry, provided that any
30 such contract shall not be assignable or otherwise
31 transferable without the express written consent of the

1 department, notwithstanding any limitations imposed by ss.
 2 679.4061 or 679.4081.

3 (3) The department shall perform the administrative
 4 and operational functions, as filing officer and filing
 5 office, for the Florida Secured Transaction Registry until
 6 October 1, 2001, or upon the effective date of a contract
 7 executed by the department to administer and operate the
 8 registry, whichever occurs later. At such time, the
 9 department shall cease serving as the designated filing
 10 officer and filing office for the registry under this part,
 11 and thereafter, except to the extent it reclaims such
 12 responsibilities as provided below, shall not be responsible
 13 for the duties of the filing office and officer under this
 14 part, including determining whether documents tendered for
 15 filing under this part satisfy the requirements of law. The
 16 department shall retain authority under this part to approve
 17 the forms required to be filed under this part. If authorized
 18 by the contract, the entity performing the duties of the
 19 filing office may certify a copy of a financing statement or
 20 amendment thereto which shall be admissible in a state or
 21 federal court or other tribunal proceeding.

22 (4) Notwithstanding the terms and conditions of any
 23 contract to perform the administrative and operational
 24 functions of the filing office or filing officer under this
 25 part for the Florida Secured Transaction Registry, the
 26 department and the state shall retain sole and exclusive
 27 ownership of the materials and records of the registry, shall
 28 have the right to inspect and make copies of the materials and
 29 records of the registry, and shall have the right to
 30 immediately reclaim and take possession and control of the
 31 original materials and records of the registry if any entity

1 under contract with the department to administer and operate
 2 the registry does not, or cannot, perform the terms and
 3 conditions of the contract for any reason or commences or
 4 consents to an insolvency proceeding. If the department
 5 reclaims control of the materials and records of the registry,
 6 the department shall provide for the uninterrupted fulfillment
 7 of the duties of the filing office and filing officer by
 8 administration and operation by the department until a
 9 subsequent contract for such duties can be executed. The
 10 department shall be entitled to injunctive relief if the
 11 entity fails to turn over the materials and records upon
 12 demand, and the Circuit Court for Leon County, Florida shall
 13 have exclusive original jurisdiction to adjudicate any
 14 disputes pertaining to this section or any contract entered
 15 into under this section.

16 (5) The Department of State shall immediately develop
 17 and issue a Request for Qualifications seeking capable parties
 18 to perform both the administrative and operational functions
 19 currently being performed by the department as a filing
 20 officer and filing office under the Uniform Commercial Code.

21 (a) The qualifications shall, at a minimum, provide
 22 for the organization and maintenance of the Florida Secured
 23 Transaction Registry as the centralized Uniform Commercial
 24 Code filing and retrieval system, which:

25 1. Is comparable and compatible with the existing
 26 filing system.

27 2. Is open to the public and accessible through the
 28 Internet, to permit the review of all existing filings of the
 29 department and all future filings, in compliance with chapter
 30 119.

31

1 3. Provides for oversight and compliance audits by the
2 department.

3 4. Requires records maintenance in compliance with
4 this part and chapter 119.

5 5. Maintains the current level of filing fees and
6 procedures for the deposit of revenues with the department as
7 specified in chapter 15, net of operating costs, for a period
8 of 5 years.

9 (b) The Department of State shall develop performance
10 standards to ensure that the filing system is accurate and
11 complete and that the users thereof are being well-served.
12 Periodically, the department shall verify that these
13 performance standards are being met or modified as may be
14 needed from time to time.

15 Section 7. Part VI of chapter 679, Florida Statutes,
16 consisting of sections 679.601, 679.602, 679.603, 679.604,
17 679.605, 679.606, 679.607, 679.608, 679.609, 679.610, 679.611,
18 679.612, 679.613, 679.614, 679.615, 679.616, 679.617, 679.618,
19 679.619, 679.620, 679.621, 679.622, 679.623, 679.624, 679.625,
20 679.626, 679.627, and 679.628, Florida Statutes, is created to
21 read:

22 PART VI

23 DEFAULT

24 679.601 Rights after default; judicial enforcement;
25 consignor or buyer of accounts, chattel paper, payment
26 intangibles, or promissory notes.--

27 (1) After default, a secured party has the rights
28 provided in this part and, except as otherwise provided in s.
29 679.602, those provided by agreement of the parties. A secured
30 party:

1 (a) May reduce a claim to judgment, foreclose, or
2 otherwise enforce the claim, security interest, or
3 agricultural lien by any available judicial procedure; and

4 (b) If the collateral is documents, may proceed either
5 as to the documents or as to the goods they cover.

6 (2) A secured party in possession of collateral or
7 control of collateral under s. 679.1041, s. 679.1051, s.
8 679.1061, or s. 679.1071 has the rights and duties provided in
9 s. 679.2071.

10 (3) The rights under subsections (1) and (2) are
11 cumulative and may be exercised simultaneously.

12 (4) Except as otherwise provided in subsection (7) and
13 s. 679.605, after default, a debtor and an obligor have the
14 rights provided in this part and by agreement of the parties.

15 (5) If a secured party has reduced its claim to
16 judgment, the lien of any levy that may be made upon the
17 collateral by virtue of an execution based upon the judgment
18 relates back to the earliest of:

19 (a) The date of perfection of the security interest or
20 agricultural lien in the collateral;

21 (b) The date of filing a financing statement covering
22 the collateral; or

23 (c) Any date specified in a statute under which the
24 agricultural lien was created.

25 (6) A sale pursuant to an execution is a foreclosure
26 of the security interest or agricultural lien by judicial
27 procedure within the meaning of this section. A secured party
28 may purchase at the sale and thereafter hold the collateral
29 free of any other requirements of this chapter.

30 (7) Except as otherwise provided in s. 679.607(3),
31 this part imposes no duties upon a secured party that is a

1 consignor or is a buyer of accounts, chattel paper, payment
2 intangibles, or promissory notes.

3 679.602 Waiver and variance of rights and
4 duties.--Except as otherwise provided in s. 679.624, to the
5 extent that they give rights to a debtor or obligor and impose
6 duties on a secured party, the debtor or obligor may not waive
7 or vary the rules stated in the following listed sections:

8 (1) Section 679.2071(2)(d)3., which deals with use and
9 operation of the collateral by the secured party;

10 (2) Section 679.210, which deals with requests for an
11 accounting and requests concerning a list of collateral and
12 statement of account;

13 (3) Section 679.607(3), which deals with collection
14 and enforcement of collateral;

15 (4) Sections 679.608(1) and 679.615(3) to the extent
16 that they deal with application or payment of noncash proceeds
17 of collection, enforcement, or disposition;

18 (5) Sections 679.608(1) and 679.615(4) to the extent
19 that they require accounting for or payment of surplus
20 proceeds of collateral;

21 (6) Section 679.609 to the extent that it imposes upon
22 a secured party that takes possession of collateral without
23 judicial process the duty to do so without breach of the
24 peace;

25 (7) Sections 679.610(2), 679.611, 679.613, and
26 679.614, which deal with disposition of collateral;

27 (8) Section 679.615(6), which deals with calculation
28 of a deficiency or surplus when a disposition is made to the
29 secured party, a person related to the secured party, or a
30 secondary obligor;

31

1 (9) Section 679.616, which deals with explanation of
2 the calculation of a surplus or deficiency;

3 (10) Sections 679.620, 679.621, and 679.622, which
4 deal with acceptance of collateral in satisfaction of
5 obligation;

6 (11) Section 679.623, which deals with redemption of
7 collateral;

8 (12) Section 679.624, which deals with permissible
9 waivers; and

10 (13) Sections 679.625 and 679.626, which deal with the
11 secured party's liability for failure to comply with this
12 article.

13 679.603 Agreement on standards concerning rights and
14 duties.--

15 (1) The parties may determine by agreement the
16 standards measuring the fulfillment of the rights of a debtor
17 or obligor and the duties of a secured party under a rule
18 stated in s. 679.602 if the standards are not manifestly
19 unreasonable.

20 (2) Subsection (1) does not apply to the duty under s.
21 679.609 to refrain from breaching the peace.

22 679.604 Procedure if security agreement covers real
23 property or fixtures.--

24 (1) If a security agreement covers both personal and
25 real property, a secured party may proceed:

26 (a) Under this part as to the personal property
27 without prejudicing any rights with respect to the real
28 property; or

29 (b) As to both the personal property and the real
30 property in accordance with the rights with respect to the
31

1 real property, in which case the other provisions of this part
2 do not apply.

3 (2) Subject to subsection (3), if a security agreement
4 covers goods that are or become fixtures, a secured party may
5 proceed:

6 (a) Under this part; or

7 (b) In accordance with the rights with respect to real
8 property, in which case the other provisions of this part do
9 not apply.

10 (3) Subject to the other provisions of this part, if a
11 secured party holding a security interest in fixtures has
12 priority over all owners and encumbrancers of the real
13 property, the secured party, after default, may remove the
14 collateral from the real property. The secured party shall
15 give reasonable notification of its intent to remove the
16 collateral to all persons entitled to reimbursement under
17 subsection (4).

18 (4) A secured party that removes collateral shall
19 promptly reimburse any encumbrancer or owner of the real
20 property, other than the debtor, for the cost of repair of any
21 physical injury caused by the removal. The secured party need
22 not reimburse the encumbrancer or owner for any diminution in
23 value of the real property caused by the absence of the goods
24 removed or by any necessity of replacing them. A person
25 entitled to reimbursement may refuse permission to remove
26 until the secured party gives adequate assurance for the
27 performance of the obligation to reimburse. This subsection
28 does not prohibit a secured party and the person entitled to
29 reimbursement from entering into an authenticated record
30 providing for the removal of fixtures and reimbursement for
31 any damage caused thereby.

1 679.605 Unknown debtor or secondary obligor.--A
2 secured party does not owe a duty based on its status as
3 secured party:

4 (1) To a person who is a debtor or obligor, unless the
5 secured party knows:

6 (a) That the person is a debtor or obligor;

7 (b) The identity of the person; and

8 (c) How to communicate with the person; or

9 (2) To a secured party or lienholder that has filed a
10 financing statement against a person, unless the secured party
11 knows:

12 (a) That the person is a debtor; and

13 (b) The identity of the person.

14 679.606 Time of default for agricultural lien.--For
15 purposes of this part, a default occurs in connection with an
16 agricultural lien at the time the secured party becomes
17 entitled to enforce the lien in accordance with the statute
18 under which it was created.

19 679.607 Collection and enforcement by secured party.--

20 (1) If so agreed, and in any event after default, a
21 secured party:

22 (a) May notify an account debtor or other person
23 obligated on collateral to make payment or otherwise render
24 performance to or for the benefit of the secured party;

25 (b) May take any proceeds to which the secured party
26 is entitled under s. 679.3151;

27 (c) May enforce the obligations of an account debtor
28 or other person obligated on collateral and exercise the
29 rights of the debtor with respect to the obligation of the
30 account debtor or other person obligated on collateral to make
31 payment or otherwise render performance to the debtor, and

1 with respect to any property that secures the obligations of
2 the account debtor or other person obligated on the
3 collateral;

4 (d) If it holds a security interest in a deposit
5 account perfected by control under s. 679.1041(1)(a), may
6 apply the balance of the deposit account to the obligation
7 secured by the deposit account; and

8 (e) If it holds a security interest in a deposit
9 account perfected by control under s. 679.1041(1)(b) or (c),
10 may instruct the bank to pay the balance of the deposit
11 account to or for the benefit of the secured party.

