

By the Committee on Judiciary; and Senator Campbell

308-1929-02

1 A bill to be entitled
2 An act relating to the Uniform Commercial Code;
3 amending ss. 679.1021, 679.1081, 679.2031,
4 679.210, 679.510, 679.513, 679.516, 676.519,
5 679.527, and 679.625, F.S.; revising provisions
6 of the Uniform Commercial Code as amended to
7 clarify and conform; amending ss. 679.3011,
8 679.3171, 679.334, and 679.5011, F.S.;
9 clarifying the application of laws of this
10 state to security interests in goods as
11 fixtures; revising operation of provisions
12 specifying priority of such security interests;
13 providing an effective date.

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

17 Section 1. Paragraph (nn) of subsection (1) of section
18 679.1021, Florida Statutes, is amended to read:

19 679.1021 Definitions and index of definitions.--

20 (1) In this chapter, the term:

21 (nn) "Fixture filing" means the filing of a financing
22 statement covering goods that are or are to become fixtures
23 and satisfying s. 679.5021 ~~679.502~~(1) and (2). The term
24 includes the filing of a financing statement covering goods of
25 a transmitting utility which are or are to become fixtures.

26 Section 2. Subsection (5) of section 679.1081, Florida
27 Statutes, is amended to read:

28 679.1081 Sufficiency of description.--

29 (5) A description only by type of collateral defined
30 in this chapter ~~the Uniform Commercial Code~~ is an insufficient
31 description of:

1 (a) A commercial tort claim; ~~or~~
2 (b) In a consumer transaction, consumer goods, a
3 security entitlement, a securities account, or a commodity
4 account; or;
5 (c) An account consisting of a right to payment of a
6 monetary obligation for the sale of real property that is the
7 debtor's homestead under the laws of this state.

8 Section 3. Subsection (2) of section 679.2031, Florida
9 Statutes, is amended and subsection (10) is added to that
10 section to read:
11 679.2031 Attachment and enforceability of security
12 interest; proceeds; supporting obligations; formal
13 requisites.--
14 (2) Except as otherwise provided in subsections (3)
15 through ~~(10)~~~~(9)~~, a security interest is enforceable against
16 the debtor and third parties with respect to the collateral
17 only if:
18 (a) Value has been given;
19 (b) The debtor has rights in the collateral or the
20 power to transfer rights in the collateral to a secured party;
21 and
22 (c) One of the following conditions is met:
23 1. The debtor has authenticated a security agreement
24 that provides a description of the collateral and, if the
25 security interest covers timber to be cut, a description of
26 the land concerned;
27 2. The collateral is not a certificated security and
28 is in the possession of the secured party under s. 679.3131
29 pursuant to the debtor's security agreement;
30 3. The collateral is a certificated security in
31 registered form and the security certificate has been

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

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

8 (10) A security interest in an account consisting of a
9 right to payment of a monetary obligation for the sale of real
10 property that is the debtor's homestead under the laws of this
11 state is not enforceable unless:

12 (a) The description of the account in the security
13 agreement conspicuously states that the collateral includes
14 the debtor's right to payment of a monetary obligation for the
15 sale of real property;

16 (b) The description of the account in the security
17 agreement includes a legal description of the real property;

18 (c) The description of the account in the security
19 agreement conspicuously states that the real property is the
20 debtor's homestead; and

21 (d) The security agreement is also authenticated by
22 the debtor's spouse, if the debtor is married; if the debtor's
23 spouse is incompetent, then the method of authentication by
24 the debtor's spouse is the same as provided by the laws of
25 this state, other than this chapter, which apply to the
26 alienation or encumbrance of homestead property by an
27 incompetent person.

28 Section 4. Subsection (6) of section 679.210, Florida
29 Statutes, is amended to read:

30 679.210 Request for accounting; request regarding list
31 of collateral or statement of account.--

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

23 Section 5. Subsection (3) of section 679.3011, Florida
24 Statutes, is amended, and subsection (5) is added to said
25 section, to read:

26 679.3011 Law governing perfection and priority of
27 security interests.--Except as otherwise provided in ss.
28 679.1091, 679.3031, 679.3041, 679.3051, and 679.3061, the
29 following rules determine the law governing perfection, the
30 effect of perfection or nonperfection, and the priority of a
31 security interest in collateral:

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

5 (a) Perfection of a security interest in the goods by
6 filing a fixture filing;

7 (b) Perfection of a security interest in timber to be
8 cut; and

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

12 (5) The law of this state governs:

13 (a) The perfection of a security interest in goods
14 that are or are to become fixtures in this state by the filing
15 of a fixture filing.

