

## CHAPTER 98-11

### House Bill No. 1083

An act relating to the Uniform Commercial Code; revising chapter 678, F.S.; revising part I, relating to general matters; providing a short title; providing definitions; providing rules for determining whether certain obligations and interests are securities or financial assets; providing for acquisition of security or financial assets or interests; providing for notice of adverse claim; providing for control of certain securities; providing for effect of certain actions; providing for warranties in direct holding; providing for warranties in indirect holding; providing for applicability of law; providing clearing corporation rules; providing for creditor's legal process; providing for inapplication of statute of frauds; providing for evidentiary rules concerning certificated securities; providing for nonliability to adverse claimant under certain circumstances; providing for securities intermediary as purchaser for value; revising part II, relating to issue and issuer; providing a definition of issuer; providing for issuer's responsibilities and defenses; providing for notice; specifying staleness as notice of defect or defense; providing effect of issuer's restriction on transfer; providing for effect of unauthorized signatures; providing for completion or alteration of security certificates; providing rights and duties of issuer with respect to registered owners; providing for effect of signature of certain persons; providing for issuer's liens; specifying conditions of overissue; revising part III, relating to transfer of certificated and uncertificated securities; providing for delivery of certain securities; providing for rights of purchaser; providing for protected purchasers; providing for indorsement; providing for certain instructions; providing for effect of guaranteeing certain actions; providing purchaser's right to certain requisites; revising part IV, relating to registration; providing duties of issuer to register transfers; requiring certain assurance of effectiveness of certain actions; providing for demand that issuer not register transfer; providing for liability for wrongful registration; providing for replacement of certain certificates; providing for obligation to notify issuer of certain certificates; providing for authenticating certain persons; revising part V, relating to security entitlements; providing for securities accounts; providing for acquisition of security entitlement from a securities intermediary; providing for assertion of adverse claim against entitlement holder; providing for property interest of entitlement holder in certain assets; providing duties of securities intermediary; providing for certain rights of purchaser of security entitlement; providing priority among security interests and entitlement holders; amending s. 679.103, F.S.; providing for perfection of security interests relating to investment property; amending s. 679.105, F.S.; conforming the section to changes made by the act; redefining the term "deposit account"; amending s. 679.106, F.S., to conform; creating s. 679.115, F.S.; providing for perfection of security interests in certain investment properties; providing definitions; providing criteria; providing procedures; creating s. 679.116, F.S.;

providing for perfection of security interests arising in purchase or delivery of financial interests; amending ss. 679.203, 679.301, 679.302, 679.303, 679.304, 679.305, 679.306, 679.309, and 679.312, F.S., to conform; amending ss. 671.105, 671.206, 674.104, and 675.114, F.S., to conform; providing for applicability; repealing ss. 610.011, 610.021, 610.031, 610.041, 610.051, 610.061, 610.071, 610.081, 610.091, 610.101, 610.111, and 671.304(2)(b), F.S., relating to the Uniform Act for Simplification of Fiduciary Security Transfers; repealing ss. 678.101, 678.102, 678.103, 678.104, 678.105, 678.106, 678.107, 678.108, 678.201, 678.202, 678.203, 678.204, 678.205, 678.206, 678.207, 678.208, 678.301, 678.302, 678.303, 678.304, 678.305, 678.306, 678.307, 678.308, 678.309, 678.310, 678.311, 678.312, 678.313, 678.314, 678.315, 678.316, 678.317, 678.318, 678.319, 678.320, 678.321, 678.401, 678.402, 678.403, 678.404, 678.405, 678.406, 678.407, and 678.408, F.S., relating to investment securities under the Uniform Commercial Code; revising provisions of chapter 680, F.S., relating to leases under the Uniform Commercial Code; amending s. 680.1031, F.S.; redefining the terms “consumer lease” and “finance lease”; amending s. 680.1041, F.S.; revising language with respect to other statutes to which leases are subject; amending s. 680.303, F.S.; revising language with respect to the alienability of a party’s interest under a lease contract or of a lessor’s residual interest in goods; amending s. 680.304, F.S.; revising language with respect to the subsequent lease of goods by the lessor; amending s. 680.307, F.S.; revising language with respect to priority of liens arising by attachment or levy on security interests in and other claims to goods; amending s. 680.309, F.S.; revising language with respect to lessor’s and lessee’s rights when goods become fixtures; creating s. 680.32, F.S.; providing that nothing in chapter 680, F.S., prevents subordination by agreement by any person entitled to priority; amending s. 680.501, F.S.; revising language with respect to the procedure governing default; amending s. 680.503, F.S.; revising language with respect to modification or impairment of rights and remedies; amending s. 680.507, F.S.; revising language with respect to proof of market rent; amending s. 680.508, F.S.; revising language with respect to lessee’s remedies; amending s. 680.516, F.S.; revising language with respect to the effect of acceptance of goods, notice of default, the burden of establishing default after acceptance, and notice of claim or litigation to persons answerable over; amending s. 680.518, F.S.; revising language with respect to cover and substitute goods; amending s. 680.519, F.S.; revising language with respect to lessee’s damages for nondelivery, repudiation, default, or breach of warranty in regard to accepted goods; amending s. 680.523, F.S.; revising language with respect to lessor’s remedies; amending s. 680.524, F.S.; revising language with respect to lessor’s right to identify goods to lease contract; amending s. 680.525, F.S.; revising language with respect to lessor’s right to possession of goods; amending s. 680.527, F.S.; revising language with respect to lessor’s rights to dispose of goods; amending s. 680.528, F.S.; revising language with respect to lessor’s damages for nonacceptance or repudiation; amending s. 680.529, F.S.; revising

language with respect to lessor's action for rent; amending s. 680.532, F.S.; revising language with respect to lessor recovery for loss of residual interest; providing for the application of the act; repealing s. 679.111, F.S., relating to applicability of bulk transfer laws; providing an effective date.