12 (2) If necessary to enable a secured party to exercise
13 under paragraph (1)(c) the right of a debtor to enforce a
14 mortgage nonjudicially outside this state, the secured party
15 may record in the office in which a record of the mortgage is
16 recorded:

17 (a) A copy of the security agreement that creates or
18 provides for a security interest in the obligation secured by
19 the mortgage; and

20 (b) The secured party's sworn affidavit in recordable
21 form stating that:

22 1. A default has occurred; and

23 2. The secured party is entitled to enforce the
24 mortgage nonjudicially outside this state.

25 (3) A secured party shall proceed in a commercially
26 reasonable manner if the secured party:

27 (a) Undertakes to collect from or enforce an
28 obligation of an account debtor or other person obligated on
29 collateral; and

30
31

1 (b) Is entitled to charge back uncollected collateral
2 or otherwise to full or limited recourse against the debtor or
3 a secondary obligor.

4 (4) A secured party may deduct from the collections
5 made pursuant to subsection (3) reasonable expenses of
6 collection and enforcement, including reasonable attorney's
7 fees and legal expenses incurred by the secured party.

8 (5) This section does not determine whether an account
9 debtor, bank, or other person obligated on collateral owes a
10 duty to a secured party.

11 (6) Nothing in subsection (2) is intended to create a
12 right of nonjudicial foreclosure in this state.

13 679.608 Application of proceeds of collection or
14 enforcement; liability for deficiency and right to surplus.--

15 (1) If a security interest or agricultural lien
16 secures payment or performance of an obligation, the following
17 rules apply:

18 (a) A secured party shall apply or pay over for
19 application the cash proceeds of collection or enforcement
20 under s. 679.607 in the following order to:

21 1. The reasonable expenses of collection and
22 enforcement and, to the extent provided for by agreement and
23 not prohibited by law, reasonable attorney's fees and legal
24 expenses incurred by the secured party;

25 2. The satisfaction of obligations secured by the
26 security interest or agricultural lien under which the
27 collection or enforcement is made; and

28 3. The satisfaction of obligations secured by any
29 subordinate security interest in or other lien on the
30 collateral subject to the security interest or agricultural
31 lien under which the collection or enforcement is made if the

1 secured party receives an authenticated demand for proceeds
2 before distribution of the proceeds is completed.

3 (b) If requested by a secured party, a holder of a
4 subordinate security interest or other lien shall furnish
5 reasonable proof of the interest or lien within a reasonable
6 time and agree to indemnify the secured party on reasonable
7 terms acceptable to the secured party for damages, including
8 reasonable attorney's fees and costs, incurred or suffered by
9 the secured party if the subordinate holder did not have the
10 right to receive the amounts to be paid to it. Unless the
11 holder complies, the secured party need not comply with the
12 holder's demand under subparagraph (a)3.

13 (c) A secured party need not apply or pay over for
14 application noncash proceeds of collection and enforcement
15 under s. 679.607 unless the failure to do so would be
16 commercially unreasonable. A secured party that applies or
17 pays over for application noncash proceeds shall do so in a
18 commercially reasonable manner.

19 (d) A secured party shall account to and pay a debtor
20 for any surplus, and the obligor is liable for any deficiency.

21 (2) If the underlying transaction is a sale of
22 accounts, chattel paper, payment intangibles, or promissory
23 notes, the debtor is not entitled to any surplus, and the
24 obligor is not liable for any deficiency.

25 (3) If the secured party in good faith cannot
26 determine the validity, extent, or priority of a subordinate
27 security interest or other lien or there are conflicting
28 claims of subordinate interests or liens, the secured party
29 may commence an interpleader action with respect to remaining
30 proceeds in excess of \$2,500 in the circuit or county court,
31 as applicable based upon the amount to be deposited, where the

1 collateral was located or collected or in the county where the
 2 debtor has its chief executive office or principal residence
 3 in this state, as applicable. If authorized in an
 4 authenticated record, the interpleading secured party is
 5 entitled to be paid from the remaining proceeds the actual
 6 costs of the filing fee and an attorney's fee in the amount of
 7 \$250 incurred in connection with filing the interpleader
 8 action and obtaining an order approving the interpleader of
 9 funds. The debtor in a consumer transaction may not be
 10 assessed for the attorney's fees and costs incurred in the
 11 interpleader action by the holders of subordinate security
 12 interests or other liens based upon disputes among said
 13 holders, and a debtor in a transaction other than a consumer
 14 transaction may only recover such fees and costs to the extent
 15 provided for in an authenticated record. If authorized in an
 16 authenticated record, the court in the interpleader action may
 17 award reasonable attorney's fees and costs to the prevailing
 18 party in a dispute between the debtor and a holder of a
 19 security interest or lien which claims an interest in the
 20 remaining interplead proceeds, but only if the debtor
 21 challenges the validity, priority, or extent of said security
 22 interest or lien. Except as provided in this subsection, a
 23 debtor may not be assessed attorney's fees and costs incurred
 24 by any party in an interpleader action commenced under this
 25 section.

26 679.609 Secured party's right to take possession after
 27 default.--

- 28 (1) After default, a secured party:
 29 (a) May take possession of the collateral; and
 30 (b) Without removal, may render equipment unusable and
 31 dispose of collateral on a debtor's premises under s. 679.610.

1 (2) A secured party may proceed under subsection (1):
2 (a) Pursuant to judicial process; or
3 (b) Without judicial process, if it proceeds without
4 breach of the peace.

5 (3) If so agreed, and in any event after default, a
6 secured party may require the debtor to assemble the
7 collateral and make it available to the secured party at a
8 place to be designated by the secured party which is
9 reasonably convenient to both parties.

10 679.610 Disposition of collateral after default.--

11 (1) After default, a secured party may sell, lease,
12 license, or otherwise dispose of any or all of the collateral
13 in its present condition or following any commercially
14 reasonable preparation or processing.

15 (2) Every aspect of a disposition of collateral,
16 including the method, manner, time, place, and other terms,
17 must be commercially reasonable. If commercially reasonable,
18 a secured party may dispose of collateral by public or private
19 proceedings, by one or more contracts, as a unit or in
20 parcels, and at any time and place and on any terms.

21 (3) A secured party may purchase collateral:
22 (a) At a public disposition; or
23 (b) At a private disposition only if the collateral is
24 of a kind that is customarily sold on a recognized market or
25 the subject of widely distributed standard price quotations.

26 (4) A contract for sale, lease, license, or other
27 disposition includes the warranties relating to title,
28 possession, quiet enjoyment, and the like which by operation
29 of law accompany a voluntary disposition of property of the
30 kind subject to the contract.

31

1 (5) A secured party may disclaim or modify warranties
2 under subsection (4):

3 (a) In a manner that would be effective to disclaim or
4 modify the warranties in a voluntary disposition of property
5 of the kind subject to the contract of disposition; or

6 (b) By communicating to the purchaser a record
7 evidencing the contract for disposition and including an
8 express disclaimer or modification of the warranties.

9 (6) A record is sufficient to disclaim warranties
10 under subsection (5) if it indicates that "there is no
11 warranty relating to title, possession, quiet enjoyment, or
12 the like in this disposition" or uses words of similar import.

13 679.611 Notification before disposition of
14 collateral.--

15 (1) In this section, the term "notification date"
16 means the earlier of the date on which:

17 (a) A secured party sends to the debtor and any
18 secondary obligor an authenticated notification of
19 disposition; or

20 (b) The debtor and any secondary obligor waive the
21 right to notification.

22 (2) Except as otherwise provided in subsection (4), a
23 secured party that disposes of collateral under s. 679.610
24 shall send to the persons specified in subsection (3) a
25 reasonable authenticated notification of disposition.

26 (3) To comply with subsection (2), the secured party
27 shall send an authenticated notification of disposition to:

28 (a) The debtor;

29 (b) Any secondary obligor; and

30 (c) If the collateral is other than consumer goods:

31

1 1. Any other person from whom the secured party has
2 received, before the notification date, an authenticated
3 notification of a claim of an interest in the collateral;

4 2. Any other secured party or lienholder that, 10 days
5 before the notification date, held a security interest in or
6 other lien on the collateral perfected by the filing of a
7 financing statement that:

8 a. Identified the collateral;

9 b. Was indexed under the debtor's name as of that
10 date; and

11 c. Was filed in the office in which to file a
12 financing statement against the debtor covering the collateral
13 as of that date; and

14 3. Any other secured party that, 10 days before the
15 notification date, held a security interest in the collateral
16 perfected by compliance with a statute, regulation, or treaty
17 described in s. 679.3111(1).

18 (4) Subsection (2) does not apply if the collateral is
19 perishable or threatens to decline speedily in value or is of
20 a type customarily sold on a recognized market.

21 (5) A secured party complies with the requirement for
22 notification prescribed by subparagraph (3)(c)2. if:

23 (a) Not later than 20 days or earlier than 30 days
24 before the notification date, the secured party requests, in a
25 commercially reasonable manner, information concerning
26 financing statements indexed under the debtor's name in the
27 office indicated in subparagraph (3)(c)2.; and

28 (b) Before the notification date, the secured party:

29 1. Did not receive a response to the request for
30 information; or

31

1 2. Received a response to the request for information
2 and sent an authenticated notification of disposition to each
3 secured party or other lienholder named in that response whose
4 financing statement covered the collateral.

5 (6) For purposes of subsection (3), the secured party
6 may send the authenticated notification as follows:

7 (a) If the collateral is other than consumer goods, to
8 the debtor at the address in the financing statement, unless
9 the secured party has received an authenticated record from
10 the debtor notifying the secured party of a different address
11 for such notification purposes or the secured party has actual
12 knowledge of the address of the debtor's chief executive
13 office or principal residence, as applicable, at the time the
14 notification is sent;

15 (b) If the collateral is other than consumer goods, to
16 any secondary obligor at the address, if any, in the
17 authenticated agreement, unless the secured party has received
18 an authenticated record from the secondary obligor notifying
19 the secured party of a different address for such notification
20 purposes or the secured party has actual knowledge of the
21 address of the secondary obligor's chief executive office or
22 principal residence, as applicable, at the time the
23 notification is sent; and

24 (c) If the collateral is other than consumer goods:

25 1. To the person described in subparagraph (3)(c)1.,
26 at the address stated in the notification;

27 2. To the person described in subparagraph (3)(c)2.,
28 at the address stated in the financing statement;

29 3. To the person described in subparagraph (3)(c)3.,
30 at the address stated in the official records of the recording
31 or registration agency.

1 679.612 Timeliness of notification before disposition
2 of collateral.--

3 (1) Except as otherwise provided in subsection (2),
4 whether a notification is sent within a reasonable time is a
5 question of fact.

6 (2) A notification of disposition sent after default
7 and 10 days or more before the earliest time of disposition
8 set forth in the notification is sent within a reasonable time
9 before the disposition.

10 679.613 Contents and form of notification before
11 disposition of collateral; general.--Except in a
12 consumer-goods transaction, the following rules apply:

13 (1) The contents of a notification of disposition are
14 sufficient if the notification:

15 (a) Describes the debtor and the secured party;

16 (b) Describes the collateral that is the subject of
17 the intended disposition;

18 (c) States the method of intended disposition;

19 (d) States that the debtor is entitled to an
20 accounting of the unpaid indebtedness and states the charge,
21 if any, for an accounting; and

22 (e) States the time and place of a public disposition
23 or the time after which any other disposition is to be made.

24 (2) Whether the contents of a notification that lacks
25 any of the information specified in subsection (1) are
26 nevertheless sufficient is a question of fact.