16 (b) The effect of perfection or nonperfection and the
17 priority of a security interest in goods that are or are to
18 become fixtures in this state.

19 Section 6. Subsections (6) and (7) are added to
20 section 679.3171, Florida Statutes, to read:

21 679.3171 Interests that take priority over or take
22 free of security interest or agricultural lien.--

23 (6) An encumbrancer or owner, other than the debtor or
24 a lien creditor, who acquires an interest in the related real
25 property takes free of a security interest in goods that are
26 or become fixtures in this state, which interest is perfected
27 only with a financing statement that is not filed as a fixture
28 filing, even if the encumbrancer or owner knows of the
29 existence of such statement. For purposes of s. 695.01, the
30 filing of a financing statement covering goods that are or
31 become fixtures in this state, which statement is not filed as

1 a fixture filing, shall not constitute constructive notice of
2 such security interest to any person, other than a lien
3 creditor, who acquires an interest in the related real
4 property.

5 (7) The holder of a mortgage or other lien against
6 real property arising under the laws of this state, other than
7 this chapter, has priority with respect to the rents, issues,
8 profits, and proceeds of the real property, including proceeds
9 from the sale thereof, over a security interest in an account
10 consisting of a right to payment of a monetary obligation for
11 the sale of the real property.

12 Section 7. Subsection (4) of section 679.334, Florida
13 Statutes, is amended to read:

14 679.334 Priority of security interests in fixtures and
15 crops.--

16 (4) A security interest in goods which are or become
17 fixtures perfected with a financing statement that is filed as
18 a fixture filing takes priority as to the goods over the
19 conflicting interest ~~claims~~ of an encumbrancer or owner of the
20 related ~~all persons acquiring an interest in the~~ real property
21 arising subsequent to the perfection of such security interest
22 or the affixing of the goods to the real property, whichever
23 occurs later. A security interest in goods which are or become
24 fixtures perfected only with a financing statement that is not
25 filed as a fixture filing is subject to the rights of an
26 encumbrancer or owner of the related real property under s.
27 679.3171(6) and to the rights of a lien creditor under s.
28 679.3171(1)(b), but takes priority as to the goods over the
29 rights of a lien creditor who does not meet the requirements
30 of s. 679.3171(1)(b).

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1 Section 8. Section 679.5011, Florida Statutes, is
2 amended to read:

3 679.5011 Filing office.--

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

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

8 1. The collateral is as-extracted collateral or timber
9 to be cut; or

10 2. The collateral is goods that are or are to become
11 fixtures ~~and in this state, in which event~~ the financing
12 statement ~~is shall be~~ filed as a fixture filing.

13 (b) The Florida Secured Transaction Registry, in
14 accordance with ss. 679.3011-679.3071, ~~and~~ in all other cases,
15 including cases in which the collateral is goods that are or
16 are to become fixtures and the financing statement is not
17 filed as a fixture filing.

18 (2) The office in which to file a financing statement
19 to perfect a security interest in collateral, including
20 fixtures, of a transmitting utility is the Office of the
21 Secretary of State, or the filing office authorized by s.
22 679.527 ~~697.527~~ to accept filings for the Florida Secured
23 Transaction Registry. The financing statement also
24 constitutes a fixture filing as to the collateral indicated in
25 the financing statement which is or is to become fixtures.

26 Section 9. Section 679.510, Florida Statutes, is
27 amended to read:

28 679.510 Effectiveness of filed record.--

29 (1) ~~Subject to subsection (3),~~A filed record is
30 effective only to the extent that it was filed by a person who
31 may file it under s. 679.509.

1 (2) A record authorized by one secured party of record
2 does not affect the financing statement with respect to
3 another secured party of record.

4 ~~(3) If a person may file a termination statement only~~
5 ~~under s. 679.509(3)(b), the filed termination statement is~~
6 ~~effective only if the debtor authorizes the filing and the~~
7 ~~termination statement indicates that the debtor authorized it~~
8 ~~to be filed.~~

9 (3)~~(4)~~ A continuation statement that is not filed
10 within the 6-month period prescribed by s. 679.515(4) is
11 ineffective.

12 Section 10. Subsection (4) of section 679.513, Florida
13 Statutes, is amended to read:

14 679.513 Termination statement.--

15 (4) ~~Except as otherwise provided in s. 679.510,~~ Upon
16 the filing of a termination statement with the filing office,
17 the financing statement to which the termination statement
18 relates ceases to be effective. ~~Except as otherwise provided~~
19 ~~in s. 679.510,~~ For purposes of ss. 679.519(7) and 679.522(1),
20 the filing with the filing office of a termination statement
21 relating to a financing statement that indicates that the
22 debtor is a transmitting utility also causes the effectiveness
23 of the financing statement to lapse.