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

Section 1. Part I of chapter 678, Florida Statutes, consisting of sections 678.1011, 678.1021, 678.1031, 678.1041, 678.1051, 678.1061, 678.1071, 678.1081, 678.1091, 678.1101, 678.1111, 678.1121, 678.1131, 678.1141, 678.1151, and 678.1161, Florida Statutes, is created to read:

## PART 1

### SHORT TITLE AND GENERAL MATTERS

678.1011 Short title.—Chapter 678 may be cited as “Uniform Commercial Code—Investment Securities.”

678.1021 Definitions.—

(1) In this chapter:

(a) “Adverse claim” means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) “Bearer form,” as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) “Broker” means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) “Certificated security” means a security that is represented by a certificate.

(e) “Clearing corporation” means:

1. A person that is registered as a “clearing agency” under the federal securities laws;

2. A federal reserve bank; or

3. Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(f) “Communicate” means to:

1. Send a signed writing; or
2. Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of s. 678.5011(3)(b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset," except as otherwise provided in s. 678.1031, means:

1. A security;
2. An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
3. Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter. As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

1. The security certificate specifies a person entitled to the security.
2. A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

1. A clearing corporation; or

2. A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in 678.1031, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

1. Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer.

2. Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

3. Which:

a. Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

b. Is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part V.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Appropriate person," s. 678.1071

"Control," s. 678.1061

"Delivery," s. 678.3011

"Investment company security," s. 678.1031

"Issuer," s. 678.2011

"Overissue," s. 678.2101

"Protected purchaser," s. 678.3031

"Securities account," s. 678.5011

(3) In addition, chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(4) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

678.1031 Rules for determining whether certain obligations and interests are securities or financial assets.—

(1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An “investment company security” is a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this chapter and not by chapter 673, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 673 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in s. 679.115, is not a security or a financial asset.

678.1041 Acquisition of security or financial asset or interest therein.—

(1) A person acquires a security or an interest therein, under this chapter, if:

(a) The person is a purchaser to whom a security is delivered pursuant to s. 678.3011; or

(b) The person acquires a security entitlement to the security pursuant to s. 678.5011.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5, but is a purchaser of any

security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in s. 678.5031.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or subsection (2).

678.1051 Notice of adverse claim.—

(1) A person has notice of an adverse claim if:

(a) The person knows of the adverse claim;

(b) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) One year after a date set for presentment or surrender for redemption or exchange; or

(b) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) Whether in bearer or registered form, has been indorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or

(b) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under chapter 679 is not notice of an adverse claim to a financial asset.

678.1061 Control.—

(1) A purchaser has “control” of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has “control” of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(a) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has “control” of an uncertificated security if:

(a) The uncertificated security is delivered to the purchaser; or

(b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has “control” of a security entitlement if:

(a) The purchaser becomes the entitlement holder; or

(b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder’s own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of paragraph (3)(b) or paragraph (4)(b) has control even if the registered owner in the case of paragraph (3)(b) or the entitlement holder in the case of paragraph (4)(b) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in paragraph (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

678.1071 Whether indorsement, instruction, or entitlement order is effective.—



(1) “Appropriate person” means:

(a) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(b) With respect to an instruction, the registered owner of an uncertificated security;

(c) With respect to an entitlement order, the entitlement holder;

(d) If the person designated in paragraph (a), paragraph (b), or paragraph (c) is deceased, the designated person’s successor taking under other law or the designated person’s personal representative acting for the estate of the decedent; or

(e) If the person designated in paragraph (a), paragraph (b), or paragraph (c) lacks capacity, the designated person’s guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) It is made by the appropriate person;

(b) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under s. 678.1061(3)(b) or (4)(b); or

(c) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) The representative has failed to comply with a controlling instrument or with the law of the State having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) The representative’s action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

678.1081 Warranties in direct holding.—

(1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(a) The certificate is genuine and has not been materially altered.

(b) The transferor or indorser does not know of any fact that might impair the validity of the security.

(c) There is no adverse claim to the security.

(d) The transfer does not violate any restriction on transfer.

(e) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person.

(f) The transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person.

(b) The security is valid.

(c) There is no adverse claim to the security.

(d) At the time the instruction is presented to the issuer:

1. The purchaser will be entitled to the registration of transfer.

2. The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

3. The transfer will not violate any restriction on transfer.

4. The requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(a) The uncertificated security is valid.

(b) There is no adverse claim to the security.

(c) The transfer does not violate any restriction on transfer.

(d) The transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:

(a) There is no adverse claim to the security.

(b) The indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(a) The instruction is effective.

(b) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7).

(9) Except as otherwise provided in subsection (7), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1)-(6). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or subsection (2), and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

678.1091 Warranties in indirect holding.—

(1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person.

(b) There is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in s. 678.1081(1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in s. 678.1081(1) or (2).

678.1101 Applicability; choice of law.—

(1) The local law of the issuer's jurisdiction, as specified in subsection (4), governs:

(a) The validity of a security.

(b) The rights and duties of the issuer with respect to registration of transfer.

(c) The effectiveness of registration of transfer by the issuer.

(d) Whether the issuer owes any duties to an adverse claimant to a security.

(e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5), governs:

(a) Acquisition of a security entitlement from the securities intermediary.

(b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement.

(c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement.

(d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction,

the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in paragraphs (1)(b)-(e).

(5) The following rules determine a “securities intermediary’s jurisdiction” for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.

(b) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (a), but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.

(c) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (a) or paragraph (b), the securities intermediary’s jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder’s account.

(d) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (a) or paragraph (b) and an account statement does not identify an office serving the entitlement holder’s account as provided in paragraph (c), the securities intermediary’s jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(6) A securities intermediary’s jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

678.1111 Clearing corporation rules.—A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this chapter and affects another party who does not consent to the rule.

678.1121 Creditor’s legal process.—

(1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4).