27 (3) The contents of a notification providing
28 substantially the information specified in subsection (1) are
29 sufficient, even if the notification includes:

30 (a) Information not specified by that paragraph; or

31 (b) Minor errors that are not seriously misleading.

1 (4) A particular phrasing of the notification is not
2 required.

3 (5) The following form of notification and the form
4 appearing in s. 679.614(3), when completed, each provides
5 sufficient information:

6 NOTIFICATION OF DISPOSITION OF COLLATERAL

7 To:....(Name of debtor, obligor, or other person to which the
8 notification is sent)....

9 From:....(Name, address, and telephone number of secured
10 party)....

11 Name of Debtor(s):....(Include only if debtor(s) are not an
12 addressee)....

13 [For a public disposition:]

14 We will sell [or lease or license, as applicable] the
15(describe collateral)....to the highest qualified bidder
16 in public as follows:

17 Day and Date:

18 Time:

19 Place:

20 [For a private disposition:]

21 We will sell [or lease or license, as applicable] the
22(describe collateral).... privately sometime after
23(day and date).....

24 You are entitled to an accounting of the unpaid
25 indebtedness secured by the property that we intend to sell
26 [or lease or license, as applicable] for a charge of \$_____.

27 You may request an accounting by calling us at(telephone
28 number).....

29 679.614 Contents and form of notification before
30 disposition of collateral; consumer-goods transaction.--In a
31 consumer-goods transaction, the following rules apply:

1 (1) A notification of disposition must provide the
2 following information:
3 (a) The information specified in s. 679.613(1);
4 (b) A description of any liability for a deficiency of
5 the person to whom the notification is sent;
6 (c) A telephone number from which the amount that must
7 be paid to the secured party to redeem the collateral under s.
8 679.623 is available; and
9 (d) A telephone number or mailing address from which
10 additional information concerning the disposition and the
11 obligation secured is available.
12 (2) A particular phrasing of the notification is not
13 required.
14 (3) The following form of notification, when
15 completed, provides sufficient information:
16(Name and address of secured party)....
17 (Date)....
18 NOTICE OF OUR PLAN TO SELL PROPERTY
19 (Name and address of any obligor who is also a
20 debtor)....
21 Subject:....(Identification of Transaction)....
22 We have your(describe collateral)...., because you broke
23 promises in our agreement.
24
25 [For a public disposition:]
26 We will sell(describe collateral).... at public sale. A
27 sale could include a lease or license. The sale will be held
28 as follows:
29 Date:
30 Time:
31 Place:

1 You may attend the sale and bring bidders if you want.

2 [For a private disposition:]

3 We will sell(describe collateral).... at private sale
4 sometime after(date)..... A sale could include a lease or
5 license.

6
7 The money that we get from the sale (after paying our costs)
8 will reduce the amount you owe. If we get less money than you
9 owe, you(will or will not, as applicable).... still owe
10 us the difference. If we get more money than you owe, you will
11 get the extra money, unless we must pay it to someone else.

12
13 You can get the property back at any time before we sell it by
14 paying us the full amount you owe (not just the past due
15 payments), including our expenses. To learn the exact amount
16 you must pay, call us at(telephone number).....

17
18 If you want us to explain to you in writing how we have
19 figured the amount that you owe us, you may call us at
20(telephone number).... or write us at(secured party's
21 address).... and request a written explanation. We will charge
22 you \$_____ for the explanation if we sent you another written
23 explanation of the amount you owe us within the last 6 months.

24
25 If you need more information about the sale, call us at
26(telephone number).... or write us at(secured party's
27 address).....

28
29 We are sending this notice to the following other people who
30 have an interest in(describe collateral).... or who owe
31 money under your agreement:

1(Names of all other debtors and obligors, if any)....

2 (4) A notification in the form of subsection (3) is
3 sufficient, even if additional information appears at the end
4 of the form.

5 (5) A notification in the form of subsection (3) is
6 sufficient, even if it includes errors in information not
7 required by subsection (1), unless the error is misleading
8 with respect to rights arising under this chapter.

9 (6) If a notification under this section is not in the
10 form of subsection (3), law other than this chapter determines
11 the effect of including information not required by subsection
12 (1).

13 679.615 Application of proceeds of disposition;
14 liability for deficiency and right to surplus.--

15 (1) A secured party shall apply or pay over for
16 application the cash proceeds of disposition under s. 679.610
17 in the following order to:

18 (a) The reasonable expenses of retaking, holding,
19 preparing for disposition, processing, and disposing, and, to
20 the extent provided for by agreement and not prohibited by
21 law, reasonable attorney's fees and legal expenses incurred by
22 the secured party;

23 (b) The satisfaction of obligations secured by the
24 security interest or agricultural lien under which the
25 disposition is made;

26 (c) The satisfaction of obligations secured by any
27 subordinate security interest in or other subordinate lien on
28 the collateral if:

29 1. The secured party receives from the holder of the
30 subordinate security interest or other lien an authenticated
31

1 demand for proceeds before distribution of the proceeds is
2 completed; and

3 2. In a case in which a consignor has an interest in
4 the collateral, the subordinate security interest or other
5 lien is senior to the interest of the consignor; and

6 (d) A secured party that is a consignor of the
7 collateral if the secured party receives from the consignor an
8 authenticated demand for proceeds before distribution of the
9 proceeds is completed.

10 (2) If requested by a secured party, a holder of a
11 subordinate security interest or other lien shall furnish
12 reasonable proof of the interest or lien within a reasonable
13 time after receipt of the request and agree to indemnify the
14 secured party on reasonable terms acceptable to the secured
15 party for damages, including reasonable attorney's fees and
16 costs, incurred or suffered by the secured party if the
17 subordinate holder did not have the right to receive the
18 amounts to be paid to it. Unless the holder complies, the
19 secured party need not comply with the holder's demand under
20 paragraph (1)(c).

21 (3) A secured party need not apply or pay over for
22 application noncash proceeds of disposition under s. 679.610
23 unless the failure to do so would be commercially
24 unreasonable. A secured party that applies or pays over for
25 application noncash proceeds shall do so in a commercially
26 reasonable manner.

27 (4) If the security interest under which a disposition
28 is made secures payment or performance of an obligation, after
29 making the payments and applications required by subsection
30 (1) and permitted by subsection (3):

31

1 (a) Unless paragraph (1)(d) requires the secured party
2 to apply or pay over cash proceeds to a consignor, the secured
3 party shall account to and pay a debtor for any surplus; and

4 (b) The obligor is liable for any deficiency.

5 (5) If the underlying transaction is a sale of
6 accounts, chattel paper, payment intangibles, or promissory
7 notes:

8 (a) The debtor is not entitled to any surplus; and

9 (b) The obligor is not liable for any deficiency.

10 (6) The surplus or deficiency following a disposition
11 is calculated based on the amount of proceeds that would have
12 been realized in a disposition complying with this part to a
13 transferee other than the secured party, a person related to
14 the secured party, or a secondary obligor if:

15 (a) The transferee in the disposition is the secured
16 party, a person related to the secured party, or a secondary
17 obligor; and

18 (b) The amount of proceeds of the disposition is
19 significantly below the range of proceeds that a complying
20 disposition to a person other than the secured party, a person
21 related to the secured party, or a secondary obligor would
22 have brought.

23 (7) A secured party that receives cash proceeds of a
24 disposition in good faith and without knowledge that the
25 receipt violates the rights of the holder of a security
26 interest or other lien that is not subordinate to the security
27 interest or agricultural lien under which the disposition is
28 made:

29 (a) Takes the cash proceeds free of the security
30 interest or other lien;

31

1 (b) Is not obligated to apply the proceeds of the
2 disposition to the satisfaction of obligations secured by the
3 security interest or other lien; and

4 (c) Is not obligated to account to or pay the holder
5 of the security interest or other lien for any surplus.

6 (8) If the secured party in good faith cannot
7 determine the validity, extent, or priority of a subordinate
8 security interest or other lien or there are conflicting
9 claims of subordinate interests or liens, the secured party
10 may commence an interpleader action with respect to remaining
11 proceeds in excess of \$2,500 in the circuit or county court,
12 as applicable based upon the amount to be deposited, where the
13 collateral was located or collected or in the county where the
14 debtor's chief executive office or principal residence is
15 located in this state, as applicable. The interpleading
16 secured party and any other parties in the interpleader action
17 shall only be entitled to recover attorney's fees and costs as
18 permitted in s. 679.608(3).

19 679.616 Explanation of calculation of surplus or
20 deficiency.--

21 (1) In this section, the term:

22 (a) "Explanation" means a writing that:

23 1. States the amount of the surplus or deficiency;

24 2. Provides an explanation in accordance with
25 subsection (3) of how the secured party calculated the surplus
26 or deficiency;

27 3. States, if applicable, that future debits, credits,
28 charges, including additional credit service charges or
29 interest, rebates, and expenses may affect the amount of the
30 surplus or deficiency; and

31

1 4. Provides a telephone number or mailing address from
2 which additional information concerning the transaction is
3 available.

4 (b) "Request" means a record:

5 1. Authenticated by a debtor or consumer obligor;

6 2. Requesting that the recipient provide an
7 explanation; and

8 3. Sent after disposition of the collateral under s.
9 679.610.

10 (2) In a consumer-goods transaction in which the
11 debtor is entitled to a surplus or a consumer obligor is
12 liable for a deficiency under s. 679.615, the secured party
13 shall:

14 (a) Send an explanation to the debtor or consumer
15 obligor, as applicable, after the disposition and:

16 1. Before or when the secured party accounts to the
17 debtor and pays any surplus or first makes written demand on
18 the consumer obligor after the disposition for payment of the
19 deficiency; and

20 2. Within 14 days after receipt of a request; or

21 (b) In the case of a consumer obligor who is liable
22 for a deficiency, within 14 days after receipt of a request,
23 send to the consumer obligor a record waiving the secured
24 party's right to a deficiency.

25 (3) To comply with subparagraph (1)(a)2., a writing
26 must provide the following information in the following order:

27 (a) The aggregate amount of obligations secured by the
28 security interest under which the disposition was made, and,
29 if the amount reflects a rebate of unearned interest or credit
30 service charge, an indication of that fact, calculated as of a
31 specified date:

1 1. If the secured party takes or receives possession
2 of the collateral after default, not more than 35 days before
3 the secured party takes or receives possession; or

4 2. If the secured party takes or receives possession
5 of the collateral before default or does not take possession
6 of the collateral, not more than 35 days before the
7 disposition;

8 (b) The amount of proceeds of the disposition;

9 (c) The aggregate amount of the obligations after
10 deducting the amount of proceeds;

11 (d) The amount, in the aggregate or by type, and types
12 of expenses, including expenses of retaking, holding,
13 preparing for disposition, processing, and disposing of the
14 collateral, and attorney's fees secured by the collateral
15 which are known to the secured party and relate to the current
16 disposition;

17 (e) The amount, in the aggregate or by type, and types
18 of credits, including rebates of interest or credit service
19 charges, to which the obligor is known to be entitled and
20 which are not reflected in the amount in paragraph (a); and

21 (f) The amount of the surplus or deficiency.

22 (4) A particular phrasing of the explanation is not
23 required. An explanation complying substantially with the
24 requirements of subsection (1) is sufficient, even if it
25 includes minor errors that are not seriously misleading.

26 (5) A debtor or consumer obligor is entitled without
27 charge to one response to a request under this section during
28 any 6-month period in which the secured party did not send to
29 the debtor or consumer obligor an explanation pursuant to
30 paragraph (2)(a). The secured party may require payment of a
31 charge not exceeding \$25 for each additional response.