24 Section 11. Subsection (1) and paragraphs (d), (e),
25 (g), (h), and (i) of subsection (2) of section 679.516,
26 Florida Statutes, are amended to read:

27 679.516 What constitutes filing; effectiveness of
28 filing.--

29 (1) Except as otherwise provided in subsection (2),
30 communication of a record to a filing office and, tender of
31

1 the processing fee, or acceptance of the record by the filing
2 office constitutes filing.

3 (2) Filing does not occur with respect to a record
4 that a filing office refuses to accept because:

5 (d) The filing office is unable to index the record
6 because:

7 1. In the case of an initial financing statement, the
8 record does not provide an organization's name or, if an
9 individual, the individual's last name and first name ~~or~~
10 initial;

11 2. In the case of an amendment or correction
12 statement, the record:

13 a. Does not correctly identify the initial financing
14 statement as required by s. 679.512 or s. 679.518, as
15 applicable; or

16 b. Identifies an initial financing statement the
17 effectiveness of which has lapsed under s. 679.515;

18 3. In the case of an initial financing statement that
19 provides the name of a debtor identified as an individual or
20 an amendment that provides a name of a debtor identified as an
21 individual which was not previously provided in the financing
22 statement to which the record relates, the record does not
23 identify the debtor's last name and first name ~~or initial~~; or

24 4. In the case of a record filed or recorded in the
25 filing office described in s. 679.5011(1)(a), the record does
26 not provide a sufficient description of the real property to
27 which it relates;

28 (e) In the case of an initial financing statement or
29 an amendment that adds a secured party of record, the record
30 does not provide an organization's name or, if an individual,

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1 the individual's last name and first name ~~or initial~~ and
2 mailing address for the secured party of record;

3 (g) In the case of an assignment reflected in an
4 initial financing statement under s. 679.514(1) or an
5 amendment filed under s. 679.514(2), the record does not
6 provide an organization's name or, if an individual, the
7 individual's last name and first name ~~or initial~~ and mailing
8 address for the assignee;

9 (h) In the case of a continuation statement, the
10 record is not filed within the 6-month period prescribed by s.
11 679.515(4); or

12 (i) In the case of an initial financing statement or
13 an amendment, which amendment requires the inclusion of a
14 collateral statement but the record does not provide any, the
15 record does not provide a statement of collateral. ~~or~~

16 Section 12. Subsection (1) of section 679.519, Florida
17 Statutes, is amended to read:

18 679.519 Numbering, maintaining, and indexing records;
19 communicating information provided in records.--

20 (1) For each record filed in a filing office, the
21 filing office shall, ~~in accordance with such other laws~~
22 ~~applicable to the recording of instruments by a filing office~~
23 ~~described in s. 679.5011(1)(a):~~

24 (a) Assign a unique number to the filed record;

25 (b) Create a record that bears the number assigned to
26 the filed record and the date and time of filing;

27 (c) Maintain the filed record for public inspection;

28 and

29 (d) Index the filed record in accordance with
30 subsections (3), (4), and (5).

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1 Section 13. Subsections (2) and (4) of section
2 679.527, Florida Statutes, are amended to read:

3 679.527 Florida Secured Transaction Registry.--

4 (2) Under chapter 287, the department has the
5 authority to determine and select the most qualified
6 respondents to the request for qualifications and to negotiate
7 and enter into one or more contracts as provided in this
8 section. The contract may not be assignable or otherwise
9 transferable without the express written consent of the
10 department, notwithstanding any limitations imposed by s.
11 679.4061 or s. 679.4081.

12 (4) Notwithstanding the terms and conditions of any
13 contract to perform the administrative and operational
14 functions of the filing office or filing officer under this
15 part for the Florida Secured Transaction Registry, the
16 department and the state shall retain sole and exclusive
17 ownership of the materials and records of the registry, shall
18 have the right to inspect and make copies of the materials and
19 records of the registry, and shall have the right to
20 immediately reclaim and take possession and control of the
21 original materials and records of the registry if any entity
22 under contract with the department to administer and operate
23 the registry does not, or cannot, perform the terms and
24 conditions of the contract for any reason or commences or is
25 adjudicated a debtor in ~~consents to~~ an insolvency proceeding.
26 If the department reclaims control of the materials and
27 records of the registry, the department shall provide for the
28 uninterrupted fulfillment of the duties of the filing office
29 and filing officer under this chapter by administration and
30 operation by the department until a subsequent contract for
31 such duties can be executed. The department shall be entitled

1 to injunctive relief if the entity fails to turn over the
2 materials and records upon demand, and the Circuit Court for
3 Leon County, Florida, shall have exclusive original
4 jurisdiction to adjudicate any disputes pertaining to this
5 section or any contract entered into under this section.