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4).

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

678.1131 Statute of frauds inapplicable.—A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

678.1141 Evidentiary rules concerning certificated securities.—The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

678.1151 Securities intermediary and others not liable to adverse claimant.—A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court

of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

678.1161 Securities intermediary as purchaser for value.—A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

Section 2. Part II of chapter 678, Florida Statutes, consisting of sections 678.2011, 678.2021, 678.2031, 678.2041, 678.2051, 678.2061, 678.2071, 678.2081, 678.2091, and 678.2101, Florida Statutes, is created to read:

## PART II

### ISSUE AND ISSUER

#### 678.2011 Issuer.—

(1) With respect to an obligation on or a defense to a security, an “issuer” includes a person that:

(a) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(d) Becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

678.2021 Issuer’s responsibility and defenses; notice of defect or defense.—

(1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Paragraph (a) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in s. 678.2051, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security “when, as and if issued” or “when distributed” in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

678.2031 Staleness as notice of defect or defense.—After an act or event, other than a call that has been revoked, creating a right to immediate



performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) Is not covered by paragraph (1) and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

678.2041 Effect of issuer's restriction on transfer.—A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified of the restriction.

678.2051 Effect of unauthorized signature on security certificate.—An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in subsection (1), entrusted with responsible handling of the security certificate.

678.2061 Completion or alteration of security certificate.—

(1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

678.2071 Rights and duties of issuer with respect to registered owners.—

(1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

678.2081 Effect of signature of authenticating trustee, registrar, or transfer agent.—

(1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(a) The certificate is genuine.

(b) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer.

(c) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) does not assume responsibility for the validity of the security in other respects.

678.2091 Issuer's lien.—A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

678.2101 Overissue.—

(1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4), the provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person

or the last purchaser for value paid for it with interest from the date of the person's demand.

Section 3. Part III of chapter 678, Florida Statutes, consisting of sections 678.3011, 678.3021, 678.3031, 678.3041, 678.3051, 678.3061, and 678.3071, Florida Statutes, is created to read:

### PART III

#### TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

##### 678.3011 Delivery.—

(1) Delivery of a certificated security to a purchaser occurs when:

(a) The purchaser acquires possession of the security certificate;

(b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

##### 678.3021 Rights of purchaser.—

(1) Except as otherwise provided in subsections (2) and (3), upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

##### 678.3031 Protected purchaser.—

(1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

- (a) Gives value.
- (b) Does not have notice of any adverse claim to the security.
- (c) Obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

678.3041 Indorsement.—

(1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in s. 678.1081 and not an obligation that the security will be honored by the issuer.

678.3051 Instruction.—

(1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by s. 678.1081 and not an obligation that the security will be honored by the issuer.

678.3061 Effect of guaranteeing signature, indorsement, or instruction.—

(1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(a) The signature was genuine.

(b) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person.

(c) The signer had legal capacity to sign.

(2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(a) The signature was genuine.

(b) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty.

(c) The signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) and also warrants that at the time the instruction is presented to the issuer:

(a) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner.

(b) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) or a special guarantor under subsection (3) does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is

liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

678.3071 Purchaser's right to requisites for registration of transfer.— Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

Section 4. Part IV of chapter 678, Florida Statutes, consisting of sections 678.4011, 678.4021, 678.4031, 678.4041, 678.4051, 678.4061, and 678.4071, Florida Statutes, is created to read:

PART IV  
REGISTRATION

678.4011 Duty of issuer to register transfer.—

(1) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name.

(b) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person.

(c) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (s. 678.4021).

(d) Any applicable law relating to the collection of taxes has been complied with.

(e) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with s. 678.2041.

(f) A demand that the issuer not register transfer has not become effective under s. 678.4031, or the issuer has complied with s. 678.4031(2) but no legal process or indemnity bond is obtained as provided in s. 678.4031(4).

(g) The transfer is in fact rightful or is to a protected purchaser.

(h) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

678.4021 Assurance that indorsement or instruction is effective.—

(1) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity.

(b) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign.

(c) If the indorsement is made or the instruction is originated by a fiduciary pursuant to s. 678.1071(1)(d) or (1)(e), appropriate evidence of appointment or incumbency.

(d) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so.

(e) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) “Guaranty of the signature” means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(b) “Appropriate evidence of appointment or incumbency” means:

1. In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

2. In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

678.4031 Demand that issuer not register transfer.—

(1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to the person who initiated the demand at the address provided in the demand and to the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(a) The certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received.

(b) A demand that the issuer not register transfer had previously been received.

(c) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in paragraph (2)(c) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

678.4041 Wrongful registration.—

(1) Except as otherwise provided in s. 678.4061, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) Pursuant to an ineffective indorsement or instruction;

(b) After a demand that the issuer not register transfer became effective under s. 678.4031(1) and the issuer did not comply with s. 678.4031(2);



(c) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(d) By an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by s. 678.2101.

(3) Except as otherwise provided in subsection (1) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

678.4051 Replacement of lost, destroyed, or wrongfully taken security certificate.—

(1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(a) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser.

(b) Files with the issuer a sufficient indemnity bond.

(c) Satisfies other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by s. 678.2101. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

678.4061 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.—If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under s. 678.4041 or a claim to a new security certificate under s. 678.4051.

678.4071 Authenticating trustee, transfer agent, and registrar.—A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the

holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

Section 5. Part V of chapter 678, Florida Statutes, consisting of sections 678.5011, 678.5021, 678.5031, 678.5041, 678.5051, 678.5061, 678.5071, 678.5081, 678.5091, 678.5101, and 678.5111, Florida Statutes, is created to read:

## PART V

### SECURITY ENTITLEMENTS

678.5011 Securities account; acquisition of security entitlement from securities intermediary.—

(1) “Securities account” means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5), a person acquires a security entitlement if a securities intermediary:

(a) Indicates by book entry that a financial asset has been credited to the person’s securities account;

(b) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person’s securities account; or

(c) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person’s securities account.