1 679.617 Rights of transferee of collateral.--

2 (1) A secured party's disposition of collateral after
3 default:

4 (a) Transfers to a transferee for value all of the
5 debtor's rights in the collateral;

6 (b) Discharges the security interest under which the
7 disposition is made; and

8 (c) Discharges any subordinate security interest or
9 other subordinate lien other than liens created under statutes
10 providing for liens, if any, that are not to be discharged.

11 (2) A transferee that acts in good faith takes free of
12 the rights and interests described in subsection (1), even if
13 the secured party fails to comply with this chapter or the
14 requirements of any judicial proceeding.

15 (3) If a transferee does not take free of the rights
16 and interests described in subsection (1), the transferee
17 takes the collateral subject to:

18 (a) The debtor's rights in the collateral;

19 (b) The security interest or agricultural lien under
20 which the disposition is made; and

21 (c) Any other security interest or other lien.

22 679.618 Rights and duties of certain secondary
23 obligors.--

24 (1) A secondary obligor acquires the rights and
25 becomes obligated to perform the duties of the secured party
26 after the secondary obligor:

27 (a) Receives an assignment of a secured obligation
28 from the secured party;

29 (b) Receives a transfer of collateral from the secured
30 party and agrees to accept the rights and assume the duties of
31 the secured party; or

1 (c) Is subrogated to the rights of a secured party
2 with respect to collateral.

3 (2) An assignment, transfer, or subrogation described
4 in subsection (1):

5 (a) Is not a disposition of collateral under s.
6 679.610; and

7 (b) Relieves the secured party of further duties under
8 this chapter.

9 679.619 Transfer of record or legal title.--

10 (1) In this section, the term "transfer statement"
11 means a record authenticated by a secured party stating:

12 (a) That the debtor has defaulted in connection with
13 an obligation secured by specified collateral;

14 (b) That the secured party has exercised its
15 post-default remedies with respect to the collateral;

16 (c) That, by reason of the exercise, a transferee has
17 acquired the rights of the debtor in the collateral; and

18 (d) The name and mailing address of the secured party,
19 debtor, and transferee.

20 (2) A transfer statement entitles the transferee to
21 the transfer of record of all rights of the debtor in the
22 collateral specified in the statement in any official filing,
23 recording, registration, or certificate-of-title system
24 covering the collateral. If a transfer statement is presented
25 with the applicable fee and request form to the official or
26 office responsible for maintaining the system, the official or
27 office shall:

28 (a) Accept the transfer statement;

29 (b) Promptly amend its records to reflect the
30 transfer; and

31

1 (c) If applicable, issue a new appropriate certificate
2 of title in the name of the transferee.

3 (3) A transfer of the record or legal title to
4 collateral to a secured party under subsection (2) or
5 otherwise is not of itself a disposition of collateral under
6 this chapter and does not of itself relieve the secured party
7 of its duties under this chapter.

8 679.620 Acceptance of collateral in full or partial
9 satisfaction of obligation; compulsory disposition of
10 collateral.--

11 (1) Except as otherwise provided in subsection (7), a
12 secured party may accept collateral in full or partial
13 satisfaction of the obligation it secures only if:

14 (a) The debtor consents to the acceptance under
15 subsection (3);

16 (b) The secured party does not receive, within the
17 time set forth in subsection (4), a notification of objection
18 to the proposal authenticated by:

19 1. A person to whom the secured party was required to
20 send a proposal under s. 679.621; or

21 2. Any other person, other than the debtor, holding an
22 interest in the collateral subordinate to the security
23 interest that is the subject of the proposal;

24 (c) If the collateral is consumer goods, the
25 collateral is not in the possession of the debtor when the
26 debtor consents to the acceptance; and

27 (d) Subsection (5) does not require the secured party
28 to dispose of the collateral or the debtor waives the
29 requirement pursuant to s. 679.624.

30 (2) A purported or apparent acceptance of collateral
31 under this section is ineffective unless:

1 (a) The secured party consents to the acceptance in an
2 authenticated record or sends a proposal to the debtor; and

3 (b) The conditions of subsection (1) are met.

4 (3) For purposes of this section:

5 (a) A debtor consents to an acceptance of collateral
6 in partial satisfaction of the obligation it secures only if
7 the debtor agrees to the terms of the acceptance in a record
8 authenticated after default; and

9 (b) A debtor consents to an acceptance of collateral
10 in full satisfaction of the obligation it secures only if the
11 debtor agrees to the terms of the acceptance in a record
12 authenticated after default or the secured party:

13 1. Sends to the debtor after default a proposal that
14 is unconditional or subject only to a condition that
15 collateral not in the possession of the secured party be
16 preserved or maintained;

17 2. In the proposal, proposes to accept collateral in
18 full satisfaction of the obligation it secures, and, in a
19 consumer transaction, provides notice that the proposal will
20 be deemed accepted if it is not objected to by an
21 authenticated notice within 30 days after the date the
22 proposal is sent by the secured party; and

23 3. Does not receive a notification of objection
24 authenticated by the debtor within 30 days after the proposal
25 is sent.

26 (4) To be effective under paragraph (1)(b), a
27 notification of objection must be received by the secured
28 party:

29 (a) In the case of a person to whom the proposal was
30 sent pursuant to s. 679.621, within 20 days after notification
31 was sent to that person; and

1 **(b) In other cases:**
2 **1. Within 20 days after the last notification was sent**
3 **pursuant to s. 679.621; or**
4 **2. If a notification was not sent, before the debtor**
5 **consents to the acceptance under subsection (3).**
6 **(5) A secured party that has taken possession of**
7 **collateral shall dispose of the collateral pursuant to s.**
8 **679.610 within the time specified in subsection (6) if:**
9 **(a) Sixty percent of the cash price has been paid in**
10 **the case of a purchase-money security interest in consumer**
11 **goods; or**
12 **(b) Sixty percent of the principal amount of the**
13 **obligation secured has been paid in the case of a**
14 **non-purchase-money security interest in consumer goods.**
15 **(6) To comply with subsection (5), the secured party**
16 **shall dispose of the collateral:**
17 **(a) Within 90 days after taking possession; or**
18 **(b) Within any longer period to which the debtor and**
19 **all secondary obligors have agreed in an agreement to that**
20 **effect entered into and authenticated after default.**
21 **(7) In a consumer transaction, a secured party may not**
22 **accept collateral in partial satisfaction of the obligation it**
23 **secures.**
24 **679.621 Notification of proposal to accept**
25 **collateral.--**
26 **(1) A secured party that desires to accept collateral**
27 **in full or partial satisfaction of the obligation it secures**
28 **shall send its proposal to:**
29 **(a) Any person from whom the secured party has**
30 **received, before the debtor consented to the acceptance, an**
31

1 authenticated notification of a claim of an interest in the
2 collateral;

3 (b) Any other secured party or lienholder that, 10
4 days before the debtor consented to the acceptance, held a
5 security interest in or other lien on the collateral perfected
6 by the filing of a financing statement that:

7 1. Identified the collateral;

8 2. Was indexed under the debtor's name as of that
9 date; and

10 3. Was filed in the office or offices in which to file
11 a financing statement against the debtor covering the
12 collateral as of that date; and

13 (c) Any other secured party that, 10 days before the
14 debtor consented to the acceptance, held a security interest
15 in the collateral perfected by compliance with a statute,
16 regulation, or treaty described in s. 679.3111(1).

17 (2) A secured party that desires to accept collateral
18 in partial satisfaction of the obligation it secures shall
19 send its proposal to any secondary obligor in addition to the
20 persons described in subsection (1).

21 (3) A secured party shall send its proposal under s.
22 679.621(1) or (2) to the affected party at the address
23 prescribed in s. 679.611(6).

24 679.622 Effect of acceptance of collateral.--

25 (1) A secured party's acceptance of collateral in full
26 or partial satisfaction of the obligation it secures:

27 (a) Discharges the obligation to the extent consented
28 to by the debtor;

29 (b) Transfers to the secured party all of a debtor's
30 rights in the collateral;

31

1 (c) Discharges the security interest or agricultural
2 lien that is the subject of the debtor's consent and any
3 subordinate security interest or other subordinate lien; and

4 (d) Terminates any other subordinate interest.

5 (2) A subordinate interest is discharged or terminated
6 under subsection (1), even if the secured party fails to
7 comply with this chapter.

8 679.623 Right to redeem collateral.--

9 (1) A debtor, any secondary obligor, or any other
10 secured party or lienholder may redeem collateral.

11 (2) To redeem collateral, a person shall tender:

12 (a) Fulfillment of all obligations secured by the
13 collateral; and

14 (b) The reasonable expenses and attorney's fees
15 described in s. 679.615(1)(a).

16 (3) A redemption may occur at any time before a
17 secured party:

18 (a) Has collected collateral under s. 679.607;

19 (b) Has disposed of collateral or entered into a
20 contract for its disposition under s. 679.610; or

21 (c) Has accepted collateral in full or partial
22 satisfaction of the obligation it secures under s. 679.622.

23 679.624 Waiver.--

24 (1) A debtor or secondary obligor may waive the right
25 to notification of disposition of collateral under s. 679.611
26 only by an agreement to that effect entered into and
27 authenticated after default.

28 (2) A debtor may waive the right to require
29 disposition of collateral under s. 679.620(5) only by an
30 agreement to that effect entered into and authenticated after
31 default.

1 (3) Except in a consumer-goods transaction, a debtor
2 or secondary obligor may waive the right to redeem collateral
3 under s. 679.623 only by an agreement to that effect entered
4 into and authenticated after default.

5 679.625 Remedies for failure to comply with article.--

6 (1) If it is established that a secured party is not
7 proceeding in accordance with this chapter, a court may order
8 or restrain collection, enforcement, or disposition of
9 collateral on appropriate terms and conditions. This
10 subsection shall not preclude a debtor other than a consumer
11 and a secured party, or two or more secured parties in other
12 than a consumer transaction, from agreeing in an authenticated
13 record that the debtor or secured party must first provide to
14 the alleged offending secured party notice of a violation of
15 this chapter and opportunity to cure before commencing any
16 legal proceeding under this section.

17 (2) Subject to subsections (3), (4), and (6), a person
18 is liable for damages in the amount of any loss caused by a
19 failure to comply with this chapter, including damages
20 suffered by the debtor resulting from the debtor's inability
21 to obtain, or increased costs of, alternative financing, but
22 not including consequential, special, or penal damages, unless
23 the conduct giving rise to the failure constitutes an
24 independent claim under the laws of this state other than this
25 chapter and then only to the extent otherwise recoverable
26 under law.

27 (3) Except as otherwise provided in s. 679.628:

28 (a) A person who, at the time of the failure, was a
29 debtor, was an obligor, or held a security interest in or
30 other lien on the collateral may recover damages under
31 subsection (2) for the person's loss; and

1 (b) If the collateral is consumer goods, a person who
2 was a debtor or a secondary obligor at the time a secured
3 party failed to comply with this part may recover for that
4 failure in any event an amount not less than the credit
5 service charge plus 10 percent of the principal amount of the
6 obligation or the time-price differential plus 10 percent of
7 the cash price.

8 (4) A debtor whose deficiency is eliminated under s.
9 679.626 may recover damages for the loss of any surplus.
10 However, a debtor or secondary obligor whose deficiency is
11 eliminated or reduced under s. 679.626 may not otherwise
12 recover under subsection (2) for noncompliance with the
13 provisions of this part relating to collection, enforcement,
14 disposition, or acceptance.

