

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: February 18, 1998 Revised: \_\_\_\_\_

Subject: UCC/Investment Securities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill replaces the current provisions of Chapter 678, F.S., “Uniform Commercial Code-- Investment Securities” by:

- modernizing the legal structure for a recently developed system of securities holdings through the use of security intermediaries;
- reflecting the current use of electronic filings;
- setting forth rules for “securities entitlements;” and
- establishing customers’ specific rights against their broker-dealers with regards to their accounts.

Additionally, the bill amends Chapter 680, F.S., “Uniform Commercial Code -- Leases,” by:

- allowing a transfer of interest, by sublease or otherwise, unless the transfer is a material violation of the lease contract;
- giving preference to the lease agreement over a creditor unless the creditor's lien attached prior to the execution of the lease contract, the creditor has a security interest in the goods, the lessee did not pay value for the goods, and the lessee received the goods with knowledge of the security interest;
- allowing any party to agree to subordinate that party's secured interest;
- allowing the party to collect those damages agreed upon in the lease contract as well as those remedies provided in the Chapter;
- revising the term “finance lease”; and
- clarifying remedies.

The bill substantially amends the following sections of the Florida Statutes: 679.103, 679.105, 679.106, 679.203, 679.301, 679.302, 679.303, 679.304, 679.305, 679.306, 679.309, 679.312, 671.105, 671.206, 674.104, 675.114, 680.1031, 680.1041, 680.303, 680.304, 680.307, 680.309, 680.501, 680.503, 680.507, 680.508, 680.516, 680.518, 680.519, 680.523, 680.524, 680.525, 680.527, 680.528, 680.529, and 680.532.

The bill creates the following sections of the Florida Statutes: 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, 678.1161, 678.2011, 678.2021, 678.2031, 678.2041, 678.2051, 678.2061, 678.2071, 678.2081, 678.2091, 678.2101, 678.3011, 678.3021, 678.3031, 678.3041, 678.3051, 678.3061, 678.3071, 678.4011, 678.4021, 678.4031, 678.4041, 678.4051, 678.4061, 678.4071, 678.5011, 678.5021, 678.5031, 678.5041, 678.5051, 678.5061, 678.5071, 678.5081, 678.5091, 678.5101, 678.5111, 679.115, 679.116, and 680.32.

The bill repeals the following sections of the Florida Statutes: 610.011, 610.021, 610.031, 610.041, 610.051, 610.061, 610.071, 610.081, 610.091, 610.101, 610.111, 671.304(2)(b) and 678.101 through 678.408.

## **II. Present Situation:**

In 1965, Chapter 678, F.S., “Uniform Commercial Code--Investment Securities”, was enacted in Florida. It was amended in 1987. The chapter, which mirrors Article 8 of the Uniform Commercial Code, sets the ground rules for implementing securities transfers and resolving disputes that may arise when different people claim conflicting interest in a security. The chapter is only one part of many laws under which the securities markets operate. The other laws include the Securities Exchange Act of 1934 and Chapter 517, F.S., the “Florida Securities and Investor Protection Act.”

Beginning in 1987, the National Conference of Commissioners on Uniform State Laws (NCCUSL), the American Law Institution, the American Bar Association, and the Florida Bar drafted and reviewed proposed revisions to Article 8 of the UCC and recommended the revisions contained in this bill.

Chapter 680, F.S., “Uniform Commercial Code -- Leases,” which is based upon Article 2A of the UCC, was enacted in 1987. Due to the negative reaction to the original Article 2A by lessees, lessors, and their creditors, the NCCUSL amended Article 2A in 1990. The debate chiefly centered on whether or not Article 2A struck the proper balance or was clear enough concerning the ability of a lessor to grant a security interest in its leasehold interest and its residual interest, the conflicting priority between a secured party and the lessee, and the lessor's remedy structure under Article 2A.

### III. Effect of Proposed Changes:

#### A. Uniform Commercial Code--Investment Securities

##### 1. Definitions and General Matters

###### a. Definitions

Section 678.1021, F.S., provides definitions, including:

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

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

“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.

“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.

“Entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary.

“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.

“Financial asset,” except as otherwise provided in s. 678.1031, F.S., 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.

“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.

“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.

“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.

“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.

“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.

“Security,” except as otherwise provided in 678.1031, F.S., 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.

“Security certificate” means a certificate representing a security.

“Security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part V.

“Uncertificated security” means a security that is not represented by a certificate.

**b. Rules for Determining Securities and Financial Assets**

Section 678.1031, F.S., provides rules for determining whether certain obligations and interests are securities or financial assets. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security. 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.

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.

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

An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset. A commodity contract is not a security or a financial asset.