(3) If a condition of subsection (2) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement.

678.5021 Assertion of adverse claim against entitlement holder.—An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under s. 678.5011 for value and without notice of the adverse claim.

678.5031 Property interest of entitlement holder in financial asset held by securities intermediary.—

(1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in 678.5111.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under ss. 678.5051-678.5081.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against a purchaser of the financial asset or interest therein only if:

(a) Insolvency proceedings have been initiated by or against the securities intermediary.

(b) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset.

(c) The securities intermediary violated its obligations under s. 678.5041 by transferring the financial asset or interest therein to the purchaser.

(d) The purchaser is not protected under subsection (5). The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(5) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under s. 678.5041.

678.5041 Duty of securities intermediary to maintain financial asset.—

(1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

(3) A securities intermediary satisfies the duty in subsection (1) if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

678.5051 Duty of securities intermediary with respect to payments and distributions.—

(1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

678.5061 Duty of securities intermediary to exercise rights as directed by entitlement holder.—A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

678.5071 Duty of securities intermediary to comply with entitlement order.—

(1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

678.5081 Duty of securities intermediary to change entitlement holder's position to other form of security holding.—A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

678.5091 Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.—

(1) If the substance of a duty imposed upon a securities intermediary by ss. 678.5041-678.5081 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by ss.678.5041-678.5081 is subject to:

(a) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise.

(b) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) Sections 678.5041-678.5081 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

678.5101 Rights of purchaser of security entitlement from entitlement holder.—

(1) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under s. 678.5021, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in chapter 679, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

678.5111 Priority among security interests and entitlement holders.—

(1) Except as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

Section 6. Subsection (6) of section 679.103, Florida Statutes, is amended to read:

679.103 Perfection of security interests in multiple state transactions.—

(6) INVESTMENT PROPERTY.—

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in s. 678.1101(4).

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in s. 678.1101(5).

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a commodity intermediary's jurisdiction for purposes of this paragraph:

1. If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

2. If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph 1., but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

3. If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph 1. or subparagraph 2., the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

4. If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph 1. or subparagraph 2. and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph 3., the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located. ~~UNCERTIFICATED SECURITIES.—The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.~~

Section 7. Paragraphs (e), (h) and (i) of subsection (1) and subsections (2) and (3) of section 679.105, Florida Statutes, are amended to read:

679.105 Definitions and index of definitions.—

(1) In this chapter unless the context otherwise requires:

(e) “Deposit account” means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a transferable certificate of deposit that is an instrument within this article;

(h) “Goods” includes all things which are movable at the time the security interest attaches or which are fixtures (s. 679.313), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. “Goods” also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) “Instrument” means a negotiable instrument (defined in s. 673.1041), ~~or a certificated security (defined in s. 678.102)~~, or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment, however, the term does not include investment property;

(2) Other definitions applying to this chapter and the sections in which they appear are:

“Account,” s. 679.106.

“Attach,” s. 679.203.

“Commodity contract,” s. 679.115.

“Commodity customer,” s. 679.115.



“Commodity intermediary,” s. 679.115.

“Consumer goods,” s. 679.109(1).

“Control,” s. 679.115.

“Equipment,” s. 679.109(2).

“Farm products,” s. 679.109(3).

“Fixtures,” s. 679.313.

“General intangibles,” s. 679.106.

“Inventory,” s. 679.109(4).

“Investment property,” s. 679.115.

“Lien creditor,” s. 679.301(3).

“Proceeds,” s. 679.306(1).

“Purchase money security interest,” s. 679.107.

“United States,” s. 679.103.

(3) The following definitions in other chapters apply to this chapter:

“Broker,” s. 678.1021.

“Certificated security,” s. 678.1021.

“Check,” s. 673.1041.

“Clearing corporation,” s. 678.1021.

“Contract for sale,” s. 672.106.

“Control,” s. 678.1061.

“Delivery,” s. 678.3011.

“Entitlement holder,” s. 678.1021.

“Financial asset,” s. 678.1021.

“Holder in due course,” s. 673.3021.

“Note,” s. 673.1041.

“Sale,” s. 672.106.

“Securities intermediary,” s. 678.1021.

“Security,” s. 678.1021.

“Security certificate,” s. 678.1021.

“Security entitlement,” s. 678.1021.

“Uncertified security,” s. 678.1021.

Section 8. Section 679.106, Florida Statutes, is amended to read:

679.106 Definitions: “account”; “general intangibles.”—“Account” means any right to payment for goods sold or leased or for services rendered which

is not evidenced by an instrument or chattel paper whether or not it has been earned by performance. “General intangibles” means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

Section 9. Section 679.115, Florida Statutes, is created to read:

679.115 Investment property.—

(1) In this chapter:

(a) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

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

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

(c) “Commodity customer” means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) “Commodity intermediary” means:

1. A person who is registered as a futures commission merchant under the federal commodities laws; or

2. A person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) “Control” with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in s. 678.1061. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) “Investment property” means:

1. A security, whether certificated or uncertificated;
2. A security entitlement;
3. A securities account;
4. A commodity contract; or
5. A commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in paragraphs (c) and (d), conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by s. 679.312(5), (6), and (7). Section 679.312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking.

Section 10. Section 679.116, Florida Statutes, is created to read:

679.116 Security interest arising in purchase or delivery of financial asset.—

(1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's

right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

Section 11. Subsection (1) of section 679.203, Florida Statutes, is amended to read:

679.203 Attachment and enforceability of security interest; proceeds, formal requisites.—

(1) Subject to the provisions of s. 674.2101 on the security interest of a collecting bank, ss. 679.115 and 679.116 on security interests in investment property, s. 678.321 on security interests in securities and s. 679.113 on a security interest arising under the chapter on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) The collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

(b) Value has been given; and

(c) The debtor has rights in the collateral.