15 (5) In lieu of damages recoverable under subsection
16 (2), the debtor, consumer obligor, or person named as a debtor
17 in a filed record, as applicable, may recover \$500 in each
18 case from a person who:

19 (a) Fails to comply with s. 679.2081;

20 (b) Fails to comply with s. 679.209;

21 (c) Files a record that the person is not entitled to
22 file under s. 679.509(1);

23 (d) Fails to cause the secured party of record to file
24 or send a termination statement as required by s. 679.513(1)
25 or (3) after receipt of an authenticated record notifying the
26 person of such noncompliance;

27 (e) Fails to comply with s. 679.616(2)(a) and whose
28 failure is part of a pattern, or consistent with a practice,
29 of noncompliance; or

30 (f) Fails to comply with s. 679.616(2)(b) with respect
31 to a consumer transaction, and with respect to a transaction

1 other than a consumer transaction, after receipt of an
2 authenticated record notifying the person of such
3 noncompliance.

4 (6) A debtor or consumer obligor may recover damages
5 under subsection (2) and, in addition, \$500 in each case from
6 a person who, without reasonable cause, fails to comply with a
7 request under s. 679.210. A recipient of a request under s.
8 679.210 which never claimed an interest in the collateral or
9 obligations that are the subject of a request under that
10 section has a reasonable excuse for failure to comply with the
11 request within the meaning of this subsection.

12 (7) If a secured party fails to comply with a request
13 regarding a list of collateral or a statement of account under
14 S. 679.210, the secured party may claim a security interest
15 only as shown in the list or statement included in the request
16 as against a person who is reasonably misled by the failure.

17 679.626 Action in which deficiency or surplus is in
18 issue.--In an action arising from a transaction in which the
19 amount of a deficiency or surplus is in issue, the following
20 rules apply:

21 (1) A secured party need not prove compliance with the
22 provisions of this part relating to collection, enforcement,
23 disposition, or acceptance unless the debtor or a secondary
24 obligor places the secured party's compliance in issue.

25 (2) If the secured party's compliance is placed in
26 issue, the secured party has the burden of establishing that
27 the collection, enforcement, disposition, or acceptance was
28 conducted in accordance with this part.

29 (3) Except as otherwise provided in s. 679.628, if a
30 secured party fails to prove that the collection, enforcement,
31 disposition, or acceptance was conducted in accordance with

1 the provisions of this part relating to collection,
2 enforcement, disposition, or acceptance, the liability of a
3 debtor or a secondary obligor for a deficiency is limited to
4 an amount by which the sum of the secured obligation,
5 reasonable expenses, and, to the extent provided for by
6 agreement and not prohibited by law, attorney's fees exceeds
7 the greater of:

8 (a) The proceeds of the collection, enforcement,
9 disposition, or acceptance; or

10 (b) The amount of proceeds that would have been
11 realized had the noncomplying secured party proceeded in
12 accordance with the provisions of this part relating to
13 collection, enforcement, disposition, or acceptance.

14 (4) For purposes of paragraph (3)(b), the amount of
15 proceeds that would have been realized is equal to the sum of
16 the secured obligation, expenses, and attorney's fees unless
17 the secured party proves that the amount is less than that
18 sum.

19 (5) If a deficiency or surplus is calculated under s.
20 679.615(6), the debtor or obligor has the burden of
21 establishing that the amount of proceeds of the disposition is
22 significantly below the range of prices that a complying
23 disposition to a person other than the secured party, a person
24 related to the secured party, or a secondary obligor would
25 have brought.

26 679.627 Determination of whether conduct was
27 commercially reasonable.--

28 (1) The fact that a greater amount could have been
29 obtained by a collection, enforcement, disposition, or
30 acceptance at a different time or in a different method from
31 that selected by the secured party is not of itself sufficient

1 to preclude the secured party from establishing that the
2 collection, enforcement, disposition, or acceptance was made
3 in a commercially reasonable manner.

4 (2) A disposition of collateral is made in a
5 commercially reasonable manner if the disposition is made:

6 (a) In the usual manner on any recognized market;

7 (b) At the price current in any recognized market at
8 the time of the disposition; or

9 (c) Otherwise in conformity with reasonable commercial
10 practices among dealers in the type of property that was the
11 subject of the disposition.

12 (3) A collection, enforcement, disposition, or
13 acceptance is commercially reasonable if it has been approved:

14 (a) In a judicial proceeding;

15 (b) By a bona fide creditors' committee;

16 (c) By a representative of creditors; or

17 (d) By an assignee for the benefit of creditors.

18 (4) Approval under subsection (3) need not be
19 obtained, and lack of approval does not mean that the
20 collection, enforcement, disposition, or acceptance is not
21 commercially reasonable.

22 679.628 Nonliability and limitation on liability of
23 secured party; liability of secondary obligor.--

24 (1) Unless a secured party knows that a person is a
25 debtor or obligor, knows the identity of the person, and knows
26 how to communicate with the person:

27 (a) The secured party is not liable to the person, or
28 to a secured party or lienholder that has filed a financing
29 statement against the person, for failure to comply with this
30 chapter; and

31

1 (b) The secured party's failure to comply with this
2 chapter does not affect the liability of the person for a
3 deficiency.

4 (2) A secured party is not liable because of its
5 status as a secured party:

6 (a) To a person who is a debtor or obligor, unless the
7 secured party knows:

- 8 1. That the person is a debtor or obligor;
- 9 2. The identity of the person; and
- 10 3. How to communicate with the person; or

11 (b) To a secured party or lienholder that has filed a
12 financing statement against a person, unless the secured party
13 knows:

- 14 1. That the person is a debtor; and
- 15 2. The identity of the person.

16 (3) A secured party is not liable to any person, and a
17 person's liability for a deficiency is not affected, because
18 of any act or omission arising out of the secured party's
19 reasonable belief that a transaction is not a consumer-goods
20 transaction or a consumer transaction or that goods are not
21 consumer goods, if the secured party's belief is based on its
22 reasonable reliance on:

23 (a) A debtor's representation concerning the purpose
24 for which collateral was to be used, acquired, or held; or

25 (b) an obligor's representation concerning the purpose
26 for which a secured obligation was incurred.

27 (4) A secured party is not liable to any person under
28 s. 679.625(3)(b) for its failure to comply with s. 679.616.

29 (5) A secured party is not liable under s.
30 679.625(3)(b) more than once with respect to any one secured
31 obligation.

1 Section 8. Part VII of chapter 679, Florida Statutes,
2 consisting of sections 679.701, 679.702, 679.703, 679.704,
3 679.705, 679.706, 679.707, 679.708, and 679.709, Florida
4 Statutes, is created to read:

5 PART VII

6 TRANSITION

7 679.701 Effective date.--This part takes effect
8 January 1, 2002.

9 679.702 Savings clause.--

10 (1) Except as otherwise provided in this part, this
11 act applies to a transaction or lien within its scope, even if
12 the transaction or lien was entered into or created before
13 this act takes effect.

14 (2) Except as otherwise provided in subsection (3) and
15 ss. 679.703-679.709:

16 (a) Transactions and liens that were not governed by
17 chapter 679, Florida Statutes 2000, were validly entered into
18 or created before this act takes effect, and would be subject
19 to this act if they had been entered into or created after
20 this act takes effect, and the rights, duties, and interests
21 flowing from those transactions and liens remain valid after
22 this act takes effect; and

23 (b) The transactions and liens may be terminated,
24 completed, consummated, and enforced as required or permitted
25 by this act or by the law that otherwise would apply if this
26 act had not taken effect.

27 (3) This act does not affect an action, case, or
28 proceeding commenced before this act takes effect.

29 679.703 Security interest perfected before effective
30 date.--

31

1 (1) A security interest that is enforceable
2 immediately before this act takes effect and would have
3 priority over the rights of a person who becomes a lien
4 creditor at that time is a perfected security interest under
5 this act if, when this act takes effect, the applicable
6 requirements for enforceability and perfection under this act
7 are satisfied without further action.

8 (2) Except as otherwise provided in s. 679.705, if,
9 immediately before this act takes effect, a security interest
10 is enforceable and would have priority over the rights of a
11 person who becomes a lien creditor at that time, but the
12 applicable requirements for enforceability or perfection under
13 this act are not satisfied when this act takes effect, the
14 security interest:

15 (a) Is a perfected security interest for 1 year after
16 this act takes effect;

17 (b) Remains enforceable thereafter only if the
18 security interest becomes enforceable under s. 679.203 before
19 the year expires; and

20 (c) Remains perfected thereafter only if the
21 applicable requirements for perfection under this act are
22 satisfied before the year expires.

23 679.704 Security interest unperfected before effective
24 date.--A security interest that is enforceable immediately
25 before this act takes effect but that would be subordinate to
26 the rights of a person who becomes a lien creditor at that
27 time:

28 (1) Remains an enforceable security interest for 1
29 year after this act takes effect;

30
31

1 (2) Remains enforceable thereafter if the security
2 interest becomes enforceable under s. 679.203 when this act
3 takes effect or within 1 year thereafter; and

4 (3) Becomes perfected:

5 (a) Without further action when this act takes effect
6 if the applicable requirements for perfection under this act
7 are satisfied before or at that time; or

8 (b) When the applicable requirements for perfection
9 are satisfied if the requirements are satisfied after that
10 time.

11 679.705 Effectiveness of action taken before effective
12 date.--

13 (1) If action, other than the filing of a financing
14 statement, is taken before this act takes effect and the
15 action would have resulted in priority of a security interest
16 over the rights of a person who becomes a lien creditor had
17 the security interest become enforceable before this act takes
18 effect, the action is effective to perfect a security interest
19 that attaches under this act within 1 year after this act
20 takes effect. An attached security interest becomes
21 unperfected 1 year after this act takes effect unless the
22 security interest becomes a perfected security interest under
23 this act before the expiration of that period.

24 (2) The filing of a financing statement before this
25 act takes effect is effective to perfect a security interest
26 to the extent the filing would satisfy the applicable
27 requirements for perfection under this act.

28 (3) This act does not render ineffective an effective
29 financing statement that, before this act takes effect, is
30 filed and satisfies the applicable requirements for perfection
31 under the law of the jurisdiction governing perfection as

1 provided in s. 679.103, Florida Statutes 2000. However,
2 except as otherwise provided in subsections (4) and (5) and s.
3 679.706, the financing statement ceases to be effective at the
4 earlier of:

5 (a) The time the financing statement would have ceased
6 to be effective under the law of the jurisdiction in which it
7 is filed; or

8 (b) June 30, 2006.

9 (4) The filing of a continuation statement after this
10 act takes effect does not continue the effectiveness of the
11 financing statement filed before this act takes effect.

12 However, upon the timely filing of a continuation statement
13 after this act takes effect and in accordance with the law of
14 the jurisdiction governing perfection as provided in part III,
15 the effectiveness of a financing statement filed in the same
16 office in that jurisdiction before this act takes effect
17 continues for the period provided by the law of that
18 jurisdiction.

19 (5) Paragraph (3)(b) applies to a financing statement
20 that, before this act takes effect, is filed against a
21 transmitting utility and satisfies the applicable requirements
22 for perfection under the law of the jurisdiction governing
23 perfection as provided in s. 679.103, Florida Statutes 2000,
24 only to the extent that part III provides that the law of a
25 jurisdiction other than the jurisdiction in which the
26 financing statement is filed governs perfection of a security
27 interest in collateral covered by the financing statement.

28 (6) A financing statement that includes a financing
29 statement filed before this act takes effect and a
30 continuation statement filed after this act takes effect is
31

1 effective only to the extent that it satisfies the
2 requirements of part V for an initial financing statement.

