

By the Committee on Judicial Oversight and Representative
Crow

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

14
15 Be It Enacted by the Legislature of the State of Florida:

16
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.

5 Section 3. Subsection (6) of section 679.210, Florida
6 Statutes, is amended to read:

7 679.210 Request for accounting; request regarding list
8 of collateral or statement of account.--

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

31

1 Section 4. Subsection (3) of section 679.3011, Florida
2 Statutes, is amended, and subsection (5) is added to said
3 section, to read:

4 679.3011 Law governing perfection and priority of
5 security interests.--Except as otherwise provided in ss.
6 679.1091, 679.3031, 679.3041, 679.3051, and 679.3061, the
7 following rules determine the law governing perfection, the
8 effect of perfection or nonperfection, and the priority of a
9 security interest in collateral:

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

14 (a) Perfection of a security interest in the goods by
15 filing a fixture filing;

16 (b) Perfection of a security interest in timber to be
17 cut; and

18 (c) The effect of perfection or nonperfection and the
19 priority of a nonpossessory security interest in the
20 collateral.

21 (5) The law of this state governs:

22 (a) The perfection of a security interest in goods
23 that are or are to become fixtures in this state by the filing
24 of a fixture filing.

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

28 Section 5. Subsection (6) is added to section
29 679.3171, Florida Statutes, to read:

30 679.3171 Interests that take priority over or take
31 free of security interest or agricultural lien.--

1 (6) An encumbrancer or owner, other than the debtor or
2 a lien creditor, who acquires an interest in the related real
3 property takes free of a security interest in goods that are
4 or become fixtures in this state, which interest is perfected
5 only with a financing statement that is not filed as a fixture
6 filing, even if the encumbrancer or owner knows of the
7 existence of such statement. For purposes of s. 695.01, the
8 filing of a financing statement covering goods that are or
9 become fixtures in this state, which statement is not filed as
10 a fixture filing, shall not constitute constructive notice of
11 such security interest to any person, other than a lien
12 creditor, who acquires an interest in the related real
13 property.

14 Section 6. Subsection (4) of section 679.334, Florida
15 Statutes, is amended to read:

16 679.334 Priority of security interests in fixtures and
17 crops.--

18 (4) A security interest in goods which are or become
19 fixtures perfected with a financing statement that is filed as
20 a fixture filing takes priority as to the goods over the
21 conflicting interest ~~claims~~ of an encumbrancer or owner of the
22 related ~~all persons acquiring an interest in the~~ real property
23 arising subsequent to the perfection of such security interest
24 or the affixing of the goods to the real property, whichever
25 occurs later. A security interest in goods which are or become
26 fixtures perfected only with a financing statement that is not
27 filed as a fixture filing is subject to the rights of an
28 encumbrancer or owner of the related real property under s.
29 679.3171(6) and to the rights of a lien creditor under s.
30 679.3171(1)(b), but takes priority as to the goods over the
31

1 rights of a lien creditor who does not meet the requirements
2 of s. 679.3171(1)(b).

3 Section 7. Section 679.5011, Florida Statutes, is
4 amended to read:

5 679.5011 Filing office.--

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

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

10 1. The collateral is as-extracted collateral or timber
11 to be cut; or

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

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

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

28 Section 8. Section 679.510, Florida Statutes, is
29 amended to read:

30 679.510 Effectiveness of filed record.--

31

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

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

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

12 (3)~~(4)~~ A continuation statement that is not filed
13 within the 6-month period prescribed by s. 679.515(4) is
14 ineffective.

15 Section 9. Subsection (4) of section 679.513, Florida
16 Statutes, is amended to read:

17 679.513 Termination statement.--

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

27 Section 10. Subsection (1) and paragraphs (d), (e),
28 (g), (h), and (i) of subsection (2) of section 679.516,
29 Florida Statutes, are amended to read:

30 679.516 What constitutes filing; effectiveness of
31 filing.--

1 (1) Except as otherwise provided in subsection (2),
2 communication of a record to a filing office and, tender of
3 the processing fee, or acceptance of the record by the filing
4 office constitutes filing.

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

7 (d) The filing office is unable to index the record
8 because:

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

13 2. In the case of an amendment or correction
14 statement, the record:

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

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

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

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

30 (e) In the case of an initial financing statement or
31 an amendment that adds a secured party of record, the record

1 does not provide an organization's name or, if an individual,
2 the individual's last name and first name ~~or initial~~ and
3 mailing address for the secured party of record;

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

10 (h) In the case of a continuation statement, the
11 record is not filed within the 6-month period prescribed by s.
12 679.515(4); or

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

17 Section 11. Subsection (1) of section 679.519, Florida
18 Statutes, is amended to read:

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

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

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

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

28 (c) Maintain the filed record for public inspection;
29 and

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

1 Section 12. 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 13. 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 14. This act shall take effect upon becoming a
19 law.

20 *****

21 HOUSE SUMMARY

22
23 Revises provisions of the Uniform Commercial Code amended
24 in the 2001 Regular Session to clarify and conform to
25 such amendments. Clarifies the application of laws of
26 this state to security interests in goods as fixtures and
27 revises operation of provisions specifying priority of
28 such security interests.
29
30
31