Section 12. Paragraph (d) of subsection (1) of section 679.301, Florida Statutes, is amended to read:

679.301 Persons who take priority over unperfected security interests; right of “lien creditor.”—

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(d) In the case of accounts, investment property, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he or she gives value without knowledge of the security interest and before it is perfected.

Section 13. Subsection (1) of section 679.302, Florida Statutes, is amended to read:

679.302 When filing is required to perfect security interest; security interests to which filing provisions of this chapter do not apply.—

(1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under s. 679.304(1) or s. 679.305;

(b) A security interest temporarily perfected in instruments, certificated securities, or documents without delivery under s. 679.304 or in proceeds for a 10-day period under s. 679.306;

(c) A security interest created by an assignment of a beneficial interest in a decedent's estate;

(d) A purchase money security interest in consumer goods; but filing is required for a fixture under s. 679.313;

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) A security interest of a collecting bank (s. 674.2101) ~~or in securities (s. 678.321)~~ or arising under the chapter on sales (see s. 679.113) or covered in subsection (3) of this section;

(g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder; or—

(h) A security interest in investment property which is perfected without filing under s. 679.115 or s. 679.116.

Section 14. Subsection (1) of section 679.303, Florida Statutes, is amended to read:

679.303 When security interest is perfected; continuity of perfection.—

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in ss. 679.115, 679.302, 679.304-679.306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

Section 15. Subsections (1), (4), and (5) of section 679.304, Florida Statutes, are amended to read:

679.304 Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.—

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than ~~certificated securities~~ or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of s. 679.306 on proceeds.

(4) A security interest in instruments, ~~(other than certificated securities)~~ or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, ~~(other than a certificated security)~~, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange but priority between conflicting security interests in the goods is subject to s. 679.312(3); or

(b) Delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

Section 16. Section 679.305, Florida Statutes, is amended to read:

679.305 When possession by secured party perfects security interest without filing.—A security interest in letters of credit and advices of credit (s. 675.116(2)(a)), goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

Section 17. Subsections (1) and (3) of section 679.306, Florida Statutes, are amended to read:

679.306 "Proceeds"; secured party's rights on disposition of collateral.—

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:

(a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if

the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) The original collateral was investment property and the proceeds are identifiable cash proceeds; or

(d)(e) The security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

Section 18. Section 679.309, Florida Statutes, is amended to read:

679.309 Protection of purchasers of instruments, documents, and securities.—Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (s. 673.3021) or a holder to whom a negotiable document of title has been duly negotiated (s. 677.501) or a protected bona fide purchaser of a security (~~s. 678.3031 s. 678.302~~), and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

Section 19. Subsections (1) and (7) of section 679.312, Florida Statutes, are amended to read:

679.312 Priorities among conflicting security interests in the same collateral.—

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: s. 674.2101 with respect to the security interests of collecting banks in items being collected, accompanying documents, and proceeds; s. 679.103 on security interests related to other jurisdictions; s. 679.114 on consignments; s. 679.115 on security interests in investment property.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under s. 679.115 or s. 679.116 on investment property ~~s. 678.321 on securities~~, the security interest has the same priority for the purposes of subsection (5) or s. 679.115(5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases, a perfected security interest has priority from the date the advance is made.

Section 20. Paragraph (d) of subsection (2) of section 671.105, Florida Statutes, is amended to read:



671.105 Territorial application of the code; parties' power to choose applicable law.—

(2) When one of the following provisions of this code specifies the applicable law, that provision governs; and a contrary agreement is effective only to the extent permitted by the law (including the conflict-of-laws rules) so specified:

(d) Applicability of the chapter on investment securities. (s. 678.1061 ~~s. 678.106~~)

Section 21. Subsection (2) of section 671.206, Florida Statutes, is amended to read:

671.206 Statute of frauds for kinds of personal property not otherwise covered.—

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (s. 672.201) nor of securities (s. 678.1131 ~~s. 678.319~~) nor to security agreements (s. 679.203).

Section 22. Paragraph (f) of subsection (1) of section 674.104, Florida Statutes, is amended to read:

674.104 Definitions and index of definitions.—

(1) In this chapter, unless the context otherwise requires, the term:

(f) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (s. 678.1021 ~~s. 678.102~~) or instructions for uncertificated securities (s. 678.1021 ~~s. 678.308~~), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

Section 23. Subsection (2) of section 675.114, Florida Statutes, is amended to read:

675.114 Issuer's duty and privilege to honor; right to reimbursement.—

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (s. 677.507) or of a certificated security (s. 678.1081 ~~s. 678.306~~) or is forged or fraudulent or there is fraud in the transaction:

(a) The issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (s. 673.3021) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (s. 677.502) or a bona fide purchaser of a certificated security (s. 678.3021 ~~s. 678.302~~); and

(b) In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from

the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

Section 24. (1) This act does not affect an action or proceeding commenced before this act takes effect.

(2) If a security interest in a security is perfected at the date this act takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue perfection. If a security interest in a security is perfected at the date this act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this act, the security interest remains perfected for a period of 4 months after the effective date and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected at the date this act takes effect and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

Section 25. Sections 610.011, 610.021, 610.031, 610.041, 610.051, 610.061, 610.071, 610.081, 610.091, 610.101, and 610.111, Florida Statutes, paragraph (b) of subsection (2) of section 671.304, Florida Statutes, and sections 678.102, 678.103, 678.104, 678.105, 678.106, 678.107, 678.108, 678.201, 678.202, 678.203, 678.204, 678.205, 678.206, 678.207, 678.208, 678.301, 678.302, 678.303, 678.304, 678.305, 678.306, 678.307, 678.308, 678.309, 678.310, 678.311, 678.312, 678.313, 678.314, 678.315, 678.316, 678.317, 678.318, 678.319, 678.320, 678.321, 678.401, 678.402, 678.403, 678.404, 678.405, 678.406, 678.407, and 678.408, Florida Statutes, are hereby repealed.