3 679.706 When initial financing statement suffices to
4 continue effectiveness of financing statement.--

5 (1) The filing of an initial financing statement in
6 the office specified in s. 679.5011 continues the
7 effectiveness of a financing statement filed before this act
8 takes effect if:

9 (a) The filing of an initial financing statement in
10 that office would be effective to perfect a security interest
11 under this act;

12 (b) The pre-effective date financing statement was
13 filed in an office in another state or another office in this
14 state; and

15 (c) The initial financing statement satisfies
16 subsection (3).

17 (2) The filing of an initial financing statement under
18 subsection (1) continues the effectiveness of the
19 pre-effective date financing statement:

20 (a) If the initial financing statement is filed before
21 this act takes effect, for the period provided in s. 679.403,
22 Florida Statutes 2000, with respect to a financing statement;
23 and

24 (b) If the initial financing statement is filed after
25 this act takes effect, for the period provided in s. 679.515
26 with respect to an initial financing statement.

27 (3) To be effective for purposes of subsection (1), an
28 initial financing statement must:

29 (a) Satisfy the requirements of part V for an initial
30 financing statement;

31

1 (b) Identify the pre-effective date financing
2 statement by indicating the office in which the financing
3 statement was filed and providing the dates of filing and file
4 numbers, if any, of the financing statement and of the most
5 recent continuation statement filed with respect to the
6 financing statement; and

7 (c) Indicate that the pre-effective date financing
8 statement remains effective.

9 679.707 Amendment or pre-effective date financing
10 statement.--

11 (1) In this section, the term "pre-effective date
12 financing statement" means a financing statement filed before
13 this act takes effect.

14 (2) After this act takes effect, a person may add or
15 delete collateral covered by, continue or terminate the
16 effectiveness of, or otherwise amend the information provided
17 in a pre-effective date financing statement only in accordance
18 with the law of the jurisdiction governing perfection as
19 provided in part III. However, the effectiveness of a
20 pre-effective date financing statement also may be terminated
21 in accordance with the law of the jurisdiction in which the
22 financing statement is filed.

23 (3) Except as otherwise provided in subsection (4), if
24 the law of this state governs perfection of a security
25 interest, the information in a pre-effective date financing
26 statement may be amended after this act takes effect only if:

27 (a) The pre-effective date financing statement and an
28 amendment are filed in the office specified in s. 679.5011;

29 (b) An amendment is filed in the office specified in
30 s. 679.5011 concurrently with, or after the filing in that
31

1 office of, an initial financing statement that satisfies s.
2 671.706(3); or

3 (c) An initial financing statement that provides the
4 information as amended and satisfies s. 679.706(3) is filed in
5 the office specified in s. 679.5011.

6 (4) If the law of this state governs perfection of a
7 security interest, the effectiveness of a pre-effective date
8 financing statement may be continued only under s. 679.705(4)
9 and (6) or s. 679.706.

10 (5) Whether or not the law of this state governs
11 perfection of a security interest, the effectiveness of a
12 pre-effective date financing statement filed in this state may
13 be terminated after this act takes effect by filing a
14 termination statement in the office in which the pre-effective
15 date financing statement is filed, unless an initial financing
16 statement that satisfies s. 679.706(3) has been filed in the
17 office specified by the law of the jurisdiction governing
18 perfection as provided in part III as the office in which to
19 file a financing statement.

20 679.708 Persons entitled to file initial financing
21 statement or continuation statement.--A person may file an
22 initial financing statement or a continuation statement under
23 this part if:

24 (1) The secured party of record authorizes the filing;
25 and

26 (2) The filing is necessary under this part:

27 (a) To continue the effectiveness of a financing
28 statement filed before this act takes effect; or

29 (b) To perfect or continue the perfection of a
30 security interest.

31 679.709 Priority.--

1 (1) This act determines the priority of conflicting
2 claims to collateral. However, if the relative priorities of
3 the claims were established before this act takes effect,
4 chapter 679, Florida Statutes 2000, determines priority.

5 (2) For purposes of s. 679.322(1), the priority of a
6 security interest that becomes enforceable under s. 679.2031
7 of this act dates from the time this act takes effect if the
8 security interest is perfected under this act by the filing of
9 a financing statement before this act takes effect which would
10 not have been effective to perfect the security interest under
11 chapter 679, Florida Statutes 2000. This subsection does not
12 apply to conflicting security interests each of which is
13 perfected by the filing of such a financing statement.

14 Section 9. Subsection (2) of section 671.105, Florida
15 Statutes, is amended to read:

16 671.105 Territorial application of the code; parties'
17 power to choose applicable law.--

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

23 (a) Governing law in the chapter on funds transfers.
24 (s. 670.507)

25 (b) Rights of sellers' creditors against sold goods.
26 (s. 672.402)

27 (c) Applicability of the chapter on bank deposits and
28 collections. (s. 674.102)

29 (d) Applicability of the chapter on letters of credit.
30 (s. 675.116)

31

1 (e) Applicability of the chapter on investment
2 securities. (s. 678.1101)

3 (f) Law governing perfection, the effect provisions of
4 perfection or nonperfection, and the priority of security
5 interests and agricultural liens ~~chapter on secured~~
6 ~~transactions. (ss. 679.3011-679.3071) (s. 679.103)~~

7 (g) Applicability of the chapter on leases. (ss.
8 680.1051 and 680.1061)

9 Section 10. Subsections (9), (32), and (37) of section
10 671.201, Florida Statutes, are amended to read:

11 671.201 General definitions.--Subject to additional
12 definitions contained in the subsequent chapters of this code
13 which are applicable to specific chapters or parts thereof,
14 and unless the context otherwise requires, in this code:

15 (9) "Buyer in ordinary course of business" means a
16 person who buys goods in good faith ~~and~~ without knowledge that
17 the sale ~~violates to him or her is in violation of the~~
18 ~~ownership rights or security interest~~ of another person a
19 ~~third party~~ in the goods, and buys in the ordinary course from
20 a person, other than a pawnbroker, in the business of selling
21 goods of that kind ~~but does not include a pawnbroker.~~ A
22 person buys goods in the ordinary course if the sale to the
23 person comports with the usual or customary practices in the
24 kind of business in which the seller is engaged or with the
25 seller's own usual or customary practices. A person who sells
26 oil, gas, or other minerals at the wellhead or minehead is a
27 person ~~All persons who sell minerals or the like (including~~
28 ~~oil and gas) at wellhead or minehead shall be deemed to be~~
29 ~~persons~~ in the business of selling goods of that kind. A buyer
30 in the ordinary course of business ~~"Buying"~~ may buy ~~be~~ for
31 cash, ~~or~~ by exchange of other property, ~~or~~ on secured or

1 unsecured credit and may acquire ~~includes receiving~~ goods or
2 documents of title under a preexisting contract for sale ~~but~~
3 ~~does not include a transfer in bulk or as security for or in~~
4 ~~total or partial satisfaction of a money debt.~~ Only a buyer
5 who takes possession of the goods or has a right to recover
6 the goods from the seller under chapter 672 may be a buyer in
7 the ordinary course of business. A person who acquires goods
8 in a transfer in bulk or as security for or in total or
9 partial satisfaction of a money debt is not a buyer in the
10 ordinary course of business.

11 (32) "Purchase" includes taking by sale, discount,
12 negotiation, mortgage, pledge, lien, security interest, issue
13 or reissue, gift or any other voluntary transaction creating
14 an interest in property.

15 (37) "Security interest" means an interest in personal
16 property or fixtures which secures payment or performance of
17 an obligation. ~~The retention or reservation of title by a~~
18 ~~seller of goods notwithstanding shipment or delivery to the~~
19 ~~buyer (s. 672.401) is limited in effect to a reservation of a~~
20 ~~security interest.~~ The term also includes any interest of a
21 consignor and a buyer of accounts, or chattel paper, a payment
22 intangible, or a promissory note in a transaction which is
23 subject to chapter 679. The special property interest of a
24 buyer of goods on identification of those goods to a contract
25 for sale under s. 672.401 is not a security interest, but a
26 buyer may also acquire a security interest by complying with
27 chapter 679. Except as otherwise provided in s. 672.505, the
28 right of a seller or lessor of goods under chapter 672 or
29 chapter 680 to retain or acquire possession of the goods is
30 not a security interest, but a seller or lessor may also
31 acquire a security interest by complying with chapter 679. The

1 retention or reservation of title by a seller of goods,
2 notwithstanding shipment or delivery to the buyer (s.
3 672.401), is limited in effect to a reservation of a security
4 interest.~~Unless a consignment is intended as security,~~
5 ~~reservation of title thereunder is not a security interest,~~
6 ~~but a consignment is in any event subject to the provisions on~~
7 ~~consignment sales (s. 672.326).~~ Whether a transaction creates
8 a lease or security interest is determined by the facts of
9 each case; however:

10 (a) A transaction creates a security interest if the
11 consideration the lessee is to pay the lessor for the right to
12 possession and use of the goods is an obligation for the term
13 of the lease not subject to termination by the lessee, and;

14 1. The original term of the lease is equal to or
15 greater than the remaining economic life of the goods;

16 2. The lessee is bound to renew the lease for the
17 remaining economic life of the goods or is bound to become the
18 owner of the goods;

19 3. The lessee has an option to renew the lease for the
20 remaining economic life of the goods for no additional
21 consideration or nominal additional consideration upon
22 compliance with the lease agreement; or

23 4. The lessee has an option to become the owner of the
24 goods for no additional consideration or nominal additional
25 consideration upon compliance with the lease agreement.

26 (b) A transaction does not create a security interest
27 merely because it provides that:

28 1. The present value of the consideration the lessee
29 is obligated to pay the lessor for the right to possession and
30 use of the goods is substantially equal to or is greater than
31

1 the fair market value of the goods at the time the lease is
2 entered into;

3 2. The lessee assumes the risk of loss of the goods or
4 agrees to pay taxes; insurance; filing, recording, or
5 registration fees; or service or maintenance costs with
6 respect to the goods;

7 3. The lessee has an option to renew the lease or to
8 become the owner of the goods;

9 4. The lessee has an option to renew the lease for a
10 fixed rent that is equal to or greater than the reasonably
11 predictable fair market rent for the use of the goods for the
12 term of the renewal at the time the option is to be performed;
13 or

14 5. The lessee has an option to become the owner of the
15 goods for a fixed price that is equal to or greater than the
16 reasonably predictable fair market value of the goods at the
17 time the option is to be performed.

18 (c) For purposes of this subsection:

19 1. Additional consideration is not nominal if, when
20 the option to renew the lease is granted to the lessee, the
21 rent is stated to be the fair market rent for the use of the
22 goods for the term of the renewal determined at the time the
23 option is to be performed or if, when the option to become the
24 owner of the goods is granted to the lessee, the price is
25 stated to be the fair market value of the goods determined at
26 the time the option is to be performed. Additional
27 consideration is nominal if it is less than the lessee's
28 reasonably predictable cost of performing under the lease
29 agreement if the option is not exercised.

30 2. "Reasonably predictable" and "remaining economic
31 life of the goods" are to be determined with reference to the

1 facts and circumstances at the time the transaction is entered
2 into.

3 3. "Present value" means the amount as of a date
4 certain of one or more sums payable in the future, discounted
5 to the date certain. The discount is determined by the
6 interest rate specified by the parties if the rate is not
7 manifestly unreasonable at the time the transaction is entered
8 into; otherwise, the discount is determined by a commercially
9 reasonable rate that takes into account the facts and
10 circumstances of each case at the time the transaction was
11 entered into.

12 Section 11. Subsection (3) of section 672.103, Florida
13 Statutes, is amended to read:

14 672.103 Definitions and index of definitions.--

15 (3) The following definitions in other chapters apply
16 to this chapter:

17 "Check," s. 673.1041.

18 "Consignee," s. 677.102.