**c. Acquisition of a Security or Financial Asset**

Section 678.1041, F.S., provides for when a person acquires a security or a financial asset. A person acquires a security or an interest therein if the person is a purchaser to whom a security is delivered or the person acquires a security entitlement to the security. A person acquires a financial asset, other than a security, or an interest therein, if the person acquires a security entitlement to the financial asset.

**d. Indorsements, Instructions, and Entitlement Orders**

Section 678.1071, F.S., provides for whether an indorsement, instruction, or entitlement order is effective. The section defines “appropriate person” to mean:

- With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;
- With respect to an instruction, the registered owner of an uncertificated security;
- With respect to an entitlement order, the entitlement holder;
- If the person designated in the definitions above 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

- If the person designated in the specific definitions above 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.

An indorsement, instruction, or entitlement order is effective if it is made by the appropriate person, 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, or the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

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.

#### **e. Warranties**

Sections 678.1081 and 678.1091, F.S., provide for warranties in securities transactions. Section 678.1081 provides the warranties in direct holding. A person who transfers a certificated security to a purchaser for value makes such warranties to the purchaser. If the transfer is by indorsement, an indorser makes such warranties to any subsequent purchaser. The warranties are that:

- The certificate is genuine and has not been materially altered.
- The transferor or indorser does not know of any fact that might impair the validity of the security.
- There is no adverse claim to the security.
- The transfer does not violate any restriction on transfer.
- 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 an appropriate person.
- The transfer is otherwise effective and rightful.

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:

- The uncertificated security is valid.
- There is no adverse claim to the security.
- The transfer does not violate any restriction on transfer.
- The transfer is otherwise effective and rightful.

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. Also, 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 these warranties.

Section 678.1091, F.S., provides the warranties in indirect holding. A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

- 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 an appropriate person.
- There is no adverse claim to the security entitlement.

**f. Creditors' Legal Process**

Section 678.1121, F.S., provides for creditors' legal process. 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 below. 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.

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 below.

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 below.

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.

**g. Statute of Frauds Inapplicable**

Section 678.1131, F.S., provides that the statute of frauds is 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 1 year of its making.

**h. Securities Intermediary's Liability to Third Parties**

Section 678.1151, F.S., provides that 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:

- 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;
- Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or
- In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

## **2. Transfer of Securities**

### **a. Delivery**

Section 678.3011, F.S., provides for delivery of securities. Delivery of a certificated security to a purchaser occurs when:

- The purchaser acquires possession of the security certificate;
- 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 the certificate for the purchaser; or
- 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.

Delivery of an uncertificated security to a purchaser occurs when:

- The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or
- 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 the certificate for the purchaser.

### **b. Rights of a Purchaser**

Section 678.3021, F.S., provides the rights of a purchaser. Except as otherwise provided, 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. A purchaser of a limited interest acquires rights only to the extent of the interest purchased. 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.

### **c. Protected Purchaser**

Section 678.3031, F.S., provides that in addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim. “Protected purchaser” means a purchaser of a certificated or uncertificated security, or of an interest therein, who gives value, does not have notice of any adverse claim to the security, and obtains control of the certificated or uncertificated security.



**d. Indorsement of Securities**

Section 678.3041, F.S., provides for indorsement of securities. 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.

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.

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.

**3. Security Entitlements****a. Securities Account**

Section 678.5011, F.S., provides that “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.

Except as otherwise provided, a person acquires a security entitlement if a securities intermediary:

- Indicates by book entry that a financial asset has been credited to the person's securities account;
- 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
- Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

If one of these conditions has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

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.

Issuance of a security is not establishment of a security entitlement.

**b. Property Interests in Intermediary Holdings**

Section 678.5031, F.S., provides that, 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.

An entitlement holder's property interest with respect to a particular financial asset 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.

**c. Duty of Intermediaries to Maintain Assets**

Section 678.5041, F.S., provides the duty of securities intermediaries to maintain financial assets. 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.

A securities intermediary satisfies this duty if:

- The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

**d. Duty of Intermediaries with Respect to Payments and Distributions**

Section 678.5051, F.S., provides the duty of a securities intermediary with respect to payments and distributions. 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:

- The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- 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.

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.

**e. Duty of Intermediaries to Exercise Rights as Directed**

Section 678.5061, F.S., provides the duty of a securities intermediary to exercise rights as directed by the 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:

- The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- 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.

**f. Duty of Intermediaries to Comply with Entitlement Order**

Section 678.5071, F.S., provides the duty of a securities intermediary to comply with an entitlement order. 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:

- The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

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 re-establish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

**g. Compliance with Other Statutes or Regulations**

Section 678.5091, F.S., provides that if the substance of a duty imposed upon a securities intermediary by the bill is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

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.