Section 26. Paragraphs (e) and (g) of subsection (1) of section 680.1031, Florida Statutes, are amended to read:

680.1031 Definitions and index of definitions.—

(1) In this chapter, unless the context otherwise requires:

(e) “Consumer lease” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who a natural person and takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

(g) “Finance lease” means a lease with respect to in which:

1. The lessor does not select, manufacture, or supply the goods;
2. The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
3. One of the following occurs ~~Either~~:

a. The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use evidencing the lessor's purchase of the goods ~~on or before signing the lease contract;~~

b. The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use evidencing the lessor's purchase of the goods is a condition to effectiveness of the lease contract;

c. The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

d. If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

I. Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person.

II. That the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

III. That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete record of the goods; and a complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

~~c.—The lease contract discloses all warranties and other rights provided to the lessee by the lessor and supplier in connection with the lease contract and informs the lessee that there are no warranties or other rights provided to the lessee by the lessor and supplier other than those disclosed in the lease contract; or~~

~~d.—Only if the lease is not a consumer lease, on or before the signing of the lease contract by the lessee the lessor:~~

~~I.—Informs the lessee in writing of the identity of the supplier unless the lessee has selected the supplier and directed the lessor to purchase the goods from the supplier;~~

~~II.—Informs the lessee in writing that the lessee may have rights under the contract evidencing the lessor's purchase of the goods; and~~

~~III.—Advises the lessee in writing to contact the supplier for a description of any such rights.~~

Section 27. Section 680.1041, Florida Statutes, is amended to read:

680.1041 Leases subject to other statutes.—

(1) A lease, although subject to this chapter, is also subject to any applicable:

(a) ~~Statute of the United States;~~

~~(b) Certificate-of-title statute of this state: chapter 319 or chapter 328;~~

~~(b)(c) Certificate-of-title statute of another jurisdiction (s. 680.1051); or~~

~~(c)(d) Consumer protection statute of this state or final consumer protection decision of a court of this state existing on the effective date of this chapter.~~

(2) In case of conflict between ~~the provisions of this chapter, other than ss. 680.1051, 680.304(3), and 680.305(3), and a any statute or decision referred to in subsection (1), the provisions of that statute or decision controls control.~~

(3) Failure to comply with an any applicable law statute has only the effect specified therein.

Section 28. Section 680.303, Florida Statutes, is amended to read:

680.303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer assignment of rights.—

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to chapter 679.

(2) Except as provided in subsections (3) and (4), a provision in a lease agreement which:

(a) Prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or

(b) Makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which:

(a) Prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(b) Makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision

or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(1) ~~Any interest of a party under a lease contract and the lessor's residual interest in the goods may be transferred unless:~~

~~(a) Except as provided in paragraph (a) of subsection (3), the transfer is voluntary and the lease contract prohibits the transfer; or~~

~~(b) Except as provided in paragraph (c) or paragraph (d) of subsection (3), the transfer materially changes the duty of or materially increases the burden or risk imposed on the other party to the lease contract, and within a reasonable time after notice of the transfer the other party demands that the transferee comply with subsection (2) and the transferee fails to comply.~~

~~(2) Within a reasonable time after demand pursuant to paragraph (1)(b), the transferee shall:~~

~~(a) Cure or provide adequate assurance that he or she will promptly cure any default other than one arising from the transfer.~~

~~(b) Compensate or provide adequate assurance that he or she will promptly compensate the other party to the lease contract and any other person holding an interest in the lease contract, except the party whose interest is being transferred, for any loss to that party resulting from the transfer.~~

~~(c) Provide adequate assurance of future due performance under the lease contract.~~

~~(d) Assume the lease contract.~~

~~(3)(a) No prohibition upon transfer of any interest of a party under a lease contract or the lessor's residual interest in the goods shall invalidate the creation or enforcement of a security interest in any interest of the lessor under a lease contract or the lessor's residual interest in the goods.~~

~~(b) Demand pursuant to paragraph (1)(b) is without prejudice to the other party's rights against the transferee and the party whose interest is transferred.~~

~~(c) Paragraph (b) of subsection (1) shall not apply to:~~

~~1. The creation of a security interest in the interest of the lessor under the lease contract or the lessor's residual interest in the goods; or~~

~~2. The exercise of rights as a secured party pursuant to the security interest other than a transfer of the interest of the lessor under the lease~~

contract or the lessor's residual interest in the goods pursuant to s. 680.504 or s. 680.505.

~~(d) Paragraph (b) of subsection (1) shall not affect the validity of a provision in a lease contract obligating the lessee to keep the lessee's interest in the lease contract or the goods free from liens or encumbrances.~~

(4)(6) A provision in a lease agreement which:

(a) Prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's assignor's due performance of the transferor's his or her entire obligation; or can be assigned despite agreement otherwise.

(b) Makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5).

(5) Subject to subsections (3) and (4):

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in s. 680.501(2);

(b) If paragraph (a) is not applicable and if a transfer is made that is prohibited under a lease agreement or materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6)(4) A transfer An assignment of "the lease" or of "all my rights under the lease" or a transfer an assignment in similar general terms is a transfer of rights, and unless the language or the circumstances, as in a transfer an assignment for security, indicate the contrary, the transfer assignment is a delegation of duties by the transferor assignor to the transferee assignee and Acceptance by the transferee assignee constitutes a promise by the transferee him or her to perform those duties. The This promise is enforceable by either the transferor assignor or the other party to the lease contract.

(7)(5) Unless otherwise agreed by the lessor and the lessee, a no delegation of performance does not relieve relieves the transferor assignor as against the other party of any duty to perform or of any liability for default.

