

## Committee Substitute for Senate Bill No. 1066

An act relating to the Uniform Commercial Code; amending ss. 679.1021, 679.1081, 679.2031, 679.210, 679.510, 679.513, 679.516, 679.519, 679.527, and 679.625, F.S.; revising provisions of the Uniform Commercial Code as amended to clarify and conform; amending ss. 679.3011, 679.3171, 679.334, and 679.5011, F.S.; clarifying the application of laws of this state to security interests in goods as fixtures; revising operation of provisions specifying priority of such security interests; amending s. 679.5041, F.S.; revising provisions governing sufficiency of indications of collateral in financing statements; providing an effective date.

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

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

679.1021 Definitions and index of definitions.—

(1) In this chapter, the term:

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

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

679.1081 Sufficiency of description.—

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

(a) A commercial tort claim; ~~or~~

(b) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account; ~~or~~

(c) An account consisting of a right to payment of a monetary obligation for the sale of real property that is the debtor’s homestead under the laws of this state.

Section 3. Subsection (2) of section 679.2031, Florida Statutes, is amended and subsection (10) is added to that section to read:

679.2031 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.—

(2) Except as otherwise provided in subsections (3) through ~~(9)~~ (10), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (a) Value has been given;
- (b) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (c) One of the following conditions is met:
  1. The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
  2. The collateral is not a certificated security and is in the possession of the secured party under s. 679.3131 pursuant to the debtor's security agreement;
  3. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under s. 678.3011 pursuant to the debtor's security agreement; or
  4. The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under s. 679.1041, s. 679.1051, s. 679.1061, or s. 679.1071 pursuant to the debtor's security agreement.

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

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

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

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

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

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

679.210 Request for accounting; request regarding list of collateral or statement of account.—

(6) A debtor is entitled under this section without charge to one response to a request for an accounting or a request regarding a statement of account for each secured obligation during any 6-month period. A debtor in a consumer transaction is entitled to a single response to a request regarding a

list of collateral, ~~for a transaction other than a consumer transaction~~, without charge during any 6-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response to a request for an accounting, a request regarding a statement of account, or a request regarding a list of collateral for a consumer transaction. To the extent provided in an authenticated record, the secured party may require the payment of reasonable expenses, including attorney's fees, reasonably incurred in providing a response to a request regarding a list of collateral for a transaction other than a consumer transaction under this section; otherwise, the secured party may not charge more than \$25 for each request regarding a list of collateral. Excluding a request related to a proposed satisfaction of the secured obligation, a secured party is not required to respond to more than 12 of each of the permitted requests in any 12-month period.

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

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

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

- (a) Perfection of a security interest in the goods by filing a fixture filing;
- (b) Perfection of a security interest in timber to be cut; and
- (c) The effect of perfection or nonperfection and the priority of a non-possessory security interest in the collateral.

(5) The law of this state governs:

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

(b) 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.

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

679.3171 Interests that take priority over or take free of security interest or agricultural lien.—

(6) An encumbrancer or owner, other than the debtor or a lien creditor, who acquires an interest in the related real property takes free of a security interest in goods that are or become fixtures in this state, which interest is perfected only with a financing statement that is not filed as a fixture filing, even if the encumbrancer or owner knows of the existence of such statement.

For purposes of s. 695.01, the filing of a financing statement covering goods that are or become fixtures in this state, which statement is not filed as a fixture filing, shall not constitute constructive notice of such security interest to any person, other than a lien creditor, who acquires an interest in the related real property.

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

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

679.334 Priority of security interests in fixtures and crops.—

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

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

679.5011 Filing office.—

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

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

1. The collateral is as-extracted collateral or timber to be cut; or
2. The collateral is goods that are or are to become fixtures and in this state, in which event the financing statement is shall be filed as a fixture filing.

