

1 A bill to be entitled
2 An act relating to the Uniform Commercial Code;
3 amending ss. 679.1021, 679.1081, 679.2031,
4 679.210, 679.510, 679.513, 679.516, 676.519,
5 679.527, and 679.625, F.S.; revising provisions
6 of the Uniform Commercial Code as amended to
7 clarify and conform; amending ss. 679.3011,
8 679.3171, 679.334, 679.5011, and 679.5041,
9 F.S.; clarifying the application of laws of
10 this state to security interests in goods as
11 fixtures; revising operation of provisions
12 specifying priority of such security interests;
13 providing an effective date.

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

16
17 Section 1. Paragraph (nn) of subsection (1) of section
18 679.1021, Florida Statutes, is amended to read:

19 679.1021 Definitions and index of definitions.--

20 (1) In this chapter, the term:

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

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

28 679.1081 Sufficiency of description.--

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

- 1 (a) A commercial tort claim; or
- 2 (b) In a consumer transaction, consumer goods, a
- 3 security entitlement, a securities account, or a commodity
- 4 account; or-

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

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

11 679.2031 Attachment and enforceability of security
12 interest; proceeds; supporting obligations; formal
13 requisites.--

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

- 18 (a) Value has been given;
- 19 (b) The debtor has rights in the collateral or the
- 20 power to transfer rights in the collateral to a secured party;
- 21 and

22 (c) One of the following conditions is met:

23 1. The debtor has authenticated a security agreement
24 that provides a description of the collateral and, if the
25 security interest covers timber to be cut, a description of
26 the land concerned;

27 2. The collateral is not a certificated security and
28 is in the possession of the secured party under s. 679.3131
29 pursuant to the debtor's security agreement;

30 3. The collateral is a certificated security in
31 registered form and the security certificate has been

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (5) The law of this state governs:

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

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

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

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

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

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

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

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

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

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

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

3 679.5011 Filing office.--

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

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

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

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

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

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

26 Section 9. Subsection (2) of section 679.5041, Florida
27 Statutes, is amended to read:

28 679.5041 Indication of collateral.--A financing
29 statement sufficiently indicates the collateral that it covers
30 if the financing statement provides:

31

1 (1) A description of the collateral pursuant to s.
2 679.1081; or

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

8 Section 10. Section 679.510, Florida Statutes, is
9 amended to read:

10 679.510 Effectiveness of filed record.--

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

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

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

22 (3)(4) A continuation statement that is not filed
23 within the 6-month period prescribed by s. 679.515(4) is
24 ineffective.

25 Section 11. Subsection (4) of section 679.513, Florida
26 Statutes, is amended to read:

27 679.513 Termination statement.--

28 ~~(4) Except as otherwise provided in s. 679.510,~~Upon
29 the filing of a termination statement with the filing office,
30 the financing statement to which the termination statement
31 relates ceases to be effective. ~~Except as otherwise provided~~

1 ~~in s. 679.510,~~ For purposes of ss. 679.519(7) and 679.522(1),
2 the filing with the filing office of a termination statement
3 relating to a financing statement that indicates that the
4 debtor is a transmitting utility also causes the effectiveness
5 of the financing statement to lapse.

6 Section 12. Subsections (1) and (2) of section
7 679.516, Florida Statutes, are amended to read:

8 679.516 What constitutes filing; effectiveness of
9 filing.--

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

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

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

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

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

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

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

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

31

- 1 a. Does not correctly identify the initial financing
2 statement as required by s. 679.512 or s. 679.518, as
3 applicable; or
- 4 b. Identifies an initial financing statement the
5 effectiveness of which has lapsed under s. 679.515;
- 6 3. In the case of an initial financing statement that
7 provides the name of a debtor identified as an individual or
8 an amendment that provides a name of a debtor identified as an
9 individual which was not previously provided in the financing
10 statement to which the record relates, the record does not
11 identify the debtor's last name and first name ~~or initial~~; or
- 12 4. In the case of a record filed or recorded in the
13 filing office described in s. 679.5011(1)(a), the record does
14 not provide a sufficient description of the real property to
15 which it relates;
- 16 (d)~~(e)~~ In the case of an initial financing statement
17 or an amendment that adds a secured party of record, the
18 record does not provide an organization's name or, if an
19 individual, the individual's last name and first name ~~or~~
20 ~~initial~~ and mailing address for the secured party of record;
- 21 (e)~~(f)~~ In the case of an initial financing statement
22 or an amendment that provides a name of a debtor which was not
23 previously provided in the financing statement to which the
24 amendment relates, the record does not:
- 25 1. Provide a mailing address for the debtor;
- 26 2. Indicate whether the debtor is an individual or an
27 organization; or
- 28 3. If the financing statement indicates that the
29 debtor is an organization, provide:
- 30 a. A type of organization for the debtor;
- 31 b. A jurisdiction of organization for the debtor; or

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

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

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

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

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

19 Section 13. Subsection (1) of section 679.519, Florida
20 Statutes, is amended to read:

21 679.519 Numbering, maintaining, and indexing records;
22 communicating information provided in records.--

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

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

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

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

31 and

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

3 Section 14. Subsections (2) and (4) of section
4 679.527, Florida Statutes, are amended to read:

5 679.527 Florida Secured Transaction Registry.--

6 (2) Under chapter 287, the department has the
7 authority to determine and select the most qualified
8 respondents to the request for qualifications and to negotiate
9 and enter into one or more contracts as provided in this
10 section. The contract may not be assignable or otherwise
11 transferable without the express written consent of the
12 department, notwithstanding any limitations imposed by s.
13 679.4061 or s. 679.4081.

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

1 operation by the department until a subsequent contract for
2 such duties can be executed. The department shall be entitled
3 to injunctive relief if the entity fails to turn over the
4 materials and records upon demand, and the Circuit Court for
5 Leon County, Florida, shall have exclusive original
6 jurisdiction to adjudicate any disputes pertaining to this
7 section or any contract entered into under this section.

8 Section 15. Paragraph (f) of subsection (5) of section
9 679.625, Florida Statutes, is amended to read:

10 679.625 Remedies for failure to comply with article.--

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

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

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