6 Section 14. Paragraph (f) of subsection (5) of section
7 679.625, Florida Statutes, is amended to read:

8 679.625 Remedies for failure to comply with article.--

9 (5) In lieu of damages recoverable under subsection
10 (2), the debtor, consumer obligor, or person named as a debtor
11 in a filed record, as applicable, may recover \$500 in each
12 case from a person who:

13 (f) Fails to comply with s. 679.616(2)(b) ~~with respect~~
14 ~~to a consumer transaction, and with respect to a transaction~~
15 ~~other than a consumer transaction, after receipt of an~~
16 ~~authenticated record notifying the person of such~~
17 ~~noncompliance.~~

18 Section 15. This act shall take effect upon becoming a
19 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1066

- 4 -- Amends paragraph (nn) of subsection (1) of s.
5 679.1021, F.S., pertaining to definition of a
6 fixture filing, to correct a cross-reference.
- 7 -- Amends subsection (5) of s. 679.1081, F.S.,
8 relating to the sufficiency of the description of
9 collateral in a financing statement, to correct a
10 cross-reference and to provide that a description
11 only by type of collateral defined in ch. 679,
12 F.S., is an insufficient description of an account
13 consisting of a right to payment of a monetary
14 obligation for the sale of real property that is
15 the debtor's homestead.
- 16 -- Amends s. 679.2031, F.S., which relates to the
17 attachment and enforceability of security
18 interests, to create a new subsection (10). New
19 subsection (10) prescribes conditions that must be
20 satisfied to create an enforceable security
21 interest in an account consisting of a right to
22 payment of a monetary obligation for the sale of a
23 debtor's homestead.
- 24 -- Creates a new subsection (5) of s. 679.3011, F.S.,
25 which pertains to the law governing the perfection
26 and priority of security interests. New subsection
27 (5) provides that Florida law governs the
28 perfection of a security interest in goods that
29 are, or are to become, fixtures in this state by
30 the filing of a fixture filing. The new subsection
31 also provides that the law of Florida governs the
effect of perfection or nonperfection, and the
priority of a security interest in goods that are
or are to become fixtures in this state.
- Creates new subsections (6) and (7) of s.
679.3171, F.S., which governs interests that take
priority over or take free of security interests
or agricultural liens. New subsection (6) provides
that certain encumbrancers or owners who acquire
an interest in the related real property do so
while taking free, under certain conditions, of a
security interest in goods that are or become
fixtures in this state. New subsection (7)
provides that a holder of a mortgage or other lien
against real property has priority over a security
interest in an account consisting of a right to
payment of a monetary obligation for the sale of
real property.
- Amends subsection (4) of s. 679.334, F.S., which
relates to the priority of security interests in
fixtures and crops, to clarify that only a
security interest filed as a fixtures filing is
sufficient to establish the priority of the
security interest in the goods which are or become

1 fixtures. Security interests that are not filed as
2 fixture filings are secondary to the rights of an
3 encumbrancer or owner of the related real property
4 and the rights of a lien creditor.
5 -- Clarifies the amendment to subsection (1) of s.
6 679.5011, F.S., to specify that the filing office
7 for collateral that is, or is to become, fixtures
8 is the office of the clerk of the circuit court.
9 The filing office for all other security interests
10 is the Florida Secured Transaction Registry.
11 -- Amends subsection (4) of s. 679.513, F.S.,
12 pertaining to termination statements, to conform
13 this subsection to the changes made by the bill to
14 s. 679.510, F.S.
15 -- Amends subsection (1) of s. 679.516, F.S., to
16 provide that, except as provided in subsection (2)
17 of s. 679.516, F.S., communication of a record to
18 a filing office and tender of the processing fee
19 or acceptance of the record by the filing office
20 constitutes filing.
21 -- Amends subsection (1) of s. 679.519, F.S., to
22 delete an unnecessary cross-reference.
23 -- Deletes the bill's amendments to subsection (1) of
24 s. 679.525, F.S., which relates to processing fees
25 for filing and indexing records other than an
26 initial financing statement.
27 -- Modifies the amendment to paragraph (f) of
28 subsection (5) of s. 679.625, F.S., by deleting
29 unnecessary language.
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