19 "Consignor," s. 677.102.

20 "Consumer goods," s. 679.1021 ~~679.109~~.

21 "Dishonor," s. 673.5021.

22 "Draft," s. 673.1041.

23 Section 12. Section 672.210, Florida Statutes, is
24 amended to read:

25 672.210 Delegation of performance; assignment of
26 rights.--

27 (1) A party may perform her or his duty through a
28 delegate unless otherwise agreed or unless the other party has
29 a substantial interest in having her or his original promisor
30 perform or control the acts required by the contract. No
31

1 delegation of performance relieves the party delegating of any
 2 duty to perform or any liability for breach.

3 (2) Except as otherwise provided in s. 679.4061,
 4 unless otherwise agreed all rights of either seller or buyer
 5 can be assigned except where the assignment would materially
 6 change the duty of the other party, or increase materially the
 7 burden or risk imposed on her or him by her or his contract,
 8 or impair materially her or his chance of obtaining return
 9 performance. A right to damages for breach of the whole
 10 contract or a right arising out of the assignor's due
 11 performance of her or his entire obligation can be assigned
 12 despite agreement otherwise.

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

30 ~~(4)~~(3) Unless the circumstances indicate the contrary
 31 a prohibition of assignment of "the contract" is to be

1 construed as barring only the delegation to the assignee of
2 the assignor's performance.

3 (5)~~(4)~~ An assignment of "the contract" or of "all my
4 rights under the contract" or an assignment in similar general
5 terms is an assignment of rights and unless the language or
6 the circumstances (as in an assignment for security) indicate
7 the contrary, it is a delegation of performance of the duties
8 of the assignor and its acceptance by the assignee constitutes
9 a promise by her or him to perform those duties. This promise
10 is enforceable by either the assignor or the other party to
11 the original contract.

12 (6)~~(5)~~ The other party may treat any assignment which
13 delegates performance as creating reasonable grounds for
14 insecurity and may without prejudice to her or his rights
15 against the assignor demand assurances from the assignee (s.
16 672.609).

17 Section 13. Section 672.326, Florida Statutes, is
18 amended to read:

19 672.326 Sale on approval and sale or return;
20 ~~consignment sales and rights of creditors.--~~

21 (1) Unless otherwise agreed, if delivered goods may be
22 returned by the buyer even though they conform to the
23 contract, the transaction is:

24 (a) A "sale on approval" if the goods are delivered
25 primarily for use, and

26 (b) A "sale or return" if the goods are delivered
27 primarily for resale.

28 ~~(2) Except as provided in subsection (3),~~ Goods held
29 on approval are not subject to the claims of the buyer's
30 creditors until acceptance; goods held on sale or return are
31 subject to such claims while in the buyer's possession.

1 ~~(3) Where goods are delivered to a person for sale and~~
2 ~~such person maintains a place of business at which she or he~~
3 ~~deals in goods of the kind involved, under a name other than~~
4 ~~the name of the person making delivery, then with respect to~~
5 ~~claims of creditors of the person conducting the business the~~
6 ~~goods are deemed to be on sale or return. The provisions of~~
7 ~~this subsection are applicable even though an agreement~~
8 ~~purports to reserve title to the person making delivery until~~
9 ~~payment or resale or uses such words as "on consignment" or~~
10 ~~"on memorandum." However, this subsection is not applicable if~~
11 ~~the person making delivery:~~

12 ~~(a) Complies with an applicable law providing for a~~
13 ~~consignor's interest or the like to be evidenced by a sign, or~~

14 ~~(b) Establishes that the person conducting the~~
15 ~~business is generally known by her or his creditors to be~~
16 ~~substantially engaged in selling the goods of others, or~~

17 ~~(c) Complies with the filing provisions of the chapter~~
18 ~~on secured transactions (chapter 679).~~

19 ~~(3)(4)~~ Any "or return" term of a contract for sale is
20 to be treated as a separate contract for sale within the
21 statute of frauds section of this chapter (s. 672.201) and as
22 contradicting the sale aspect of the contract within the
23 provisions of this chapter on parol or extrinsic evidence (s.
24 672.202).

25 Section 14. Section 672.502, Florida Statutes, is
26 amended to read:

27 672.502 Buyer's right to goods on seller's
28 repudiation, failure to deliver, or insolvency.--

29 (1) Subject to subsections ~~subsection~~ (2) and (3), and
30 even though the goods have not been shipped, a buyer who has
31 paid a part or all of the price of goods in which she or he

1 has a special property under the provisions of the immediately
2 preceding section may on making and keeping good a tender of
3 any unpaid portion of their price recover them from the seller
4 if:

5 (a) In the case of goods bought for personal, family,
6 or household purposes, the seller repudiates or fails to
7 deliver as required by the contract; or

8 (b) In all cases,the seller becomes insolvent within
9 ten days after receipt of the first installment on their
10 price.

11 (2) The buyer's right to recover the goods under
12 paragraph (1)(a) vests upon acquisition of a special property,
13 even if the seller has not then repudiated or failed to
14 deliver.

15 (3)~~(2)~~ If the identification creating her or his
16 special property has been made by the buyer she or he acquires
17 the right to recover the goods only if they conform to the
18 contract for sale.

19 Section 15. Section 672.716, Florida Statutes, is
20 amended to read:

21 672.716 Buyer's right to specific performance or
22 replevin.--

23 (1) Specific performance may be decreed where the
24 goods are unique or in other proper circumstances.

25 (2) The decree for specific performance may include
26 such terms and conditions as to payment of the price, damages,
27 or other relief as the court may deem just.

28 (3) The buyer has a right of replevin for goods
29 identified to the contract if after reasonable effort she or
30 he is unable to effect cover for such goods or the
31 circumstances reasonably indicate that such effort will be

1 unavailing or if the goods have been shipped under reservation
2 and satisfaction of the security interest in them has been
3 made or tendered. In the case of goods bought for personal,
4 family, or household purposes, the buyer's right of replevin
5 vests upon acquisition of a special property, even if the
6 seller had not then repudiated or failed to deliver.

7 Section 16. Subsection (3) of section 674.2101,
8 Florida Statutes, is amended to read:

9 674.2101 Security interest of collecting bank in
10 items, accompanying documents, and proceeds.--

11 (3) Receipt by a collecting bank of a final settlement
12 for an item is a realization on its security interest in the
13 item, accompanying documents, and proceeds. So long as the
14 bank does not receive final settlement for the item or give up
15 possession of the item or accompanying documents for purposes
16 other than collection, the security interest continues to that
17 extent and is subject to chapter 679, but:

18 (a) No security agreement is necessary to make the
19 security interest enforceable (s. 679.2031(2)(c)1.
20 ~~679.203(1)(a)~~);

21 (b) No filing is required to perfect the security
22 interest; and

23 (c) The security interest has priority over
24 conflicting perfected security interests in the item,
25 accompanying documents, or proceeds.

26 Section 17. Section 675.1181, Florida Statutes, is
27 created to read:

28 675.1181 Security interest of issuer of nominated
29 person.--

30 (1) An issuer or nominated person has a security
31 interest in a document presented under a letter of credit to

1 the extent that the issuer or nominated person honors or gives
2 value for the presentation.

3 (2) As long as and to the extent that an issuer or
4 nominated person has not been reimbursed or has not otherwise
5 recovered the value given with respect to a security interest
6 in a document under subsection (1), the security interest
7 continues and is subject to chapter 679, but a security
8 agreement is not necessary to make the security interest
9 enforceable under s. 679.2031(2)(c):

10 (a) If the document is presented in a medium other
11 than a written or other tangible medium, the security interest
12 is perfected; and

13 (b) If the document is presented in a written or other
14 tangible medium and is not a certificated security, chattel
15 paper, a document of title, an instrument, or a letter of
16 credit, the security interest is perfected and has priority
17 over a conflicting security interest in the document so long
18 as the debtor does not have possession of the document.

19 Section 18. Subsection (1) of section 677.503, Florida
20 Statutes, is amended to read:

21 677.503 Document of title to goods defeated in certain
22 cases.--

23 (1) A document of title confers no right in goods
24 against a person who before issuance of the document had a
25 legal interest or a perfected security interest in them and
26 who neither:

27 (a) Delivered or entrusted them or any document of
28 title covering them to the bailor or the bailor's nominee with
29 actual or apparent authority to ship, store or sell or with
30 power to obtain delivery under this chapter (s. 677.403) or
31

1 with power of disposition under this code (ss. 672.403 and
2 679.320 ~~679.307~~) or other statute or rule of law; nor

3 (b) Acquiesced in the procurement by the bailor or the
4 bailor's nominee of any document of title.

5 Section 19. Subsection (6) of section 678.1031,
6 Florida Statutes, is amended to read:

7 678.1031 Rules for determining whether certain
8 obligations and interests are securities or financial
9 assets.--

10 (6) A commodity contract, as defined in s.
11 679.1021(1)(o)~~679.115~~, is not a security or a financial
12 asset.

13 Section 20. Subsections (4) and (6) of section
14 678.1061, Florida Statutes, are amended to read:

15 678.1061 Control.--

16 (4) A purchaser has "control" of a security
17 entitlement if:

18 (a) The purchaser becomes the entitlement holder; ~~or~~

19 (b) The securities intermediary has agreed that it
20 will comply with entitlement orders originated by the
21 purchaser without further consent by the entitlement holder;
22 or-

23 (c) Another person has control of the security
24 entitlement on behalf of the purchaser or, having previously
25 acquired control of the security entitlement, acknowledges
26 that the person has control on behalf of the purchaser.

27 (6) A purchaser who has satisfied the requirements of
28 subsection paragraph (3)(b)~~or subsection paragraph (4)(b)~~ has
29 control, even if the registered owner in the case of
30 subsection paragraph (3)(b)~~or the entitlement holder in the~~
31 case of subsection paragraph (4)(b) retains the right to make

1 substitutions for the uncertificated security or security
2 entitlement, to originate instructions or entitlement orders
3 to the issuer or securities intermediary, or otherwise to deal
4 with the uncertificated security or security entitlement.

5 Section 21. Subsection (5) of section 678.1101,
6 Florida Statutes, is amended to read:

7 678.1101 Applicability; choice of law.--

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

10 (a) If an agreement between the securities
11 intermediary and its entitlement holder governing the
12 securities account expressly provides that a particular
13 jurisdiction is the securities intermediary's jurisdiction for
14 purposes of this part, this chapter, or this code specifies
15 that it is governed by the law of a particular jurisdiction,
16 that jurisdiction is the securities intermediary's
17 jurisdiction.

18 (b) If paragraph (a) does not apply and an agreement
19 between the securities intermediary and its entitlement holder
20 governing the securities account expressly provides that the
21 agreement is governed by the law of a particular jurisdiction,
22 that jurisdiction is the securities intermediary's
23 jurisdiction.

24 (c) ~~(b)~~ If neither paragraph (a) nor paragraph (b)
25 applies and an agreement between the securities intermediary
26 and its entitlement holder governing the securities account
27 does not specify the governing law as provided in paragraph
28 (a), but expressly provides specifies that the securities
29 account is maintained at an office in a particular
30 jurisdiction, that jurisdiction is the securities
31 intermediary's jurisdiction.

1 ~~(d)~~(c) If none of the preceding paragraphs applies an
2 ~~agreement between the securities intermediary and its~~
3 ~~entitlement holder does not specify a jurisdiction as provided~~
4 ~~in paragraph (a) or paragraph (b), the securities~~
5 ~~intermediary's jurisdiction is the jurisdiction in which is~~
6 ~~located the office identified in an account statement as the~~
7 ~~office serving the entitlement holder's account~~ is located.