**h. Priority of Property Interests**

Section 678.5111, F.S., provides that, except as otherwise provided, 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.

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.

### **B. Amendments to Statutes on Security Interest in Investment Property**

Section 679.103, F.S., is amended to specify choice of laws rules for the perfection of a security interest in investment property in multiple state transactions.

Section 679.115, F.S., is created to define investment property and set out the principal rules on security interests in investment property.

Section 679.116, F.S., is created to provide for security interests arising in the purchase of a financial asset.

A number of existing statutes are amended to conform to the new uniform act on investment securities.

### **C. Application of Security Investment Provisions**

The bill provides that it does not affect any action or proceeding commenced prior to its effective date. Also, if a security interest was perfected prior to the effective date of the act, no further action is necessary to maintain the perfection.

### **D. Uniform Commercial Code--Leases**

The bill amends the definition of “consumer lease” and “finance lease” in s. 680.1031, F.S. The definition of “consumer lease” is limited to leases in which the total payments to be made, excluding payments for options to renew or buy, do not exceed \$25,000. The definition of “finance lease” is amended to require that one of the following occur:

- The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
- The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
- 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

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

The bill amends s. 680.1041, F.S., by deleting the provision that a lease subject to chapter 680, F.S., is also subject to federal statutes. The bill also subjects leases to the final consumer protection decisions of Florida courts existing on the effective date of the act.

The bill amends the provisions of s. 680.303, F.S., affecting transfers of interest, by sublease or otherwise. A transfer of interest is allowed unless the transfer is a material violation of the terms of the prime lease and is a ground for default.

The bill amends s. 680.307, F.S., to provide that a lessor's creditor is subject to the lease unless the creditor has a security interest in the goods which was perfected before the lease contract became enforceable.

The bill substantially rewords s. 680.503, F.S., to allow a lease agreement to include rights and remedies for default in addition to or in lieu of those provided in chapter 680, F.S. The lease agreement may limit or alter the measure of damages recoverable under chapter 680, F.S. Use of the remedies provided in this chapter are optional unless the remedy is expressly agreed by the parties to be exclusive. If the lease agreement provides for an exclusive or limited remedy, but that remedy would fail as to its essential purpose or would be unconscionable, the parties may make use of the remedies contained in chapter 680, F.S. Consequential damages may be liquidated, limited, altered, or excluded unless this would be unconscionable. Rights and remedies on default by either party are not impaired by chapter 680, F.S.

The bill amends s. 680.507, F.S., by changing the time at which damages based on market rent are determined from the time of the default to the times specified in s. 680.519 or s. 680.528, F.S.

The bill amends s. 680.508, F.S., by adding the rights and remedies contained in the lease contract to the remedies a lessee may seek if the lessor fails to deliver goods which conform to the terms of

the lease contract or rejects the lease agreement, or the lessee rejects delivered goods or justifiably revokes acceptance of goods. If the lessor is otherwise in default of the lease contract, the lessee may exercise the rights and remedies in the lease contract or rights and remedies associated with a breach of warranty.

The bill amends the notification provisions of s. 680.516, F.S., to require the lessee to notify not only the lessor but also the supplier of goods of any default within a reasonable time.

The bill amends the provisions of s. 680.518, F.S., to allow the lessee to enter the market and lease goods which conform to the original lease (cover) after a default by the lessor as described in chapter 680, F.S., or any other default agreed to by the parties. Damages are determined by taking the present value of the rent due under the new lease minus the present value of rent due under the old lease for the same time period.

The bill amends s. 680.519, F.S., to specify the damages the lessee may recover for nondelivery of goods, rejection of the lease contract by the lessor, or revocation of acceptance by the lessee. The parties may agree to damages other than those damages provided in this section.

The bill amends s. 680.523, F.S., by adding the lessor's remedies if the lessee's breach substantially impairs the value of the lease contract as: canceling the lease contract, withholding goods and taking possession of goods already delivered, stopping delivery of goods, disposing of the goods or retaining goods and recovering damages, exercising any other right or remedy provided in the lease contract, or seeking damages. If the breach does not substantially impair the value of the lease contract, the lessor may only seek damages.

The bill amends ss. 680.524, 680.525, 680.527, 680.528, 680.527, and 680.532, F.S., to provide for a lessor's remedies upon a lessee's wrongful rejection or revocation of goods or failure to make payment, or upon a lessee's default which substantially impairs the value of the lease contract, or upon a lessee's default of a type agreed to by the parties.

#### **E. Application of Lease Provisions**

The bill provides that the lease provisions do not apply to any lease contract entered into prior to the effective date of the bill unless such lease contracts specifically agree in writing that it is governed by applicable law as supplemented or amended.

#### **F. Effective Date**

The bill takes effect October 1, 1998.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.