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

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the Office

of the Secretary of State, or the filing office authorized by s. ~~679.527~~ 697.527 to accept filings for the Florida Secured Transaction Registry. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

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

679.510 Effectiveness of filed record.—

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

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

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

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

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

679.513 Termination statement.—

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

Section 11. Subsections (1) and (2) of section 679.516, Florida Statutes, are amended to read:

679.516 What constitutes filing; effectiveness of filing.—

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

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

(a) The record is not communicated by a method or medium of communication authorized by the filing office;

(b) An amount equal to or greater than the applicable processing fee is not tendered;

~~(e)~~ The record does not include the notation required by s. 201.22 indicating that the excise tax required by chapter 201 had been paid or is not required;

(c)~~(d)~~ The filing office is unable to index the record because:

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

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

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

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

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

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

(d)~~(e)~~ In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide an organization's name or, if an individual, the individual's last name and first name ~~or initial~~ and mailing address for the secured party of record;

(e)~~(f)~~ In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

1. Provide a mailing address for the debtor;

2. Indicate whether the debtor is an individual or an organization; or

3. If the financing statement indicates that the debtor is an organization, provide:

a. A type of organization for the debtor;

b. A jurisdiction of organization for the debtor; or

c. An organizational identification number for the debtor or indicate that the debtor has none;

(f)~~(g)~~ In the case of an assignment reflected in an initial financing statement under s. 679.514(1) or an amendment filed under s. 679.514(2), the record does not provide an organization's name or, if an individual, the

individual's last name and first name ~~or initial~~ and mailing address for the assignee;

~~(g)~~<sup>(h)</sup> In the case of a continuation statement, the record is not filed within the 6-month period prescribed by s. 679.515(4);

~~(h)~~<sup>(i)</sup> In the case of an initial financing statement or an amendment, which amendment requires the inclusion of a collateral statement but the record does not provide any, the record does not provide a statement of collateral; or

(i) The record does not include the notation required by s. 201.22 indicating that the excise tax required by chapter 201 had been paid or is not required.

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

679.519 Numbering, maintaining, and indexing records; communicating information provided in records.—

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

- (a) Assign a unique number to the filed record;
- (b) Create a record that bears the number assigned to the filed record and the date and time of filing;
- (c) Maintain the filed record for public inspection; and
- (d) Index the filed record in accordance with subsections (3), (4), and (5).

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

679.527 Florida Secured Transaction Registry.—

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

(4) Notwithstanding the terms and conditions of any contract to perform the administrative and operational functions of the filing office or filing officer under this part for the Florida Secured Transaction Registry, the department and the state shall retain sole and exclusive ownership of the materials and records of the registry, shall have the right to inspect and make copies of the materials and records of the registry, and shall have the right to immediately reclaim and take possession and control of the original materials and records of the registry if any entity under contract with the

department to administer and operate the registry does not, or cannot, perform the terms and conditions of the contract for any reason or commences or is adjudicated a debtor in ~~consents to~~ an insolvency proceeding. If the department reclaims control of the materials and records of the registry, the department shall provide for the uninterrupted fulfillment of the duties of the filing office and filing officer under this chapter by administration and operation by the department until a subsequent contract for such duties can be executed. The department shall be entitled to injunctive relief if the entity fails to turn over the materials and records upon demand, and the Circuit Court for Leon County, Florida, shall have exclusive original jurisdiction to adjudicate any disputes pertaining to this section or any contract entered into under this section.

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

679.625 Remedies for failure to comply with article.—

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

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

Section 15. Section 679.5041, Florida Statutes, is amended to read:

679.5041 Indication of collateral.—A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to s. 679.1081; or

~~(2) If the security agreement grants a security interest in all of the debtor's personal property and such property is reasonably identified in the security agreement, as permitted by s. 679.1081, An indication that the financing statement covers all assets or all personal property.~~

Section 16. This act shall take effect upon becoming a law.

Approved by the Governor May 13, 2002.

Filed in Office Secretary of State May 13, 2002.