(8)(7) In a consumer lease, to prohibit the transfer of an interest of a party under the a lease contract or to make a transfer an event of default, the language of prohibition must be specific, by a writing, and conspicuous.

Section 29. Subsection (1) of section 680.304, Florida Statutes, is amended to read:

680.304 Subsequent lease of goods by lessor.—

(1) Subject to ~~the provisions of s. 680.303~~, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer and, except as provided in subsection (2) and s. 680.527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. ~~If~~ When goods have been delivered under a transaction of purchase, the lessor has that power even though:

- (a) The lessor's transferor was deceived as to the identity of the lessor;
- (b) The delivery was in exchange for a check which is later dishonored;
- (c) It was agreed that the transaction was to be a "cash sale"; or
- (d) The delivery was procured through fraud punishable as larcenous under the criminal law.

Section 30. Subsections (2) and (3) of section 680.307, Florida Statutes, are amended to read:

680.307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.—

(2) Except as otherwise provided in subsections (3) and (4) ~~of this section~~ and in ss. 680.306 and 680.308, a creditor of a lessor takes subject to the lease contract unless:

(a) ~~Unless~~ The creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) ~~Unless~~ The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interests and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) ~~Unless~~ The creditor holds a security interest in the goods which that attached and was perfected (s. 679.303) before:

- 1. the lease contract became enforceable.;
- 2. ~~The lessee gave value and received delivery of the goods; or~~
- 3. ~~In the case of a purchase money security interest, the date that is 15 days after the date that the lessor received possession of the goods or the date that the lessee received possession of the goods, whichever is earlier.~~

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though

the security interest is perfected (s. 679.303) and the lessee knows of its existence.

Section 31. Subsections (6), (7), (8), and (9) of section 680.309, Florida Statutes, are amended to read:

680.309 Lessor's and lessee's rights when goods become fixtures.—

(6) Notwithstanding paragraph ~~(a) of subsection (4)(a)~~ but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease agreement by the other party but subject to the provisions of the lease agreement and this chapter, or if necessary to enforce his or her other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but ~~the lessor or lessee he or she~~ must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of chapter 679.

Section 32. Section 680.32, Florida Statutes, is created to read:

680.32 Priority subject to subordination.—Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

Section 33. Subsection (5) of section 680.501, Florida Statutes, is amended to read:



680.501 Default: procedure.—

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with ~~that party's her or his~~ rights and remedies in respect of the real property, in which case this part does not apply.

Section 34. Section 680.503, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 680.503, F.S., for present text.)

680.503 Modification or impairment of rights and remedies.—

(1) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.

(2) Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this chapter.

(3) Consequential damages may be liquidated under s. 680.504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

Section 35. Subsection (1) of section 680.507, Florida Statutes, is amended to read:

680.507 Proof of market rent; time and place.—

(1) Damages based on market rent (s. 680.519 or s. 680.528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in s. 680.519 or s. 680.528 ~~time of the default~~.

Section 36. Subsections (1) and (3) of section 680.508, Florida Statutes, are amended to read:

680.508 Lessee's remedies.—

(1) If a lessor fails to deliver the goods in conformity to the lease contract (s. 680.509) or repudiates the lease contract (s. 680.402), or a lessee rightfully rejects the goods (s. 680.509) or justifiably revokes acceptance of the goods (s. 680.517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (s. 680.51), the lessor is in default under the lease contract; and the lessee may:

(a) Cancel the lease contract (s. 680.505(1)).

(b) Recover so much of the rent and security as has been paid and, ~~but in the case of an installment lease contract the recovery is that which is just~~ under the circumstances.

(c) Cover and recover damages as to all goods affected, whether or not they have been identified to the lease contract (ss. 680.518 and 680.52), or recover damages for nondelivery (ss. 680.519 and 680.52).

(d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(3) If a lessor is ~~otherwise in default under a the lease contract pursuant to subsection (1) or subsection (2) or is otherwise in default under the lease contract~~, the lessee may exercise ~~any of the rights and pursue the remedies provided for in the lease contract, which may include a right to cancel the lease, and in s. 680.519(3) this chapter if not effectively excluded or modified by the lease contract, or any rights and remedies effectively provided for in the lease contract.~~

Section 37. Sections (3), (4), and (5) of section 680.516, Florida Statutes, are amended to read:

680.516 Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.—

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default,

1. the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified. ~~lessor, and in addition;~~

2. ~~In the case of a finance lease, the lessee shall notify the supplier or be barred from any remedy against the supplier.~~

(b) Within a reasonable time after the lessee receives notice of litigation for infringement or the like (s. 680.211), the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation.

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified lessor or the supplier may come in and defend and that if the person notified lessor or the supplier does not do so that person he or she will be bound in any action against that person him or her by the lessee by any determination of fact common to the two litigations, then unless the person notified lessor or the supplier after reasonable receipt of the notice does come in and defend that person he or she is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (s. 680.211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable receipt of the demand does turn over control the lessee is so barred.

(5) ~~The provisions of Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (s. 680.211).~~

Section 38. Subsections (1) and (2) of section 680.518, Florida Statutes, are amended to read:

680.518 Cover; substitute goods.—

(1) After default by a lessor under the lease contract of the type described in (s. 680.508), or, if agreed, after another default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (s. 680.504) or otherwise determined pursuant to by agreement of the parties (ss. s. 671.102(3) and 680.503), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a) The present value, as of the date of the commencement of the term of the new lease agreement, of the difference between the total rent under for the lease term of the new lease agreement and applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and.