8 ~~(e)~~(d) If none of the preceding paragraphs applies an
9 ~~agreement between the securities intermediary and its~~
10 ~~entitlement holder does not specify a jurisdiction as provided~~
11 ~~in paragraph (a) or paragraph (b) and an account statement~~
12 ~~does not identify an office serving the entitlement holder's~~
13 ~~account as provided in paragraph (c), the securities~~
14 ~~intermediary's jurisdiction is the jurisdiction in which is~~
15 ~~located the chief executive office of the securities~~
16 ~~intermediary~~ is located.

17 Section 22. Subsection (1) of section 678.3011,
18 Florida Statutes, is amended to read:

19 678.3011 Delivery.--

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

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

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

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

1 registered in the name of the purchaser, payable to the order
2 of the purchaser, or ~~has been~~ specially indorsed to the
3 purchaser by an effective indorsement and has not been
4 endorsed to the securities intermediary or in blank.

5 Section 23. Section 678.3021, Florida Statutes, is
6 amended to read:

7 678.3021 Rights of purchaser.--

8 (1) Except as otherwise provided in subsections (2)
9 and (3), a purchaser upon delivery of a certificated or
10 uncertificated security ~~to a purchaser, the purchaser~~ acquires
11 all rights in the security that the transferor had or had
12 power to transfer.

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

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

18 Section 24. Section 678.5101, Florida Statutes, is
19 amended to read:

20 678.5101 Rights of purchaser of security entitlement
21 from entitlement holder.--

22 (1) In a case not covered by the priority rules in
23 chapter 679 or the rules stated in subsection (3), an action
24 based on an adverse claim to a financial asset or security
25 entitlement, whether framed in conversion, replevin,
26 constructive trust, equitable lien, or other theory, may not
27 be asserted against a person who purchases a security
28 entitlement, or an interest therein, from an entitlement
29 holder if the purchaser gives value, does not have notice of
30 the adverse claim, and obtains control.

31

1 (2) If an adverse claim could not have been asserted
2 against an entitlement holder under s. 678.5021, the adverse
3 claim cannot be asserted against a person who purchases a
4 security entitlement, or an interest therein, from the
5 entitlement holder.

6 (3) In a case not covered by the priority rules in
7 chapter 679, a purchaser for value of a security entitlement,
8 or an interest therein, who obtains control has priority over
9 a purchaser of a security entitlement, or an interest therein,
10 who does not obtain control. Except as otherwise provided in
11 subsection (4), purchasers who have control rank according to
12 priority in time of:

13 (a) The purchaser's becoming the person for whom the
14 securities account, in which the security entitlement is
15 carried, is maintained, if the purchaser obtained control
16 under s. 678.1061(4)(a);

17 (b) The securities intermediary's agreement to comply
18 with the purchaser's entitlement orders with respect to
19 security entitlements carried or to be carried in the
20 securities account in which the security entitlement is
21 carried, if the purchaser obtained control under s.
22 678.1061(4)(b); or

23 (c) If the purchaser obtained control through another
24 person under s. 678.1061(4)(c), the time on which priority
25 would be based under this subsection if the other person were
26 the secured party. ~~equally, except that~~

27 (4) A securities intermediary as purchaser has
28 priority over a conflicting purchaser who has control unless
29 otherwise agreed by the securities intermediary.

30 Section 25. Subsection (3) of section 680.1031,
31 Florida Statutes, is amended to read:

- 1 680.1031 Definitions and index of definitions.--
 2 (3) The following definitions in other chapters of
 3 this code apply to this chapter:
 4 (a) "Account," s. 679.1021(1)(b)~~679.106~~.
 5 (b) "Between merchants," s. 672.104(3).
 6 (c) "Buyer," s. 672.103(1)(a).
 7 (d) "Chattel paper," s. 679.1021(1)(k)~~679.105(1)(b)~~.
 8 (e) "Consumer goods," s. 679.1021(1)(w)~~679.109(1)~~.
 9 (f) "Document," s. 679.1021(1)(dd)~~679.105(1)(f)~~.
 10 (g) "Entrusting," s. 672.403(3).
 11 (h) "General intangible ~~intangibles~~," s.
 12 679.1021(1)(pp)~~679.106~~.
 13 (i) "Good faith," s. 672.103(1)(b).
 14 (j) "Instrument," s. 679.1021(1)(uu)~~679.105(1)(i)~~.
 15 (k) "Merchant," s. 672.104(1).
 16 (l) "Mortgage," s. 679.1021(1)(ccc)~~679.105(1)(j)~~.
 17 (m) "Pursuant to a commitment," s. 679.1021(1)(ppp)
 18 679.105(1)(k).
 19 (n) "Receipt," s. 672.103(1)(c).
 20 (o) "Sale," s. 672.106(1).
 21 (p) "Sale on approval," s. 672.326(1).
 22 (q) "Sale or return," s. 672.326(1).
 23 (r) "Seller," s. 672.103(1)(d).

24 Section 26. Section 680.303, Florida Statutes, is
 25 amended to read:

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

29 (1) As used in this section, "creation of a security
 30 interest" includes the sale of a lease contract that is
 31 subject to chapter 679 by reason of s. 679.1091(1)(c).

1 (2) Except as provided in subsection ~~subsections~~ (3)
2 and s. 679.4071~~(4)~~, a provision in a lease agreement which:

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

9 (b) Makes such a transfer an event of default, gives
10 rise to the rights and remedies provided in subsection~~(4)~~
11 ~~(5)~~, but a transfer that is prohibited or is an event of
12 default under the lease agreement is otherwise effective.

13 ~~(3) A provision in a lease agreement which:~~

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

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

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

1 ~~(3)(4)~~ A provision in a lease agreement which:

2 (a) Prohibits a transfer of a right to damages for
3 default with respect to the whole lease contract or of a right
4 to payment arising out of the transferor's due performance of
5 the transferor's entire obligation; or

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

12 ~~(4)(5)~~ Subject to subsection ~~subsections~~ (3) and s.
13 679.4071~~(4)~~:

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

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

31

1 appropriate relief, including cancellation of the lease
2 contract or an injunction against the transfer.

3 (5)~~(6)~~ A transfer of "the lease" or of "all my rights
4 under the lease" or a transfer in similar general terms is a
5 transfer of rights, and unless the language or the
6 circumstances, as in a transfer for security, indicate the
7 contrary, the transfer is a delegation of duties by the
8 transferor to the transferee. Acceptance by the transferee
9 constitutes a promise by the transferee to perform those
10 duties. The promise is enforceable by either the transferor or
11 the other party to the lease contract.

12 (6)~~(7)~~ Unless otherwise agreed by the lessor and the
13 lessee, a delegation of performance does not relieve the
14 transferor as against the other party of any duty to perform
15 or of any liability for default.

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

20 Section 27. Section 680.307, Florida Statutes, is
21 amended to read:

22 680.307 Priority of liens arising by attachment or
23 levy on, security interests in, and other claims to goods.--

24 (1) Except as otherwise provided in s. 680.306, a
25 creditor of a lessee takes subject to the lease contract.

26 (2) Except as otherwise provided in subsection
27 ~~subsections~~ (3) ~~and (4)~~ and in ss. 680.306 and 680.308, a
28 creditor of a lessor takes subject to the lease contract
29 unless+

30 ~~(a)~~ the creditor holds a lien that attached to the
31 goods before the lease contract became enforceable.~~+~~

1 ~~(b) The creditor holds a security interest in the~~
2 ~~goods and the lessee did not give value and receive delivery~~
3 ~~of the goods without knowledge of the security interests; or~~

4 ~~(c) The creditor holds a security interest in the~~
5 ~~goods which was perfected (s. 679.303) before the lease~~
6 ~~contract became enforceable.~~

7 (3) Except as otherwise provided in ss. 679.3171,
8 679.321, and 679.323, a lessee takes a leasehold interest
9 subject to a security interest held by a creditor or lessor.~~A~~
10 ~~lessee in the ordinary course of business takes the leasehold~~
11 ~~interest free of a security interest in the goods created by~~
12 ~~the lessor even though the security interest is perfected (s.~~
13 ~~679.303) and the lessee knows of its existence.~~

14 ~~(4) A lessee other than a lessee in the ordinary~~
15 ~~course of business takes the leasehold interest free of a~~
16 ~~security interest to the extent that it secures future~~
17 ~~advances made after the secured party acquires knowledge of~~
18 ~~the lease or more than 45 days after the lease contract~~
19 ~~becomes enforceable, whichever first occurs, unless the future~~
20 ~~advances are made pursuant to a commitment entered into~~
21 ~~without knowledge of the lease and before the expiration of~~
22 ~~the 45-day period.~~

23 Section 28. Paragraph (b) of subsection (1) of section
24 680.309, Florida Statutes, is amended to read:

25 680.309 Lessor's and lessee's rights when goods become
26 fixtures.--

27 (1) In this section:

28 (b) A "fixture filing" is the filing, in the office
29 where a mortgage on the real estate would be filed or
30 recorded, of a financing statement covering goods that are or
31

1 are to become fixtures and conforming to the requirements of
2 s. 679.5021(1) and (2)~~679.402(5)~~.

3 Section 29. Section 285.20, Florida Statutes, is
4 created to read:

5 285.20 Tribal Secured Transactions Filing Offices.--

6 (1) If the governing body of the Seminole Tribe of
7 Florida or the governing body of the Miccosukee Tribe of
8 Indians adopts or enacts a law or ordinance governing secured
9 transactions arising within or relating to the reservation of
10 such tribe in this state, and if such tribal law or ordinance
11 authorizes financing statements and other records relating to
12 secured transactions to be filed:

13 (a) With the Department of State or such other central
14 filing office as may be established from time to time under
15 the Uniform Commercial Code of this state, then the Department
16 of State or other central filing office, including any private
17 secured transaction registry that may be designated as such in
18 this state, shall accept and process such filings made under
19 the tribal secured transactions law in accordance with this
20 section and the provisions of chapter 679; or

21 (b) With the office of the clerk of circuit court in
22 any county of this state in which the tribal secured
23 transactions law requires a local filing, then such county
24 filing office shall accept and process such filings made under
25 such tribal law in accordance with this section and the
26 provisions of chapter 28.

27 (2) The filing office shall not be required to accept
28 any financing statements or other records communicated for
29 filing under a tribal secured transactions law unless they
30 satisfy the same filing requirements then applicable to
31 financing statements and other records communicated to that

1 filing office under the Uniform Commercial Code of this state,
2 including the payment of the same filing, processing, or
3 recording charges or fees then charged by that filing office
4 for filing or recording comparable financing statements and
5 other records under the Uniform Commercial Code of this state.

6 (3) The filing office shall maintain and index its
7 records of all financing statements or other records filing
8 with that filing office under the tribal secured transactions
9 law together with and in the same manner as its records of
10 financing statements and other records filed under the Uniform
11 Commerical Code of this state. The filing office shall not be
12 required to record or index separately, or otherwise segregate
13 in any manner, any such filings made under the tribal secured
14 transactions law from other filings made under the Uniform
15 Commerical Code of this state. In all respects, the filing
16 office shall have the same duties and responsibilities with
17 respect to filings made under the tribal secured transactions
18 law as with respect to filings made under the Uniform
19 Commercial Code of this state.

20 Section 30. Nothing contained in s. 679.4061, Florida
21 Statutes, or s. 679.4081, Florida Statutes, as created by this
22 act, shall supersede the provisions of SB 108 or HB 767,
23 relating to structured settlements, if Senate Bill 108 or
24 House Bill 767 becomes a law.

25 Section 31. This act shall take effect January 1,
26 2002.