(b) Any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

Section 39. Subsections (1), (3), and (4) of section 680.519, Florida Statutes, are amended to read:

680.519 Lessee's damages for nondelivery, repudiation, default, or breach of warranty in regard to accepted goods.—

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (s. 680.504) or otherwise determined pursuant to by agreement of the parties (ss. s. 671.102(3) and 680.503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement, whether or not the lease agreement qualifies for treatment under s. 680.518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee default by the lessor (s. 680.508) is the present value, as of the date of the default, of the difference between the then market rent minus the present value as of the same date of and the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (s. 680.516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Section 40. Section 680.523, Florida Statutes, is amended to read:

680.523 Lessor's remedies.—

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (s. 680.51), the lessee is in default under the lease contract; and the lessor may:

(a) Cancel the lease contract (s. 680.505(1));

(b) Proceed respecting goods not identified to the lease contract (s. 680.524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (s. 680.525);

(d) Stop delivery of the goods by any bailee (s. 680.526); ~~or~~

(e) Dispose of the goods and recover damages (s. 680.527), or retain the goods and recover damages (s. 680.528), or in a proper case recover rent (s. 680.529); or.

(f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3)(2) If a lessee is otherwise in default under a the lease contract pursuant to subsection (1) or is otherwise in default under the lease contract, the lessor may exercise any of the rights and pursue the remedies provided for in this chapter if not effectively excluded or modified by the lease contract, or any rights and remedies effectively provided for in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or subsection (2); or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

Section 41. Subsection (1) of section 680.524, Florida Statutes, is amended to read:

680.524 Lessor's right to identify goods to lease contract.—

(1) After default by the lessee under the lease contract of the type described in s. 680.523(1) or s. 680.523(3)(a) or, if agreed, after other default by the lessee, the lessor ~~A lessor aggrieved under s. 680.523~~ may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) Dispose of goods (s. 680.527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

Section 42. Subsections (2) and (3) of section 680.525, Florida Statutes, are amended to read:

680.525 Lessor's right to possession of goods.—

(2) After a ~~The lessor has on~~ default by the lessee under the lease contract of the type described in s. 680.523(1) or s. 680.523(3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in

trade or business and may dispose of goods on the lessee's premises (s. 680.527).

(3) The lessor may proceed under subsection (2) without judicial process if ~~it that~~ can be done without breach of the peace, or the lessor may proceed by action.

Section 43. Subsections (1) and (2) of section 680.527, Florida Statutes, are amended to read:

680.527 Lessor's rights to dispose of goods.—

(1) After a default by a lessee under the lease contract of the type described in (s. 680.523(1) or s. 680.523(3)(a)) or after the lessor refuses to deliver or takes possession of goods (s. 680.525 or s. 680.526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (s. 680.504) or otherwise determined pursuant to by agreement of the parties (ss. s. 671.102(3) and 680.503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a) Accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b) The present value, as of the same date, of the commencement of the term of the new lease agreement of the ~~difference between the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, and the total rent for the lease term of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement;~~ and

(c) Any incidental damages allowed under s. 680.53, less expenses saved in consequence of the lessee's default.

Section 44. Subsection (1) of section 680.528, Florida Statutes, is amended to read:

680.528 Lessor's damages for nonacceptance or repudiation.—

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (s. 680.504) or otherwise determined pursuant to by agreement of the parties (ss. s. 671.102(3) and 580.503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify, whether or not the lease agreement qualifies for treatment under s. 680.527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages a default of the type described in s. 680.523(1) or s. 680.523(3)(a), or if agreed, for other default of ~~for default by the lessee (s. 680.523):~~

(a) ~~Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor obtained possession of the goods or such earlier date as the lessee has made an effective tender of possession of the goods back to the lessor.~~

(b) ~~The present value as of the date determined under paragraph (a) of the difference between the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of and the market rent on the date determined under paragraph (a) and at the place where the goods were located on that date computed for the same lease term.~~

(c) Any incidental damages allowed under s. 680.53, less expenses saved in consequence of the lessee's default.

Section 45. Subsections (1), (4), and (5) of section 680.529, Florida Statutes, are amended to read:

680.529 Lessor's action for the rent.—

(1) After default by the lessee under the lease contract of the type described in (s. 680.523(1) or s. 680.523(3)(a) or, if agreed, after other default by the lessee), if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or ~~effectively~~ tendered back to the lessor and for conforming goods lost or damaged after risk of loss passes to the lessee (s. 680.219):

1. Accrued and unpaid rent as of the date of entry of judgment in favor of the lessor.

2. The present value as of the ~~same date determined under subparagraph 1.~~ of the rent for the then remaining lease term of the lease agreement.

3. Any incidental damages allowed under s. 680.53, less expenses saved in consequence of the lessee's default.

(b) For goods identified to the lease contract ~~if where the lessor has never delivered the goods or has taken possession of them or the lessee has effectively tendered them back to the lessor, if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that such an effort will be unavailing:~~

1. Accrued and unpaid rent as of the date of entry of judgment in favor of the lessor.

2. The present value as of the ~~same date determined under subparagraph 1.~~ of the rent for the then remaining lease term of the lease agreement.

3. Any incidental damages allowed under s. 680.53, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement, provided that the lessee complies with all other terms and conditions of the lease agreement.

(5) After a default by the lessee under the lease contract of the type described in s. 680.523(1) or s. 680.523(3)(a) or, if agreed, after other default by the lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (s. 680.402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under ss. 680.527 and 680.528.

Section 46. Section 680.532, Florida Statutes, is amended to read:

680.532 Lessor's rights to Lessor recovery for loss of residual interest.— In addition to any other recovery permitted by this chapter, the lessor may ~~shall be entitled to~~ recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

Section 47. This act does not apply to any lease contract entered into before the effective date of this act unless the parties thereto specifically agree in writing that the lease contract as expanded, amended, modified, renewed, or supplemented shall be governed by applicable law as supplemented or amended by this act. Absent such specific agreement, transactions validly entered into before that date and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as though this act had not taken effect.

Section 48. Section 679.111, Florida Statutes, is hereby repealed.

Section 49. This act shall take effect October 1 of the year in which enacted.

Became a law without the Governor's approval April 14, 1998.

Filed in Office Secretary of State April 13, 1998.